



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**FIRST APPEAL NO.547 OF 2021
WITH
CROSS-OBJECTION NO.63 OF 2024**

FIRST APPEAL NO.547 OF 2021

Vidarbha Irrigation Development Corporation,
Through its Executive Engineer,
Minor Irrigation Division, Karanja Lad,
District-Washim.

.. Appellant
(Ori. Respondent No.1
on R.A.)

.. Versus ..

1. Mo. Nayeem Mo. Yunus,
Aged 51 years,
Occupation-Agriculture.
R/o. Kamargaon, Tq. Karanja Lad,
District-Washim.

.. Ori. Claimant on
on R.A.

2. State of Maharashtra,
The Collector, Washim,
Tahsil and District-Washim.
Through The Special Land
Acquisition Officer No.2,
Washim.

.. Ori. Respondent
No.2.
.. Respondents

.....
Mr. K.P. Mahalle, Advocate for Appellant.
Ms.Bhagyashri V. Reddy, Advocate for Respondent No.1.
Mr. M.A. Kadu, AGP for Respondent No.2.
.....

WITH
CROSS-OBJECTION NO.63 OF 2024

Mo. Nayeem Mo. Yunus,
Age 37 years,
Occupation-Agriculturist.
R/o. Kamargaon, Tq. Karanja (Lad),
District-Washim.

.. Appellant
(Ori. Petitioner)

.. Versus ..

1] Vidarbha Irrigation Development
Corporation, Through Executive
Engineer, Minor Irrigation Division,
Washim.

2] State of Maharashtra,
Through the Collector, Washim.
Dist. Washim. Through the
Special Land Acquisition Officer No.2,
District-Washim.

.. Ori. Respondents

.....
Ms. Bhagyashri V. Reddy, Advocate for Appellant.
Mr. K.P. Mahalle, Advocate for Respondent No.1.
Mr. M.A. Kadu, AGP for Respondent No.2.

.....

CORAM : SANJAY A. DESHMUKH, J.
DATE : 29/11/2024.

JUDGMENT :

1. This appeal is preferred against the judgment and award passed by the learned Reference Court i.e. Civil Judge, Senior Division, Mangrulpir, District-Washim in Land Acquisition

Case No.70/2014, decided on 01.07.2017, by which the claim of the respondent-claimant was partly allowed.

FACTUAL MATRIX

2. Agricultural land bearing Block No.10/1 ad-measuring 0.54 R of village Undari, District-Washim was acquired by the appellant for Undari Project. The learned Reference Court directed to pay the compensation at the rate of Rs.1,60,000/- per hectare to the claimant for acquired land i.e. Block No.10/1 ad-measuring 0.54 R. It also directed to pay other statutory benefits. It also directed to pay the compensation at the rate of Rs.5,000/- per tree for 160 Orange trees.

The respondent denied the claim and prayed to dismiss the appeal.

3. The appellant-acquiring body preferred this appeal on the grounds of objections that the Reference Court has not given proper reasons while awarding compensation of Rs.1,60,000/- per hectare and Rs.5,000/- per tree for 160 Orange trees.

4. Learned advocate for the appellant submitted that the valuation report was challenged during the cross-examination of

expert Mr. Balkrishna Namdeo Patil (CW-3). His evidence is not acceptable. He submitted that the sale instances are considered without giving convincing reasons. He, therefore, submitted that the judgment and award of the learned Reference Court is not sustainable on the facts and law. He submitted that the appeal may kindly be allowed by setting aside the impugned judgment and award.

5. Learned advocate for respondent no.1 submitted that the valuer's report is properly appreciated by the Reference Court. The sale instances are properly appreciated. Thus, on the basis of evidence on record after considering matter before it by giving the sufficient reasons, learned Reference Court decided claim reference on merit. There is ample evidence to enhance the amount of compensation for agricultural land and for orange trees. It is lastly submitted to dismiss the appeal and allow the cross-examination.

6. Learned Trial Court held that the applicant-claimant is entitled for enhanced compensation at the rate of Rs.1,60,000/- per hectare and Rs.5,000/- per tree for 160 Orange trees.

7. Perused the impugned judgment and record and proceedings. Perused the grounds of objections raised in the appeal and cross-objections.

8. The following points emerged for consideration :

- (i) Is the amount of compensation awarded excessively and illegally.?
- (ii) Was it proved by claimant that he is entitled for enhanced amount of compensation for the acquired agricultural land as well as Orange trees.?
- (iii) Are the impugned judgment and award illegal, incorrect and required interference.?

9. Claimant Mohammad Naiem Mohd. Yunus (AW-1) adduced his oral evidence which is inconsonance with his application. He also examined Sunil Vitthalrao Gulhane (CW-2), the Valuer, who valued the water well and Balkrishna Namdeo Patil (CW-3), who valued the orange trees. The claimant has also adduced evidence of sale instances at Exh.20 to 22 and also valuation report at Exh.25 and 26. The respondents have not adduced any evidence.

10. In the reasons of the impugned judgment particularly in para no.8, the learned Reference Court discussed entire

evidence at length. On page no.18 of the impugned judgment, learned Reference Court discussed the evidence of sale instances of sale deed Exh.20 of the land ad-measuring 0.2 R of village Kamargaon which was sold for Rs.4,50,000/- by sale deed dated 18.04.2001. Another sale instance at Exh.21 shows that 0.81 R of land out of Survey No.16/4 of village Undri was sold for Rs.80,000/- by sale deed dated 28.06.2004. The third sale instance dated 25.02.2005 at Exh. 22 is in respect of Block No.81 of village Vilegaon, ad-measuring 1.20 H.R. which was sold for Rs.1,80,000/-. The Reference Court held that the sale instances were not considered while drawing award by the Land Acquisition Officer and accepted the said evidence for enhancement of amount of compensation.

11. If these three sale instances are considered together, then it shows that those were executed in between 2001 to 2005. The land of the claimant was acquired in the year 2004. It is not specifically pointed out as to how 0.2 R of land was sold for Rs.4,50,000/- which was situated in the village Kamargaon. The learned Reference Court also observed that sale instance of Rs.98,765/- for 0.81 R of land was considered by the Land

Acquisition Officer while drawing the award. The Reference Court, relied upon these three sale instances and held that compensation granted by the Special Land Acquisition Officer is inadequate and awarded compensation of Rs.1,50,000/- per hectare. The sale instance at Exh.22 shows that 1.20 HR land of village Vilegaon was sold for Rs.1,80,000/-. There is no reason to disbelieve said evidence.

12. As far as the price of the fruits are concerned, expert evidence of Balkrishna Namdeo Patil (CW-3) is recorded. The learned advocate for the appellant pointed out his cross-examination in which he had admitted that he had drawn the value of the trees as per the Agricultural Produce Market Committee, Nagpur, but he had not filed the rates of that valuation. He has further admitted that while drawing the valuation he did not consider the rates of fruits of Agricultural Produce Market Committee, Washim. He further admits that there is difference between the rates of APMC Washim and APMC Nagpur. He further admitted that there cannot be guarantee of bearing of the fruits to the tree, even if it becomes eight years old.

13. Learned advocate for the appellant submitted that all these admissions are sufficient to disbelieve the evidence of valuer Balkrishna Namdeo Patil (CW-3). The law is well settled that oral admission is weaker kind of evidence. The oral admissions are more weaker than judicial admissions. As per Section 31 of the Indian Evidence Act, 1872 admission is not conclusive proof. As per Section 58 of the Indian Evidence Act, 1972 admitted fact need not be proved. However, proviso to Section 58 of the Act says that even though the fact is admitted, court may require proof of it independently. To disprove the evidence of the claimant, the appellant has not adduced any independent evidence. Considering above admissions of expert with the settled position of law that evidential admissions are weaker, the learned Trial Court has rightly appreciated the evidence and considered average price of each tree at the rate of Rs.5,000/- for the calculation of compensation.

14. The learned Advocate for appellant submitted sufficient and proper reasons were not given by the Reference Court. However, in view of the law laid down by the Hon'ble Supreme Court in the case of *D. Purushottam Reddy and*

another .vs. K. Sateesh, reported in 2008 SCC 505, the party shall not suffer for the mistake of the court. (*actus curiae neminem gravabit* - No person shall be prejudiced by an act of court). Therefore, the argument of learned advocate for the appellant is not acceptable in this regard that reasons are not sufficiently given, therefore, appeal deserves to be allowed.

15. As held above, only because the court has not given detailed reasons, this appeal cannot be allowed and impugned judgment cannot be set aside. The evidence of claimant is corroborated by the evidence of expert. The evidences are properly appreciated by the Reference Court along with the matter before it. Therefore, it is held that the judgment and award passed by the Reference Court is legal and correct. There is no substance in the grounds of objections of the appeal. For the reasons discussed above, the argument of the learned advocate for the appellant is not acceptable. The appeal deserves to be dismissed.

16. As far as the cross-objections are concerned, considering above reasons, there is absolutely no scope for enhancement of amount of compensation either for agricultural

land of the appellant or Orange trees, as the evidence is properly weighed, cogent and acceptable reasons are given by the Reference Court in its reasons. The cross-objection, therefore, deserves to be dismissed. Hence, the Point Nos.1 and 2 are answered accordingly.

17. The appeal is dismissed. The cross-objections is dismissed. No costs.

(Sanjay A. Deshmukh, J.)