



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

FIRST APPEAL NO. 325 OF 2011

Laxman s/o Mohan Rathod
Aged about 33 Years, Resident of
Beldari, Tahsil Mahagaon, District
Yavatmal.

... APPELLANT

VERSUS

1. The State of Maharashtra
Through the Collector, Yavatmal.
2. The Executive Engineer
Zilla Parishad Irrigation Division,
Yavatmal, District Yavatmal.
3. The Special Land Acquisition Officer,
Upper Painganga Project, Pusad,
District Yavatmal.

... RESPONDENTS

WITH
FIRST APPEAL NO. 389 OF 2011

Govinda son of Farida Rathod
[Since deceased] through L.Rs.
Aged about 56 Years, Resident of
Beldari, Tahsil Mahagon, District
Yavatmal.

- 1-a] Anandrao s/o Govindrao Rathod
Aged 42 Years, Occupation, R/o Beldari
Tahsil Mahagaon, District Yavatmal.
- 1-b] Bhimrao s/o Govinda Rathod

Aged 39 Years, Occupation – Cultivator,
R/o Beldari, Tahsil Mahagaon, District
Yavatmal.

1-c] Renuka w/o Shivaji Pawar
Aged 37 Years, Occupation-Housewife,
R/o Dindada, Tahsil Umarkhed, District
Yavatmal.

1-d] Kamlabai w/o Ram Chavan
Aged 35 Years, Occupation-Housewife;
R/o Buty, Tahsil Pusad, District
Yavatmal.

1-e] Vimal w/o Dilip Chavan
Aged 32 Years, Occupation-Housewife,
R/o Beldari, Tahsil Mahagaon, District
Yavatmal.

... APPELLANT

VERSUS

1. The State of Maharashtra
Through the Collector, Yavatmal.
2. The Executive Engineer
Zilla Parishad Irrigation Division,
Yavatmal, District Yavatmal.
3. The Special Land Acquisition Officer,
Upper Painganga Project, Pusad,
District Yavatmal.

... RESPONDENTS

WITH
FIRST APPEAL NO. 360 OF 2011

Ganesh son of Mohan Rathod
Aged about 40 Years, Resident of

Beldari, Tahsil Mahagaon, District
Yavatmal.

... APPELLANT

VERSUS

1. The State of Maharashtra
Through the Collector, Yavatmal.
2. The Executive Engineer
Zilla Parishad Irrigation Division,
Yavatmal, District Yavatmal.
3. The Special Land Acquisition Officer,
Upper Painganga Project, Pusad,
District Yavatmal.

... RESPONDENTS

WITH
FIRST APPEAL NO. 391 OF 2011

Gambhira son of Sewa Rathod
Aged about 56 Years, Resident of
Beldari, Tahsil Mahagaon, District
Yavatmal.

... APPELLANT

VERSUS

1. The State of Maharashtra
Through the Collector, Yavatmal.
2. The Executive Engineer
Zilla Parishad Irrigation Division,
Yavatmal, District Yavatmal.
3. The Special Land Acquisition Officer,
Upper Painganga Project, Pusad,
District Yavatmal.

... RESPONDENTS

WITH
FIRST APPEAL NO. 390 OF 2011

Mohan Sewa Rathod
[Since deceased] through L.Rs.

- 1] Smt. Chandrakala Namdeo Jadhao
Aged about 41 Years, Resident of
Nageshwadi, Tahsil Umarched, District
Yavatmal.
- 2] Sau. Shashikala wife of Gurusing
Chavan, Aged about 39 Years, Resident
of Januna, Tahsil Umarched, District
Yavatmal.
- 3] Sau. Lalita Babusing Jadhao
Aged about 35 Years, Resident of
Bhamb, Tahsil Mahagaon, District
Yavatmal.
- 4] Ganesh Mohan Rathod
Aged about 33 Years, Resident of
Beldari, Tahsil Mahagaon, District
Yavatmal.
- 5] Sau. Sunita wife of Sabha Shubhash
Jadhao, aged about 32 Years, Resident
of Nageshwadi, Tahsil Umarched,
District Yavatmal.
- 6] Laxman Mohan Rathod
Aged about 31 Years, Resident of
Beldari, Tahsil Mahagaon, District
Yavatmal.
- 7] Sau. Savita wife of Dharmendra Aade

Aged about 29 Years, Resident of
Mokh, Tahsil Digras, District Yavatmal.

... APPELLANT

VERSUS

1. The State of Maharashtra
Through the Collector, Yavatmal.
2. The Executive Engineer
Zilla Parishad Irrigation Division,
Yavatmal, District Yavatmal.
3. The Special Land Acquisition Officer,
Upper Painganga Project, Pusad,
District Yavatmal.

... RESPONDENTS

WITH
FIRST APPEAL NO. 327 OF 2011

Zita son of Vyankati Jadhao
Aged about 68 Years, Resident of
Beldari, Tahsil Mahagaon, District
Yavatmal.

... APPELLANT

VERSUS

1. The State of Maharashtra
Through the Collector, Yavatmal.
2. The Executive Engineer
Zilla Parishad Irrigation Division,
Yavatmal, District Yavatmal.
3. The Special Land Acquisition Officer,
Upper Painganga Project, Pusad,
District Yavatmal.

... RESPONDENTS

Mr. K. S. Narwade, Advocate for Appellant in all Appeals.

Ms. M. R. Kavimandan, AGP for Respondent Nos.1 to 3/State in First Appeal Nos. 325/2011, 360/2011, 391/2011, 390/2011, 327/2011 and for Respondent Nos.1 & 3/State in First Appeal No. 389/2011.

Mr. T. S. Kene, Advocate h/f Mr. T. U. Tathod, Advocate for Respondent No.2 in First Appeal No. 389/2011.

CORAM : ANIL L. PANSARE, J.

ARGUMENTS HEARD ON : FEBRUARY 21, 2024.

PRONOUNCED ON : FEBRUARY 29, 2024.

JUDGMENT

. Heard Mr. K. S. Narwade, learned Counsel for the Appellant, Ms. M. R. Kavimandan, learned AGP for the Respondent Nos.1 to 3/State and Adv. Mr. T. S. Kene I/b Mr. T. U. Tathod, learned Counsel for the Respondent No.2.

2. The Appellants in all these Appeals are aggrieved by the Judgment and Award passed by the trial court in the Land Acquisition Cases under question. The trial court has dismissed the references lodged by the Appellants. The facts are identical and for convenience, the facts of the First Appeal No. 325/2011 are referred.

3. The Notification under Section 4 of the Land Acquisition Act, 1894 (*In short, 'the Act of 1894'*) was published by the Respondent No.3 on 8/1/1998. The Award has been passed by the Respondent No.3 on 12/2/2001. He has awarded compensation at the rate of Rs. 22,000/- per hector. The Appellant claimed compensation at the rate of Rs. 2,50,000/- per hector. The trial court observed that the Appellant failed to tender any evidence, much less, the cogent evidence to substantiate his claim and

accordingly dismissed the reference petition. The decision is under challenge.

4. The land bearing Survey No. 132/2, admeasuring 1.34 H.R. situated at village Beldari, District Yavatmal was acquired for submergence in Beldari Minor Irrigation Project in Land Acquisition Case No. 15/47/1996-97 of village Beldari, Tahsil Mahagaon, District Yavatmal. According to the learned Counsel for the Appellant, the Respondent No.3 has awarded a meagre amount of compensation ignoring the real market price of the land. The Appellant has relied upon the sale instance of April-2001. The learned Counsel submits that though the sale instance is subsequent to passing Award, the reference court ought to have enhanced the compensation by guesswork. Having not done so, it has committed serious error by ignoring well settled principles of assessment of the market value in the cases where direct evidence is not applicable.

5. Having heard learned Counsel for the Appellant and having gone through the record, following points arise for my consideration. I have recorded my findings thereon for the reasons to follow.

POINTS

FINDINGS

1. Whether the Appellant has tendered before the trial court any admissible evidence to substantiate his claim for enhancement in compensation ?

Negative

2. Whether inference is called for in the impugned Judgment ?

Negative

3. What order ?

Appeals are dismissed

REASONS

AS TO POINT NOS.1 AND 2 :

6. Both the points being interlinked, are answered by common reasons. The land of the Appellant is situated at village Beldari, Tahsil Mahagaon, District Yavatmal. The Respondent No.3 has awarded compensation at Rs. 22,000/- per hector and paid the same along with all admissible statutory benefits. The only evidence in support of enhancement of compensation is a sale instance between Smt. Kusum Aade in favour of Kisan Mangu Jadhav. The copy of the Index-II and not the Sale Deed has been annexed with the reference. Thus, the status of the land is not available for comparison.

7. The trial court noted that the Respondent No.3 has taken into account sale instances of five years preceding the date of Notification under Section 4 of the Act of 1894. It further noted that, despite receiving notice, the Appellant has not placed on record before the Respondent No.3 any evidence to differently assess the market value of the acquired land. The Appellant admitted in the evidence that he has not tendered any documentary evidence with regard to cost of the land before the Respondent No.3. Accordingly, the plea taken by the Appellant that he was not given opportunity of filing evidence, has been rejected by the reference court. I do not find any error in the said finding, because the Appellant himself admits that he has not filed any evidence in support.

8. In the reference proceedings, the Appellant admitted that he has not filed any document to show income arising from the land. He has

not filed documents to show the location of his land. He failed to adduce evidence to prove that his land was a fertile land. There is further no evidence as regards quality of land. Thus, except for the bare words, there is absolutely nothing to show that the acquired land is/was fertile and had potential to get something more than what has been awarded by the Respondent No.3.

9. The most crucial evidence, according to the Appellant, is the sale instance dated 24/4/2001. Admittedly, the Award has been passed on 12/2/2001. It is well settled that the sale instance subsequent to passing Award cannot be taken into account for enhancement in compensation.

10. That apart, the reference court has opined that the sale instance is not genuine. In doing so, he has considered the evidence led by the Appellant's witnesses. The second witness of the Appellant is the one who has purchased 0.20 H.R. land from Smt. Kusum Aade. The Respondents have put-up a case to the Appellant and the second witness that the said sale instance is pseudo transaction. The court noted that the second witness who is purchaser of the land can be said to be interested witness to extend the benefit of enhancement in compensation. This inference has been drawn on the ground that the second witness despite knowing fully well that the sale instance is subsequent to the date of Award, has firmly deposed that the land under question was acquired subsequent to the Sale Deed. Thus, he has made an attempt to justify the enhancement in the compensation by deposing facts, known to him to be incorrect. The second witness further admitted that the Appellant is his relative. Accordingly, the first appellate court found the sale instance to be pseudo transaction. There appears no reason to interfere with this finding

of fact. In any case, the sale instance being subsequent to passing Award, it will be unsafe to rely upon the same to assess the market value of the land. It is a common practice that subsequent to acquisition of land, the sale instances of higher price are shown for getting benefit. The trial court, therefore, has rightly refused to accept the sale instance as a cogent evidence to assess the market value of the land.

11. The learned Counsel for the Appellant has then invited my attention to the Judgment 17/8/2015 passed by the Civil Judge Senior Division, Pusad in Land Acquisition Case No. 55/2009. In the said case, the Notification under Section 4 of the Act of 1894 was lastly published on 9/10/2002. The acquired land was situated at village Beldari, District Yavatmal. The reference court is said to have relied upon the sale instance dated 24/4/2001, which was relied upon by the Appellant herein as well. The court noted that the Land Acquisition Officer, while assessing the market value, has referred to the Ready Recknor, which is meant for payment of stamp duty and is not the evidence to fix the value of the land. Accordingly, the court held that the Land Acquisition Officer has not properly determined the market value, which was assessed at the rate of Rs. 31,300/- per hector. The reference court has taken into account the sale instance of April-2001. The land was purchased at the rate of Rs. 1,85,000/- per hector. Accordingly, the trial court assessed the value of land at Rs. 2,01,250/- per hector and enhanced the compensation.

12. The Appellant intends to take benefit of the aforesaid Judgment, which in my considered view, cannot be granted for more than one reason.

Firstly, the notification under Section 4 of the Act of 1894 in the said case was published on 9/10/2002 i.e. subsequent to the sale instance, relied upon by the Applicant therein. It is well settled that the sale instance prior to notification is a relevant fact to assess the market value of the acquired land. Viewed thus, there was no bar to consider the sale instance that occurred prior to publication of notification under Section 4 of the Act of 1894, rather the court was bound to consider the same. It is a different matter that the parties before the reference court at Pusad did not apprise the Court that the sale instance was held to be pseudo transaction in the earlier proceedings. The Land Acquisition Officer ought to have brought to the notice of the reference court, Pusad of the said fact.

Be that as it may, the fact remains that the sale instance dated 24/4/2001 is held to be pseudo transaction by the reference court under question. Therefore, the subsequent Award enhancing the amount of compensation on the basis of the said sale instance cannot be taken aid of to grant any benefit to the Appellant herein.

Secondly, the reference court, Pusad has found that the Land Acquisition Officer therein has assessed the valuation of the property by referring to the Ready Recknor which is meant for payment of stamp duty. This Court and the Hon'ble Supreme Court, in many cases, has taken a view that Ready Recknor is not relevant to decide the market value of a particular property. Had the subsequent Award been passed on consideration of genuine sale instances, the contention of the Appellant that by proportionately reducing the enhanced compensation passed in subsequent Award, the enhancement in the earlier case could be

considered, would have been good argument. The Appellant herein, however, intends to take benefit of the Award passed by the reference court in subsequent proceedings by relying upon the sale instance which has been held to be pseudo transaction by the reference court in the present case. Thus, no benefit could be extended in terms of subsequent Award.

13. The sum and substance of the above discussion is that the Appellant has failed to tender before the reference court any admissible evidence to substantiate his claim for enhancement in compensation, and therefore, the interference in the Judgment passed by the reference court is not called for. Accordingly, the Point Nos.1 and 2 are answered in negative.

AS TO POINT NO. 3 :

14. Having answered the Point Nos.1 and 2 as mentioned above, the Appellant failed to make out a case. There is no merit in the Appeals. The First Appeals stand dismissed.

15. In view of dismissal of the First Appeal No. 325/2011, pending Civil Application No. 496/2024 seeking early hearing does not survive. The same stands disposed of accordingly.

(ANIL L. PANSARE, J.)