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

FIRST APPEAL NO.1323 OF 2017

Executive Engineer, (V.I.D.C.)
Yavatmal Project Construction
Division, Yavatmal, Tal. and
Dist. Yavatmal. **APPELLANT**

// VERSUS //

1. Siddarth Shamrao Kale,
Aged 26 years, Occ. Agriculturist,
R/o. Sindkhed, Tal. Ner, Dist. Yavatmal. (Ori. Applicant)

2. The State of Maharashtra,
Through its Collector, Yavatmal, (Ori. Respdt-1)
Tal. and Dist. Yavatmal.

3. Land Acquisition Officer, (Ori. Respdt-2)
Darwha, Dist. Yavatmal. **RESPONDENTS**

WITH

CROSS-OBJECTION NO.73 OF 2022

Siddarth Shamrao Kale,
Aged 40 years, Occ. Agri.,
R/o. Sindkhed, Tal. Ner, Dist. Yavatmal. **CROSS-OBJECTOR.**
(Ori. Claimant on R.A.)

// VERSUS //

1. Executive Engineer, (V.I.D.C.)
Yavatmal Project Construction
Division, Yavatmal,
Dist. Yavatmal. (Ori. Respedt.No.-3)

2. The State of Maharashtra,
Through Collector, Yavatmal, (Ori. Respdt-1)
Dist. Yavatmal.

3. Land Acquisition Officer, (Ori. Respdt-2)
Darwha, Dist. Yavatmal. **RESPONDENTS**

Ms. I. P. Khisti, Advocate for the appellant.
Mr. N. M. Kolhe, Advocate for cross-objector.
Mr. M. A. Kadu, AGP for respondent Nos.2 and 3.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08/03/2023

ORAL JUDGMENT

1. Heard.

2. Learned Advocate Ms. Khisti for the appellant submitted the compensation awarded by the reference Court is within four times. In view of the Government Circular dated 23.02.2017 which is made applicable to the V.I.D.C, the compensation awarded in the present case by the Reference Court is within four times, and therefore, appellant do not want to proceed with the appeal and is seeking leave to withdraw the appeal.

3. The leave as prayed for is granted. The First Appeal is disposed of as withdrawn.

Cross-objection No. 73/2022

1. The original claimant has filed the cross-objection for enhancement of the compensation.

2. Brief facts of the case which are necessary for disposal of the cross-objection are as follows:

The claimant was the owner of Gat No.27/2 admeasuring 1 hectare 62 R was acquired by the Government for Kumbharpind Project vide LAC No.4/47/97-98 of Mouza Sindkhed, Tq. Ner. The Section 4 notification is issued on 30.08.2000. Final notification under Section 6 of the Act was issued on 27.07.2003. The Special Land Acquisition Officer has issued notice under Section 12(2) of the said Act on 11.05.2004. Accordingly payment was made on 14.05.2004. The said compensation was received by the claimant under protest reserving his right to prefer the reference. By passing an award the Special Land Acquisition Officer has awarded the compensation at the rate of Rs.37,000/- per hectare which according to the claimant is unjust and inadequate. As per contention of the claimant, the Special Land Acquisition Officer had not considered the fertility, potentiality of the acquired land. Moreover, the sale instances of the relevant period are not considered in proper prospective. Therefore, they preferred the reference petition.

3. The said reference petition was strongly opposed by the respondent - State on the ground that the Land Acquisition Officer has given every opportunity to the claimant to substantiate their claim and rightly considered all the aspect laid down in the Act for determination of compensation. According to the respondents, the award passed by the Land Acquisition Officer is based on sound reasoning after properly appreciated the material placed on record and prayed for dismissal of the reference.

4. The claimant Siddharth Shamrao Kale stepped into the witness box and filed affidavit of examination-in-chief. He reiterated the contention as per his reference petition and as per his evidence, he has claimed the compensation at the rate of Rs.1,25,000/- to Land Acquisition Officer, Yavatmal. However, Land Acquisition Officer has not responded the same and only awarded Rs.37,000/- per hectare. He has not received any compensation towards the tree. Thus, the Land Acquisition Officer has awarded the inadequate compensation. He further testified that his land is at a distance of 8 KM from Ner which is situated on Yavatmal – Amravati Highway. To reach at his agricultural field there is tar road available as well as in Ner, Taluka offices like Tahsil Office, Court, Panchayat facilities are available but these facts are not considered by the Land Acquisition Officer. He claimed the

compensation at the rate of Rs.3,00,000/- per hectare by filing the reference petition. He was cross-examined at length and during cross-examination, he admitted that he has not produced any evidence on record to show that fruit bearing trees, Well available in his agricultural field, at the time of acquisition. His cross-examination further shows that he has not produced any documents to show that Well is situated in his agricultural field. The said Well is acquired by the Government. He further admitted that there was no Well in his agricultural field, 1 hectare 54 R which was acquired. There was no electric motor installed on the said Well. Thus, his cross-examination reveals that he has not produced any document to show that any trees were planted in his agricultural field, there was Well. Even he has not adduced the evidence regarding the sale instances. After considering the evidence on record, the Reference Court has awarded the compensation at the rate of Rs.1,25,000/- per hectare. The Reference Court has considered that during cross-examination the claimant had admitted that no such cogent and documentary evidence is available to consider his demand. Hence, in absence of evidence to that effect Reference Court come to the conclusion that claimant is not entitled to claim enhanced compensation for the said trees. While allowing the reference partly, the Reference Court directed the respondents/non-applicants to pay enhanced compensation of Rs.1,25,000/- per hectare to the petitioner/applicant

for the acquired land for Gat No.27/2 admeasuring 1 hectare 62 R and the reference was partly allowed.

5. Being aggrieved and dissatisfied with the above said Judgment and Award of the Reference Court present cross-objection is filed by the cross-objector/original claimant, on the ground that the land of the cross-objector was of rich quality, irrigated land and having black cotton soil. The cross-objector also raised the ground that he was taking crops like, Cotton, Jawar, Toor, Wheat etc. But the Reference Court had not considered the fact that they were getting the income from the said land and cross-objector claimed the compensation at the rate of Rs.3,00,000/- per hectare. The claimant has claimed the compensation at the rate of Rs.3,00,000/- per hectare. Admittedly, no evidence is adduced by the claimant to prove that they are entitled for the compensation at the rate of Rs.3,00,000/- per hectare. The admissions during cross-examination sufficiently explains that no evidence is adduced. The claimant has produced on record 7/12 extract wherein there was no entry regarding trees. There is also no entry regarding the Well in the 7/12 extract. Therefore, the contention of the claimant that his land was well irrigated is not substantiated by the documentary evidence. No oral evidence is also adduced by the claimant to prove the same.

6. The claimant relied upon the sale instance of year 2005 which shows that the property bearing No.27/3 admeasuring 1 hectare 55 R was sold out for the consideration of Rs.3,75,000/-. To prove the said transaction claimant has not either examined Vendor or the purchaser. Even if the said sale instance is taken into consideration said sale instance from the adjacent village and not from the same village. The sale instance is from village Walki, Tq. Ner and the land of the claimant is from village Sindkhed. The oral evidence of the claimant nowhere shows that both the lands are of same quality, same fertility, and therefore claimant is entitled for the compensation at the rate of Rs.3,00,000/-. The Reference Court has also observed that the claimant has not adduced any evidence to support the contention that the claimant is entitled to receive the compensation at the rate of Rs.3,00,000/-. The Hon'ble Apex Court in the case of **Chindha Fakira Patil (Dead) through LRs. Vs. Special Land Acquisition Officer, Jalgaon** reported in **(2011) 10 SCC 787** held that while deciding the reference proceeding every reference proceeding must be decided on the basis of the evidence produced and the issues raised by the parties in the proceedings concerned. It was observed that the evidence of the witness examined by the claimant and analysis thereon by the Supreme Court in some other reference case arising from any independent notification issued in earlier point of time concerning another village/Taluka cannot

be the basis to mechanically hold that since the valuation report has been prepared by the expert, it must be accepted as duly proved in all respects in another reference more so in respect of justness of the valuation of the subject property. Thus, in view of the observation of the Hon'ble Apex Court, every reference is to be decided on the basis of the evidence produced in the said reference. The aforesaid decision can be made applicable to the facts of the present case, as undisputedly the claimant has neither examined any expert witness nor sought any opinion from any expert. The contention that the land which was acquired by the Government was having tree itself is not proved by the claimant. It is pertinent to note that, the sale instance on which claimant placed reliance on is also not from same village. Even there is no evidence that the adjacent village and the village in which the claimants land is situated is having nearest distance. No evidence is adduced to show that the quality of the land, fertility of the land and potential of the land was of same nature. In view of that, the contention of the claimant that he is entitled for the compensation more than the Reference Court awarded is not acceptable.

7. The Reference Court has observed that only the guesswork is available to award the compensation. It is observed by the Reference Court that looking the material available before him, it can sufficiently

said that the compensation awarded by Land Acquisition Officer is not proper, adequate and not as per the prevailing market value of acquired land. The Reference Court come to the conclusion on the basis of contents of the award available on record. His statement which shows that on the basis of proofs the Land Acquisition Officer has appreciated the sale instances of previous five years. From the date of notification under Section 4 of the Act issued on 30.8.2000 and came to the conclusion that Rs.46,000/- per hectare is the highest market value of the acquired land. The Reference Court has further considered that the rate of Rs.37,000/- per hectare for group No.2 and at the rate of Rs.46,000/- for group No.3 in which the acquired lands in the cases in hand. The Land Acquisition Officer has also given comparative table but as the entire statistical work is done on the basis of land revenue. Reference Court held that it cannot be said that it is proper and correct one, and therefore the compensation awarded by Land Acquisition Officer is not the exact value of the acquired land on the date of notification. Reference Court further observed that though there is no concrete and definite evidence available on record to ascertain the market value of the acquired land then compensation is assessed on the basis of guesswork. Thus, considering the fact and circumstances after appreciating the evidence on record the Reference Court come to the conclusion that at the rate of Rs.1,25,000/- per hectare will be

appropriate to award the compensation to the claimant on the basis of guesswork.

8. As observed above, in the absence of the evidence the Reference Court has already awarded the compensation by applying the guesswork. The compensation is awarded adequately by the Reference Court and no interference is called for in the absence of the evidence. In view of that cross-objection deserves to be dismissed. In view of that, I proceed to pass following order.

9. As there is no merit in the cross-objection, cross-objection is hereby dismissed.

(URMILA JOSHI-PHALKE, J.)

Sarkate./-

Digitally signed byANANT R SARKATE
Signing Date:18.04.2023 11:19