



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1919 OF 2024
IN
FIRST APPEAL NO.186 OF 2023

Mr. Nivrutti Muralidhar Dhande And Ors.

...Applicants

Versus

Spl. Land Acquisition Officer

...Respondents

Adv. Shriram S. Kulkarni, a/w Sachin Chavan for the Appellant.
Adv. A. R. Patil, AGP for the State.

Coram : Sharmila U. Deshmukh, J.

Date : October 16, 2024.

P. C. :

1. Heard.
2. At the outset learned counsel for the Applicant seeks leave to amend the Application to annex the subsequent judgment of the LAR, which he seeks to produce as and by way of additional evidence.
3. Leave as prayer is granted. Amendment to be carried out forthwith.
4. Interim Application has been preferred under Order XLI Rule 27(aa) of CPC seeking permission to produce additional evidence which have not referred to the sale deed as per Exhibit A.
5. First Appeal arises out of the judgment dated 31st January, 2014 passed by the Reference Court in Land Reference No. 28 of 2009, filed under Section 18 of the Land Acquisition Act, 1894.

6. Learned counsel for the Applicant would submit that in Land Reference No. 28 of 2009 filed under Section 18 of the Land Acquisition Act, 1894, a comparable sale deed of Gat No.468 was produced and the Land Reference Court has deducted 25% of the sale consideration of the said Gat No.468 on the basis that there were some standing crops on Gat No.468 thereby deducting 10% and that the sale deed was executed with the owner of the adjacent land and therefore, there would be enhanced compensation paid to the extent of 15%. He would further submit that as far as the compensation granted for the fruit bearing trees are concerned, the same has been granted by the SLAO at Rs.5,12,170/- by taking into consideration that on the date of acquisition, the grape pasture was only one year old and the fruits were not borne, has awarded an amount of Rs. 4,500/- per hector as per report of Agricultural Officer. He would further submit that the Agricultural Officer's report as regards the valuation of the fruit trees is as per Appendix-E and he has obtained a statement in Appendix-E from a Retired Agricultural Assistant which shows the valuation as per Appendix-E at a higher value than what has been granted by the Special Land Acquisition Officer. He would further submit that by way of subsequent order dated 18th February, 2017 passed in Land Reference No.108 of 2010, the Reference Court while accepting the comparable sale deed in respect of Gat No.468 has not deducted any amount which has been done in the present case. He would further submit that the provisions of Order XLI Rule 27(aa) of the CPC stands satisfied as the said information was not available at the time of the trial before the Reference Court and that the same is necessary for full and effective adjudication for the claim of the claimant.

7. *Per Contra*, learned AGP would submit that the judgment of 18th February 2017 is subsequent to the judgment of the Reference Court. He would further submit that as per the statement of valuation of the Agricultural Officer, the fruit bearing trees had been valued and compensation paid. He would submit that the said evidence could have been produced at the time of Trial before the Reference Court.

8. Considered the submissions and perused the record.

9. From the evidence which has come on record, it appears that the Reference Court though accepting that the sale deed in respect of Gat No.468, is a comparable instance, has given deduction of 25% for the reason stated in paragraph No.18 of the decision. Though the judgment in LAR NO.108 of 2010 is subsequent to the judgment included in the First Appeal, the same would be a relevant fact under Section 41 of the Evidence Act, 1872 to be considered at the time of hearing of the present First Appeal.

10. Perusal of the judgment dated 18th February, 2017 passed in the subsequent LAR proceeding would indicate that by accepting the valuation in the sale deed of Gat No.468, the compensation has been determined without any deduction. *Prima facie* the decision is relevant for the purpose of deciding the present First Appeal as the claim is for enhanced compensation.

11. As regards the statement of valuation, the Special Land Acquisition Officer has valued the fruit bearing trees, apparently on a valuation which has been obtained from the Agricultural Department at Rs.5,12,170/-. In the Interim Application, the chart produced would indicate that the same has been prepared by a retired Agricultural Assistant in Appendix-E which shows an enhanced compensation. The

Trial Court, while assessing the amount of compensation, has awarded the compensation based on the fact that on the date of acquisition, the grape pastures were only one year old and has accordingly assessed the compensation. Whereas the chart takes into consideration the said factor and has given an enhanced compensation. The Application seeks to bring on record the evidence which was not within the knowledge of the Applicants at the time when the Trial was conducted before the Reference Court. As such, the ingredients of Order XLI Rule 27(aa) stands satisfied in the present case. The reference proceedings are in respect of enhancement of compensation and the Appeal has been preferred seeking enhancement of compensation and thus, the additional evidence which is to be brought on record has a direct bearing of the subject matter and will have to be considered for full and effective adjudication as regards the claim of the land owner for compensation.

12. In light of the above, the Interim Application is allowed. The matter is remanded to the Reference Court to consider the following issues.

i] Whether the judgment dated 18th February 2017 in LAR No. 108 of 2018 would be applicable to the land of the present Applicant, and the compensation will be assessed on the basis of the sale deed of Gat No.468 without any deduction ?

ii] Whether fresh valuation relied upon by the Applicant in accordance with Appendix-E will have to be considered for the purpose of assessing the compensation in respect of fruit bearing trees?

13. The Reference Court is requested to record the finding on the

said two issues within a period of 12 weeks from the date of production of the copy of this order and submit the same along with report to this Court.

14. The parties to appear before the Reference Court on 12th November, 2024 and lead necessary evidence.

15. Registry is directed to send record and proceeding to the Reference Court expeditiously.

[Sharmila U. Deshmukh, J.]