



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

FIRST APPEAL NO. 1461 OF 2019

APPELLANT : Jaywant Trambakrao Choudhari, Aged
(Org. Petitioner on R.A.) about : 71 years, Occupation :
Agriculturist, R/o. Nawathe Plot,
Amravati, Tq. & Dist. Amravati.

//VERSUS//

RESPONDENTS : 1. The State of Maharashtra, through the
(Org. Respondents on R.A.) Collector, Amravati, Dist. Amravati.

2. The Special Land Acquisition Officer,
Upper Wardha Project No.4,
Amravati.

3. The Executive Engineer, Bembla
Project Office, Yavatmal, Tq. & Dist.
Yavatmal.

Mr. V.A. Kothale, Advocate for the Appellant.
Ms. T.H. Udeshi, AGP for Respondent Nos.1 & 2.
Mr. M.A. Kadu, Advocate for Respondent No.3.

CORAM : G. A. SANAP, J.
DATED : 21st AUGUST, 2023.

ORAL JUDGMENT

Heard learned advocates for the parties. Perused the
record and proceedings.

02] In this appeal, the appellant has challenged the judgment and award passed by learned Reference Court i.e. Civil Judge (Senior Division), Amravati dated 25th April, 2013, whereby the reference filed for enhancement of compensation, was partly allowed.

03] The land of the appellant bearing Gat No.94, admeasuring 4H. 33R., situated at village Belora, Tq. Nandgaon (Khandeshwar), was acquired for Bembla Project Budit Kshetra. The Land Acquisition Officer determined the compensation for the land and the trees. The reference was made on multiple grounds. Learned Reference Court partly allowed the reference and enhanced the compensation.

04] Mr. Kothale, learned advocate appearing for the appellant submitted that the land of the appellant was irrigated land. However, while deciding the reference, it was treated as non-irrigated land. Learned advocate submitted that the advocate for the appellant did not take proper care at the stage of evidence. The evidence was not placed on record. It is submitted that, therefore, the evidence to prove that the land was irrigated, could not be adduced. It is pointed out that the compensation has been

awarded for the orange trees, existing in the part of the acquired land. Learned advocate, therefore, submitted that this basic aspect has not been taken into consideration. It is further pointed out that the learned Reference Court has enhanced the compensation by placing reliance on the judgment and award passed in *L.A.C. No.86 of 2006 dated 16th September, 2000 [Bhimrao Abhiman Dhawale Vs. State of Maharashtra and others]*. It is further pointed out that only pursis was filed on behalf of the respondent No.3, mentioning the number of this L.A.C. However, the copy of this L.A.C. was not placed on record of the Reference Court. Learned advocate submitted that the appellant, a poor farmer, has suffered because of the mistake of his advocate.

05] Mr. Kadu, learned advocate appearing for respondent No.3 i.e. Acquiring Body submitted that the learned Reference Court has rightly relied upon the judgment and award passed in L.A.C. No.86 of 2006. Learned advocate, in all fairness, admitted that certified copy of the judgment and award of the said reference was not produced in this case. Learned advocate further submitted that, if this Court is inclined to grant an opportunity to the appellant to lead evidence by remanding the matter, then in that event from 25th April, 2013 to December, 2018, the appellant shall

not be granted interest on the amount of compensation, if awarded/enhanced after remand. Learned advocate further submitted that possibility of creation of the valuation report of the private valuer cannot be ruled out and therefore, the appellant be directed, at this stage, to place on record the report of the private valuer, if any, obtained by him at the time of filing of the reference.

06] Mr. Kothale, learned advocate appearing for the appellant submitted that, if the matter is remanded back and compensation is awarded afresh, then this Court may pass an appropriate order with regard to the non-payment of interest to the appellant on the enhancement of compensation, if any, made by the learned Reference Court from 25th April, 2013 to December, 2018. Learned advocate, in all fairness, admitted that the appellant has not obtained the report of the private valuer in respect of the valuation of the orange trees. In my view, this statement made by learned advocate for the appellant will take care of the grievance made by learned advocate for respondent No.3.

07] It is to be noted that loss of land is permanent. Compensation is one time relief to the land loser. It is cardinal principle of law that the compensation awarded for acquisition of

the agricultural land must be just, proper and reasonable. The just, proper and reasonable compensation has to be decided keeping in mind number of factors. In order to prove the factors for deciding the reasonable compensation, the evidence is required to be adduced. In this case, the advocate appearing for the appellant did not take proper care and adduce the evidence. In my view, therefore, for the mistake committed by the advocate, the appellant, poor farmer, cannot be made to suffer. After remand of the matter for fresh decision, he would get an opportunity to place on record the evidence to substantiate his claim. Learned Reference Court, on the basis of the said evidence, would be required to decide the matter afresh. In my view, in order to meet the ends of justice, it would be just and proper to set aside the impugned judgment and award and remit the matter back to the learned Reference Court for decision afresh, after granting an opportunity to the parties to lead the evidence.

08] Accordingly, the appeal is **allowed**.

The judgment and award dated 25th April, 2013, passed in L.A.C. No.195 of 2007 by the learned Reference Court, Amravati, is set aside by retaining the compensation already deposited and paid over to the appellant. The matter is remitted

back to the learned Reference Court for decision of the reference on merits by granting an opportunity to the appellant and respondents to lead their evidence. It is made clear that for the above period, the appellant shall not be entitled to get interest on the amount of compensation determined by the learned Reference Court.

09] Considering the time consumed in this process, the learned Reference Court is requested to dispose of the reference expeditiously and in any case within a period of six months from today.

10] The appeal is disposed of in the above terms.

(G. A. SANAP, J.)

Vijay