



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

FIRST APPEAL NO. 660 OF 2008

1 Abdul Jabbar s/o Mushtaq Ahmed, : **APPELLANT**
Aged about 50 years, Occ. Cultivator,
R/o Deoli, Tahsil Deoli, Dist. Wardha

VERSUS

1 State of Maharashtra, Mantralaya, Mumbai, : **RESPONDENTS**
through its Collector, Wardha, Tah. & Dist.
Wardha

2 Maharashtra Industrial Development
Corporation, having its Head Office at
Mumbai and Regional Office at Udyog
Bhavan, Civil Lines, Nagpur through its
Area Manager, Wardha

Mr. A.Z. Jibhkate, Advocate for the appellant

Mr. M.M. Agnihotri, Advocate for the Respondent No.2

WITH

FIRST APPEAL NO.626 OF 2006

1 Maharashtra Industrial Development : **APPELLANT**
Corporation through its Chief Executive
Officer, Having it's Regional Office at Udyog
Bhavan, Nagpur

VERSUS

1 Shamrao s/o Daulatrao Vaidya, : **RESPONDENTS**
Aged about 67 years, Occu. Cultivator and
Teacher, R/o Deoli, Tahsil – Deoli, District
Wardha

2 State of Maharashtra Through Collector,
Wardha

Mr. M.M. Agnihotri, Advocate for the appellant

Mr. A.Z. Jibhkate, Advocate for Respondent No.1

WITH

FIRST APPEAL NO. 936 OF 2008

- 1 Mohd. Harun Abdul Majid Tawar : **APPELLANT**
Aged about 34 years, occ. Cultivator,
R/o Tah. Deoli, Distt. Wardha

VERSUS

- 1 State of Maharashtra, Mantralaya, Mumbai, : **RESPONDENTS**
through Collector, Wardha
- 2 Maharashtra Industrial Development
Corporation, having its Head Office at
Udyog Bhawan, Civil Lines, Nagpur
through its Area Manager, Wardha

Mr. A.Z. Jibhkate, Advocate for appellant

Mr. M.M. Agnihotri, Advocate for Respondent No.2

WITH**FIRST APPEAL NO. 529 OF 2005**

- 1 Abdul Hamid s/o Abdul Majid, : **APPELLANTS**
Aged about 45 years, Occ. Cultivator,
- 2 Mohd. Harun s/o Abdul Majid,
Aged about 42 years, Occ. Cultivator
Both R/o Deoli, Dist. Wardha

VERSUS

- 1 State of Maharashtra, Through Collector, : **RESPONDENTS**
Wardha, Tah. and Dist. Wardha
- 2 The Maharashtra Industrial Development
Corporation, having its Head Office at
Bombay and Branch Office at Udyog
Bhavan, Civil Lines, Nagpur, through its
Area Manager, Wardha

Mr. A.Z. Jibhkate, Advocate for appellants.

Mr. M.M. Agnihotri, Advocate for Respondent No.2

WITH**FIRST APPEAL NO. 57 OF 2006**

1 *Shyamrao s/o Daulatrao Vaidya (DEAD)* : **APPELLANTS**
Aged about 70 years, Occ. Cultivator,
R/o Deoli, Tah. Deoli, Dist. Wardha

- 1) Anand s/o Shyamrao Vaidya (son)
Aged about 40 Years,
- 2) Smt. Tara wd/o Shyamrao Vaidya, (Wife)
Aged about 75 years,
- 3) Sau. Sadhana w/o Madhav Ghuse
(Daughter) Aged about 51 years,
- 3) Sau. Sadhana w/o Satish Somnathe
(Daughter) Aged about 50 years
- 4) Sau. Safalata Yashwant Ambatkar,
(Daughter) Aged about 48 years,
- 5) Sau. Nandini Vijay Badwaik (Daughter)
Aged about 47 years
- 6) Sau. Shilpa w/o Avinash Shende
(Daughter) Aged about 46 years

VERSUS

- 1 State of Maharashtra, Through Collector, : **RESPONDENTS**
Wardha, Tah. and Dist. Wardha
- 2 The Maharashtra Industrial Development
Corporation, having its Head Office at
Bombay and Branch Office at udyog
Bhavan, Civil Lines, Nagpur, through its
Area Manager, Wardha

Mr. A.Z. Jibhkate, Advocate for appellant

Mr. M.M. Agnihotri, Advocate for Respondent No.2

WITH

FIRST APPEAL NO.1006 OF 2008

- 1 Suresh s/o Marotrao Vaidya, : **APPELLANT**
Aged about 50 years, Occ. Cultivator,
R/o Deoli, Tahsil Deoli, Distt. Wardha

VERSUS

- 1 State of Maharashtra, Mantralaya, Mumbai, : **RESPONDENTS**
through its Collector, Wardha, Tah. & Dist.
Wardha

2 Maharashtra Industrial Development Corporation, having its Head Office at Mumbai and Regional Office at Udyog Bhavan, Civil Lines, Nagpur, through its Area Manager, Wardha

Mr. A.Z. Jibhkate, Advocate for appellant
Mr. M.M. Agnihotri, Advocate for Respondent No.2

CORAM : AVINASH G. GHAROTE, J.

DATE : 20th OCTOBER, 2023

ORAL JUDGMENT

All these appeals, except F.A. No.626/2006, raise a common ground regarding failure of the learned Reference Court to enhance the compensation. F.A. No. 626/2006, is by the MIDC and challenges the judgment and decree dated 04/04/2005 passed by the 4th Adhoc Additional District Judge, Wardha upholding the award by the Land Acquisition Officer. All these appeals are therefore concerned with the compensation and therefore, can be decided by the common judgment.

2. For the sake of reference, the facts in First Appeal No. 660/2008, are being referred by Mr. Jibhkate, learned counsel for the appellant.

3. Heard Mr. Jibhkate, learned counsel for the appellant and Agnihotri, learned counsel for the respondent.

4. Being dissatisfied by the judgment under Section 18 of the Land Acquisition Act, passed by the learned Reference Court dated 29/04/2005 and the quantum of enhancement of the compensation granted by it, the present appeal has been filed.

5. The factual position enumerating from the record is as under :

(i) The acquisition is under the Maharashtra Industrial Development, Act

(ii) The Notification under the provisions of the Land Acquisition Act was published on 31/10/1989 under which one of the lands acquired was that of the appellant in the instant matter bearing survey No.532 admeasuring 2.78 HR. The land Acquisition Officer by his Award dated 13/7/1994, granted a rate of Rs.35,000/- per hectare accepting that the entire land was irrigated. He also granted compensation of Rs.22,751/- for a well which was constructed in the said field, the claim for pipeline laid was declined by the Land Acquisition Officer. Dissatisfied with this, the appellant approached to the Reference Court under Section 34 of the Maharashtra Industrial

Development Act, in which by the judgment dated 29/04/2005, the Reference Court enhanced the value of the land to Rs.40,000/- per hectare, maintained the compensation for well to the same amount of Rs.22,751/-, but granted compensation for pipeline to the tune of Rs.7301/- on the ground that the valuation report indicated its existence and its valuation as Rs7,301/-.

6. Mr. Jibhkate, learned counsel for the appellant contends, that the compensation granted for the agricultural land which is irrigated, is very meager. He submits, that the land was adjacent to *Abadi* and, therefore, had (Non-agriculture) NA potentiality, for which he places reliance upon the *Patwari* map showing the location of the land with the *Abadi*, which is being objected by Mr. Agnihotri, learned counsel for the respondent No. 2 on the ground that this was not before the Reference Court. It is also contended that considering the well settled position of valuing the agricultural land which is irrigated at twice the value of the dry crop land, since the dry crop land for the same village under the same Notification has been valued at Rs.30,000/- per hectare, the minimum valuation ought to have been Rs. 60,000/-

per hectare. He further submits, that the evidence of the appellant has not been controverted regarding the location of the land in question being near to the village and therefore, ought to have been accepted by the Reference Court. It is also contended, that the amount of compensation granted for well, was inadequate as the well was 40 ft. deep and 25 ft. wide, for which a compensation of Rs.1,50,000/- is being claimed. In respect of the pipeline also there is a grievance regarding the amount of compensation granted as it is contended that the pipeline was admeasuring 1500 running feet and was having a diameter of more than 4 inches, considering which, the compensation of Rs.2,25,000/- is being claimed.

7. Reliance is also placed upon Exh.49 a sale deed of the same village dated 26/7/1983 to contend, that the market valuation of the property in question ought to have been minimum of Rs.1,25,000/- per hectare. Compensation is also being claimed for Bandies of Rs.25000/-; for Babul trees Rs.10,000/- and for Bor trees Rs.20,000/-.

8. With the assistance of the learned counsel for both the parties, I have gone through the record of the Reference Court,

which also contains the record of the Land Acquisition Officer.

9. In respect of the well, there is no dispute about its existence on account of which the compensation of Rs.22,751/- has been granted. Since a claim is made for enhancement it was necessary for the appellant to demonstrate on the record the dimension of the well including its diameter and width whether it was constructed one, how inner part of the well was lined, all of which unfortunately is absent. It is only for the first time in evidence the appellant makes a mention that the well was having diameter of 25 ft. and depth of 40 ft. and reliance is placed upon that statement and contention that there is no cross-examination. Merely because there is no cross-examination that by itself, would not indicate the truthfulness of the contents of the statement made by the appellant, moreso, when the truthfulness of the contents could have been established by appointing Commissioner to measure the well and nature of its construction. That having not being done, it is merely the singular statement of the appellant which is there on record, which by itself, cannot be a ground, for enhancement of the compensation in respect of the well.

10. The same position is available in respect of the pipeline also for which except for a bare averment that the pipeline was 1500 feet long nothing has been given in the affidavit evidence of the appellant as to of what material it was, what was the diameter of the pipeline, when it was laid. This position also could have been verified and brought on record by appointment of a Commissioner before the Reference Court, however, no such attempts appear to have been made. It is, therefore, apparent that the reliance placed by the Reference Court on the valuation report prepared by the respondent No.2 which indicates the existence of the pipeline and values it at Rs.7301/- is the only material which has been accepted by the Reference Court by granting compensation in that regard, and rightly so.

11. In respect of the agricultural land, it is not disputed by Mr. Agnihotri, learned counsel for the respondent No.2, that it was irrigated land. The contention that it was adjacent to *Abadi*, as contended by Mr. Jibhkate, learned counsel for the appellant to seek enhancement is clearly belied, even from *Patwari* map which indicates that the field Survey No.532 is more than 10 agricultural fields beyond Pulgaon road, and, therefore, cannot

be claimed to be adjacent to *Abadi* and specifically to the Bank as indicated in that map, which is taken on record and marked as 'X' for the purpose of identification. A comparison of this map where the Bank is said to have been located with the map at Exh.52 would also substantiate the position that the Bank, which is indicated in a piece of land adjacent to the field Survey No.1054 is nowhere shown in the map at Exh.58 and would be way beyond to the west of field Survey No.532. Thus, the plea that the land of field Survey No.532 is adjacent to *Abadi* cannot be accepted even on the statement of the appellant, as there is no other material on record to indicate this.

12. The learned Reference Court has enhanced the compensation from Rs.35,000/- granted by the Land Acquisition Officer to Rs.40,000/- by considering the sale deed of the year 1983, the consideration, therefore, is in para 6 and indicates that there is no material on record to point out that the land under the sale deed at Exh.83 was similarly situated to that of the property in question in the instant matter. Even thereafter, the learned Reference Court has considered the sale instance as referred to in the Award and has held that the market price

ought to have been assessed at Rs.56,000/- for the fields along the road and since the field of the appellant was situated one field inside, about 200 meters away from the road, has determined the price at 2/3rd of this amount to Rs.40,000/- per hectare.

13. Though Mr. Jibhkate, learned counsel for the appellant has placed heavy reliance on Exh.49 - the sale deed dated 26/7/1983, which is of the same village Deoli, what is material to be noted is that the sale deed is not in respect of agricultural land, but the land converted for non-agriculture (NA) use by the order of the Tahsildar dated 24/6/1983 and therefore, would not be an appropriate document to place reliance upon for a comparative valuation of the land, as by no stretch of imagination the agricultural irrigated land of Survey No.532, can be equated with the NA plottable land which forms subject matter of the sale deed at Exh.49. I, therefore, do not see any reason to differ with the view taken by the learned Reference Court regarding the sale deed of the year 1983.

14. Reliance is also placed upon the judgment of this Court in **Abdul Hamid s/o Abdul Maji Vs. State of Maharashtra and Anr.**

in First Appeal No. 79/2006, decided on 12/6/2017, which arises out of the same Notification for the same village, in which a compensation of Rs.45,000/- has been granted for the agricultural irrigated land. A review there-against has also been dismissed and the matter is said to be now sub-judice before the Hon'ble Apex Court. In my considered opinion, the compensation awarded in **Abdul Hamid s/o Abdul Maji Vs. State of Maharashtra** (supra), can be considered for the purpose of determining the compensation in the present case also as it is in respect of said Notification and the same village. Though Mr. Jibhkate, learned counsel for the appellant relies upon **Digvijay Graharchana Mandal Solapur and another Vs State of Maharashtra and others 2012(4) Mh.L.J. 201** all that it says is that for the purpose of determining the market value by comparable sale method, the property should be comparable and the enhancement of the compensation on the basis of escalation of prices cannot be an arbitrary process, but must be guided by prudence and availability of record. As indicated above, there is absolute dearth of material which would assist the learned counsel for the appellant, to demonstrate that on its basis there

is a need for enhancement.

15. Reliance is also placed upon **Chindha Fakira Patil (dead) through LRs Vs Special Land Acquisition Officer, Jalgaon 2012 (2) Mh.L.J. 530**, which holds that when there are wells in the acquired land the mere fact that the appellant had not cultivated sugarcane or wheat cannot made inference that the land was not irrigated. The judgment on fact is not attracted for the reason that there is no dispute that the land in question is irrigated one.

16. Though **State of Maharashtra and another Vs. Baliram Girdhar Patil 2006(6) Mh.L.J. 82** holds that if the market price of land is for working out of the market price of the irrigated land, in absence of any other evidence on record, double the market rate of *Jirayat* land has to be awarded, it is necessary to note that the rate which has been awarded by the Courts below is based upon the evidence which has been brought on record by the Land Acquisition Officer in the form of sale deeds which have been considered for determining the same.

17. Mr. Jibhkate, learned counsel for the appellant also relies upon **Union of India and others Vs. A. Ajit Singh AIR 1997 SCC 2669** and **Bhupal Singh and others Vs. State of Haryana (2015) 5**

SCC 801, to contend that future potentiality also needs to be considered for the purpose of determining the compensation, however, as indicated above, the land of the appellant, is situated at least 10 to 11 agricultural fields from *Abadi*, considering which, there is no scope for the appellant to the principles laid down in the above judgments.

18. The Award of the Reference Court needs interference in respect of the value of the agricultural land, which is enhanced to Rs.45,000/- per hectare, relying upon what has been held in **Abdul Hamid** (supra). Though a claim is also made for Bandies, Babul trees and Bor trees, there is no material to indicate its existence, considering which, I am unable to accept the claim in that regard.

19. The appeals are therefore partly allowed except F.A. No. 626/2006 which for the above reasons is dismissed. No costs.

JUDGE

MP Deshpande