



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

FIRST APPEAL NO. 685 OF 2009

Western Coalfields Ltd.,
through its Chief General Manager,
Wani North Area, Bhalla Township,
Post Bhallar, Tq. Wani, District – Yavatmal.

...APPELLANT

Versus

Sou. Shalini w/o Rukhmangad @ Bhayyaji Khade,
Occ. Household, R/o Ukani, Tq. Wani,
District – Yavatmal.

...RESPONDENT

Shri Pushkar Ghare, Counsel for the appellant.
Shri Omkar Deshpande h/f Shri Anand Parchure, Counsel for the
respondent.

CORAM : ANIL L. PANSARE, J.

DATE : MARCH 13, 2024

ORAL JUDGMENT :

The appellant – Western Coalfields Ltd. has filed present appeal under Section 20 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (hereinafter referred to as “Act of 1957”). The Land belonging to the respondent has been acquired by the appellant.

2] The respondent owned land bearing Gat No. 297/4,

admeasuring 1.35 HR, situated at Village – Aheri, Tahsil – Wani, District – Yavatmal. Notification under Section 4 of the Act of 1957 was published on 14/12/2004. The Land Acquisition Officer (L.A.O.) declared the award on 15/5/2007 granting compensation to the respondent @ Rs.74,117/- per hectare. The respondent filed application under Section 14(3) read with Section 17(3) of the Act of 1957 for enhancement in the compensation amount. The Reference Court, vide judgment and award dated 5/1/2009 in Compensation Case No. 39/2007, was pleased to enhance the amount to Rs. 1,66,666/- per hectare. In addition, an amount of Rs.50,000/- has been granted as price of 25 fuel trees and 10 fruit trees. The appellant is aggrieved by the said enhancement and, hence, the present appeal.

3] Having heard both the sides and having gone through the record, the point that arises for my consideration is whether the Reference Court has committed error in appreciating the evidence while enhancing the amount of compensation.

4] The point, so framed, indicates that there is no serious dispute as regards granting compensation of Rs.50,000/- towards price of trees. The record indicates that the L.A.O. has not made valuation of trees standing on the acquired land. The respondent led evidence in this regard. According to her, there were 25 fuel trees and 10 fruit trees. The value of trees was assessed to Rs.50,000/-. The respondent has produced the entire estimate report (Exh. 14) issued by the proprietor of Nath Saw Mills, Wani. The witness of the appellant has also admitted that compensation towards trees was not given. The appellant did not produce any evidence contrary to the evidence placed on record by the respondent towards claim of Rs.50,000/-. Thus, it appears that the Reference Court has rightly awarded Rs.50,000/- as market price of the trees.

5] The main grievance of the appellant is against enhancement in compensation for the agricultural land. The Reference Court has considered two sale instances; one is dated 15/4/2004 (Exh. 15) and another is dated 5/8/2004

(Exh. 16). The Reference Court has noted that both the sale-deeds were executed just prior to the publication of Section 4 Notification. The Reference Court further noted that lands under both the sale-deeds were unirrigated. Most importantly, the sale-deed (Exh.16) was executed by the respondent herself and sale was of the land, which came to be acquired by the appellant. The sale consideration was Rs.1,50,000/-. The land admeasured 1.35 HR. The rate per hectare will be, thus, Rs.1,11,111/- per hectare. The respondent has purchased this land on 5/8/2004. Notification under Section 4 was published on 14/12/2004. Thus, four months prior to issuance of Section 4 Notification, the respondent has purchased the said land, which was acquired in the present proceedings. Despite the aforesaid evidence, the Reference Court has enhanced the compensation to Rs.1,66,666/- per hectare.

6] The Hon'ble Supreme Court in the case of *The Dollar Company, Madras Vs. Collector of Madras [(1975) 2 SCC 730]* has held that one of the best evidences of the value of the property is the sale of the very property to which the

claimant is a party. The findings of the Reference Court is, thus, contrary to the settled principles of law.

7] The learned Counsel for the appellant has invited my attention to the reasons assigned by the Reference Court for enhancement. As stated above, the Reference Court has considered two sale instances (Exhs. 15 and 16). The Reference Court noted that the land under question admeasures 1.35 HR. It was an unirrigated land. It was purchased by the respondent for Rs.1,50,000/-. The Court then states that seasonally irrigated land will fetch 1 ½ times the aforesaid rate of Rs.1,50,000/-. The Reference Court took a view that the acquired land was seasonally irrigated. He has placed reliance upon the evidence of the witness examined by the respondent, who was a neighboring land owner. His evidence was recorded in November – 2008. He deposed that the respondent's land was adjacent to river and she used to take two crops in a year. She fetched water from the river through diesel pump.

8] In my view, this evidence was not sufficient to

prove the claim of irrigated land inasmuch as the witness has nowhere stated that in the year 2004, the respondent has taken two crops or that irrigation facility was available at that time. The respondent has not placed on record 7/12 extract of the year 2004 to indicate the status of land, rather the Reference Court has noted, from the sale-deed (Exh. 16), that the acquired land was unirrigated.

9] The learned Counsel for the respondent has, by referring to certificate dated 31/12/2008 issued by the Talathi (Exh. 31), contended that the Talathi has issued certificate that the respondent's land has been acquired by the Western Coalfields Ltd. and prior to acquisition, she used to irrigate the land through diesel pump for seasonal crops. According to him, this document, having been issued by public servant, is admissible in evidence and, therefore, the Reference Court has rightly enhanced the compensation.

10] I am not impressed with the aforesaid arguments. The certificate is of the year 2008. The Talathi has not

disclosed the source of his knowledge of the fact that the respondent, prior to the acquisition of land, used to take seasonal crops by using diesel pump for irrigation purpose. The certificate is silent as to at whose instance it has been issued. Further, if what has been stated by the Talathi is true, he could have issued 7/12 extract showing statement of crops for the period 2003-04.

11] The respondent did not take effort to place on record authenticate documents, like 7/12 extract. Instead, she has obtained certificate from the Talathi. She has not led any evidence in support. I am informed by the learned Counsel for the appellant that this certificate was placed on record subsequent to closure of argument. If that be so and for the reasons set out above, the Reference Court committed a serious error of law by placing reliance upon the document, which had no evidentiary value.

12] In any case, the sale-deed (Exh. 16), which pertains to the land under question itself refers the land to be an

unirrigated land. Thus, the best evidence indicates that the land was unirrigated. In fact, the Reference Court has noted so but got swayed away with the certificate of the Talathi and the evidence of neighboring land owner, which if minutely gone into, does not disclose the status prior to publication of Notification under Section 4 of the Act of 1957.

13] The Reference Court, therefore, ought to have granted compensation in terms of the best evidence, i.e., the sale-deed (Exh. 16), which indicates that the respondent has purchased the land under question @ Rs.1,11,111/- per hectare. The respondent is, thus, entitled for compensation at the aforesaid rate. The Reference Court has, thus, committed an error while enhancing compensation to Rs.1,66,666/- per hectare. The point framed earlier is answered accordingly. The appellant has, thus, made out a case in its favour, though partly. Hence, the following order :

ORDER

- i] The appeal is partly allowed.
- ii] The award dated 5/1/2009 passed by the Special

Tribunal, Nagpur in Compensation Case No. 39/2007 is quashed and set aside.

iii] The respondent, in addition to the amount of Rs.50,000/- towards market value of trees, is entitled for enhancement in compensation @ Rs.1,11,111/- per hectare. The award passed by the Reference Court is modified accordingly.

iv] The respondent is entitled to all statutory benefits.

v] Decree be drawn in the aforesaid terms.

14] The appeal is accordingly disposed of with no order as to costs.

JUDGE

Sumit