

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.795/2013

Maroti S/o Hari Adhagale,
aged about 65 Yrs., Occ. Agriculture,
R/o Kurali, Taluka Umarkhed,
District Yavatmal.

... Appellant

- Versus -

1. State of Maharashtra,
through Collector, Yavatmal.
2. The Executive Engineer,
Lower Pus Project, Pusad,
Taluka Pusad, District Yavatmal.
3. The Special Land Acquisition Officer,
Lower Pus Project, Pusad, Taluka
Pusad, District Yavatmal.

... Respondents

Mr. Akhilesh Potnis, Advocate h/f Mr. M.M. Sudame, Advocate
for the Appellant.

Ms. T.H. Udeshi, A.G.P. for Respondent Nos.1 and 3.

Mr. Amol B. Patil, Advocate for Respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

JUDGMENT RESERVED ON : 12.1.2023

JUDGMENT PRONOUNCED ON : 17.1.2023

JUDGMENT

Heard the learned Advocate for the appellant, learned Assistant Government Pleader for respondent Nos.1 and 3 and learned Advocate for respondent No.2.

2. By preferring this appeal, the appellant original claimant has challenged the judgment and award passed by the Reference Court in L.A.C. No.446/2002 with connected matters decided by the learned Civil Judge, Senior Division, Pusa dated 4.1.2013.

3. Brief facts of the appeal are as follows:-

The appellant is the original claimant whose lands are acquired by Notification No.5/47/96-97 dated 19.6.1997 issued under Section 4 of the Land Acquisition Act, 1894. Being not satisfied with the amount of compensation awarded by the Land Acquisition Officer at the rate of ₹17,500/- per hector for the non-irrigated land and ₹20,000/- per hector for irrigated land,

the appellant had approached the Reference Court under Section 18 of the Land Acquisition Act seeking enhanced amount of compensation in respect of his acquired lands. The Reference Court had enhanced compensation at the rate of ₹40,000/- per hector, however, being aggrieved and dissatisfied with the said enhancement, the original claimant-appellant approached this Court by filing appeal under Section 54 of the Land Acquisition Act.

4. As per the contention of the appellant, his land Survey No.25 admeasuring 4 hector 36 R, Survey No.42 admeasuring 0.62 R, Survey No.26 admeasuring 2 hector 2 R and Survey No.123 admeasuring 2 hector 35 R were acquired by the respondents for Amdapur project. As per the contention of the appellant, his lands were fertile and having high potential. He used to take crops like cotton, tur etc. and his lands were also well irrigated. It is further his contention that he was cultivating the vegetables crops and was getting income from the same. Thus

these lands were having great potential and their market price was higher than the market price which is awarded by the Reference Court. It is his further case that market value was much higher of the acquired lands than was considered by the Land Acquisition Officer. Moreover, Land Acquisition Officer has also not considered the potentiality of the lands. The categorization by the Land Acquisition Officer depending on the land revenue and awarding different rates is totally unjustified. The Reference Court has also not considered the potentiality of the acquired lands while awarding compensation. The appellant was also having independent source of income from the said lands as the lands were having independent source of irrigation, namely, the well. Considering these facts, for the acquisition of the lands situated at village Kurali which is near to village Ghamapur, the Reference Court ought to have awarded compensation at the rate of ₹83,000/- per hector to the appellant as the said lands of the appellant were also acquired for the same project at Amdapur, Taluka Umarkhed and the appellant is also entitled for same

amount of compensation which is awarded for the village Ghamapur.

5. As against this, learned Assistant Government Pleader and the learned Advocate for respondent No.2 submit that considering the potential of the market value of the sale instances produced before it, the Reference Court had determined the amount of compensation which is just and fair hence no interference is warranted in the impugned judgment and award and order of the Reference Court deserves to be maintained.

6. Considering the submissions made by the parties only issue which arise for my consideration is - whether the appellant has made out the case for enhanced compensation, if yes, at what rate?

7. The perusal of the judgment of the Reference Court reveals that it has maintained the classification of the lands in different groups as relied upon by the Land Acquisition Officer and this

classification was made on the basis of the land revenue of those lands. It is undisputed that the land revenue alone cannot be made basis to decide the market value of the land. The market value of the land depends upon the other factors like the fertility of the land, location where it is situated and whether the land is irrigated or not etc. Market value of land also depends upon the prevailing market rate for which the sale instances are executed and produced before the Land Acquisition Officer and also before the Reference Court. It is now well settled that classification of the lands on the basis of land revenue is not a correct and proper way to determine the amount of compensation to be awarded. In the present case when all these lands are situated at the same village and more or less adjacent to each other or in the same vicinity and they are also acquired for the same project then the categorization of these lands only on the basis of the land revenue is totally unjustified. Therefore, to that extent interference is warranted in the judgment and award of the Reference Court.

8. The Reference Court has enhanced compensation for these various categories and awarded compensation at the rate of ₹40,000/- per hector to the appellant. For this purpose, the Reference Court has considered various sale instances, the first and foremost being the sale instance of land between Madhukar Gaikwad and Avadhut Naik which is sold for consideration of ₹80,000/- admeasuring 1 hector 62 R. Another sale instance wherein 1 hector 21 R was purchased in the year 1995 i.e. 22.2.1995 for consideration of ₹50,000/-. Third sale instance is of dated 7.1.2005 wherein 1 hector 62 R was purchased for consideration of ₹1,92,000/-. On the basis of such sale instances Reference Court come to the conclusion that the approximate rate at the time of acquisition was ₹35,000/- to ₹40,000/- and awarded compensation on the basis of sale instances at the rate of ₹40,000/-. The appellant has also placed reliance on the judgment passed in First Appeal No.1110/2008 wherein this Court placed reliance on the judgment of the Reference Court in L.A.C. No.94/2004 dated 13.4.2016 which is

in respect of the land bearing Survey No.65 situated at village Kurali. The Reference Court has in the said judgment awarded compensation at the rate of ₹83,000/- per hector. According to the learned Advocate for the appellant the respondent had not preferred any appeal against the said judgment and, therefore, that judgment has attained finality.

9. It is undisputed that village Kurali and Ghamapur are situated adjacent to each other and land covered in L.A.C. No.94/2004 was also acquired for the same project. Though in the present appeal the claimant claimed that his lands were well irrigated but admittedly no evidence is adduced by the claimant to show that the lands were well irrigated. In view thereof, in my considered view, the appellant is also entitled to get the same compensation that of ₹83,000/- per hector.

10. It is submitted by the learned Advocate for the appellant that as compensation at the rate of ₹83,000/- per hector was

awarded in L.A.C. No.94/2004 for non-irrigated land and the lands of the present appellant were well irrigated therefore, the appellant is entitled to get enhanced compensation at the rate of ₹1,00,000/- per hector. As observed earlier, the appellant has not adduced any evidence to show that his lands were well irrigated.

However, considering that this Court had awarded substantially a fair rate of ₹83,000/- per hector and the appellant has relied upon the judgment of the Reference Court in L.A.C. No.94/2004 on the basis of which he claimed compensation at the rate of ₹83,000/- per hector and that the judgment passed in L.A.C. No.94/2004 had attained finality; the appellant is also entitled to receive compensation at the rate of ₹83,000/- per hector. As already observed, the Reference Court has in absence of any independent and convincing evidence produced on record awarded compensation considering the categorization made by the Land Acquisition Officer and it is undisputed that the appellant had not adduced any independent and convincing evidence to the effect that his lands were well irrigated. Therefore,

Reference Court held that the lands of the appellant were not irrigated lands and, therefore, in view of the judgment passed by the Reference Court in L.A.C. No.94/2004 wherein the land was acquired for the same project, the appellant is held entitled to get compensation at the rate of ₹83,000/- per hector for non-irrigated lands. Needless to state that the appellant is entitled to get this enhanced amount of compensation along with all statutory benefits thereon.

11. The appeal stands disposed of as partly allowed in the above terms. There shall be no orders as to costs.

(URMILA JOSHI-PHALKE, J.)