

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

FIRST APPEAL NO.214/2016

Pandurang Ganpat Kharde,
aged about 58 Yrs., Occ. Cultivator,
R/o Garkhed, Tq. Deulgaon Raja,
Dist. Buldana.

... Appellant

- Versus -

1. The State of Maharashtra,
through Collector, Buldhana.
2. Vidarbha Irrigation Development
Corporation, through its Executive
Engineer Khadakpurna Project
Deulgaon (Raja), Dist. Buldhana.
3. ~~Special Land Acquisition Officer,~~
~~Buldhana, Dist. Buldana. ..(Deleted)~~ ... Respondents

Mr. R. N. Ghuge, Advocate for the Appellant.
Ms. T.H. Udeshi, A.G.P. for Respondent No.1.
Mr. R.D. Kalra, Advocate for Respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 10.1.2023

ORAL JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard the learned Advocate for the appellant, learned

Assistant Government Pleader for respondent No.1 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 Joint Civil Judge, Senior Division, Buldhana dated 24.2.2005 for enhancement of the compensation. As per contentions of the appellant the learned Reference Court had not considered the evidence on record and awarded the compensation which is not according to the evidence adduced by the original claimant. The appellant has also filed pursis on record contending that the present case is covered by the judgment passed by the Reference Court in L.A.C. No.219/2000 and in view of said rate considered by the Reference Court, present appeal can be disposed of.

3. Notices of the appeal are served on the acquiring body as well as on the State. Mr. Kalra, learned Advocate appearing for respondent No.2 submits that the judgment on

which the appellant has relied upon can be distinguished on the ground that in the present appeal the compensation regarding fruit bearing trees is in issue and for that purpose the appellant has to adduce the evidence. Therefore, compensation cannot be granted on the basis of judgment on which the appellant has relied upon.

4. Heard the submissions of the parties. Considering the issue of fruit bearing trees regarding which the evidence is not adduced before the Reference Court and the fact that without such evidence this Court is unable to decide the issue regarding the fruit bearing trees, opportunity is required to be given to the appellant to adduce the evidence in respect of valuation of the fruit bearing trees otherwise the appellant would suffer irreparable loss.

5. As per the contention of the appellant by issuing notification under Section 4 dated 7.3.1997 and 11.3.1197 the

land owned by the appellant bearing Gat No.178 admeasuring 1.52 hector situated at Garkhed, Taluka Deulgaon Raja, District Buldhana was acquired for Khadakpurna project. The Land Acquisition Officer has granted compensation which was inadequate and, therefore, the appellant preferred the land reference bearing No.224/2000 and adduced the evidence. The Reference Court has awarded compensation at the rate of Rs.60,000/- per hector for Gat No.178. The appellant has challenged the rate decided by the Reference Court. He placed reliance on the judgment passed in L.A.C. No.219/2000 by Joint Civil Judge, Senior Division, Buldhana for the land which is acquired for the same project. The Joint Civil Judge, Senior Division has awarded compensation to the land owners at the rate of ₹2,05,000/- per hector with all statutory benefits. As per the contention of the appellant the land which is owned by the appellant acquired for Khadakpurna project is having same potential like the land bearing Gat No.178 owned by Ganesh Keshav Kakad who filed reference bearing No.219/2000. The

Reference Court has awarded the compensation at the rate of ₹2,05,000/- per hector for the said land. The land which is in issue in the judgment relied upon by the appellant is acquired for the same project, from the same village and having same potential. Therefore, the case of the appellant is also covered by the judgement on which the appellant has placed reliance. Now, only question regarding fruit bearing trees and pipeline has remained and for that purpose the land reference case which is before this Court for consideration in appeal is to be remanded back to that extent to the Reference Court for recording the evidence and deciding it afresh.

6. In view of the above, I pass the following order:-

(a) The appeal is partly allowed.

(b) The appellant is entitled to receive compensation of the land acquired bearing Gat No.178 of village Garkheda admeasuring 1 H 52 R at the rate of ₹2,05,000/- (Two Lakh Five Thousand) per hector with all statutory benefits and interest at

the rate of 9% p.a. for one year from the date of notification and thereafter at the rate of 15% p.a. till realization of the amount.

The reference is remanded only to the extent of ascertaining the compensation amount regarding fruit bearing trees and pipeline.

(c) In the above terms, the appeal is disposed of. There shall be no orders as to costs.

(URMILA JOSHI-PHALKE, J.)

Tambaskar.

Signed By: NILESH VILASRAO
TAMBASKAR

Private Secretary
Date: 12.01.2023 17:28