



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

FIRST APPEAL NO. 986 OF 2010

APPELLANTS : 1. Sudhakar s/o Kisan Bhelkar
 Aged about 63 years, Occ: Agriculturist
 R/o Mahuli Jahagir, Tah and
 Dist: Amravati

2. Prakash s/o Kisan Bhelkar (Dead) through
 LRs.

Amendment carried out as per
 Court Order dated 17/07/2021

2. a) Smt. Maya wd/o Prakash Bhelkar,
 Aged about 58 years, Occ: Household,
 R/o Mahuli Jahangir, Tah. and Dist.
 Amravati

//VERSUS//

RESPONDENTS : 1. State of Maharashtra through Collector,
 Amravati

2. Special Land Acquisition Officer, Laghu
 Sinchan Works, Amravati

3. Executive Engineer, Laghu Path Bandhare
 Vibhag, Amravati

4. ~~Zilla Parishad, Amravati through~~
~~Executive Engineer, District Amravati~~

Amendment carried out as per
 Court Order dated 17/09/2021
 and 10/12/2021
 Deleted as per order dt.
 04/08/2022

Mrs. Swati K. Paunekar, Advocate for the appellant.
 Mr. K.R. Lule, AGP for respondent Nos. 1 to 3.

CORAM : G. A. SANAP, J.
DATED : 26th FEBRUARY, 2024

ORAL JUDGMENT

1. Heard finally with the consent of learned advocates for the parties.

2. In this appeal, the challenge is to the judgment and award, dated 05.05.2010, passed by the learned 2nd Joint Civil Judge, Senior Division, Amravati (for short, "Reference Court"), whereby the Reference Court partly allowed the reference filed by the appellants-claimants for enhancement of the compensation.

3. Background facts:-

The land of the appellants area 0.29 R from survey No.125/01 situated at village Mahuli Jahangir, Tahsil and District Amravati was acquired by the respondent-acquiring body for the purpose of construction of Wagholi Dam. The notification under Section 4 of the Land Acquisition Act, 1894 (for short, "the Act") was published on 16.06.2005. The award was passed by the Land Acquisition Officer on 17.01.2007. The Land Acquisition Officer awarded the compensation at the rate of 1,20,000/- (Rupees One Lac Twenty Thousand Only) per hectare and Rs.59,640/- (Rupees Fifty Nine Thousand Six Hundred Forty Only) per hectare for the land admeasuring 0.16 R and 0.13 R respectively. The Land Acquisition Officer awarded fixed value of 35 orange

trees at Rs.1,02,620/- (Rupees One Lac Two Thousand Six Hundred and Twenty Only).

4. The reference was filed by the appellants. The Reference Court enhanced the compensation to Rs.1,50,000/- (Rupees One Lac Fifty Thousand Only) for the lands and awarded Rs.4000/- (Rupees Four Thousand Only) per orange tree. Being aggrieved by this partial enhancement, the appellants have filed this appeal.

5. I have heard Mrs. Swati Paunikar, learned Advocate for the appellants and Mr. K.R. Lule, learned AGP for respondent Nos.1, 2 and 3. Perused the record and proceedings.

6. In the facts and circumstances, the following points fall for my determination:

- “i) Whether the enhancement of compensation for the land and orange trees granted by the Reference Court is just, proper and reasonable?
- ii) What Order?

7. Learned Advocate for the appellants submitted that the Reference Court has not properly considered the sale deed at Exh.15 dated 28.01.2005. Learned Advocate submitted that the

sale instance at Exh.15 was from the village Mahuli Jahangir. Learned Advocate pointed out that the Reference Court has given unnecessary weightage to the distance between the lands of the appellants and the land in the sale instance and discarded the said sale deed. Learned Advocate submitted that land of the appellants and the land in the sale instance are situated at the same village. Learned Advocate submitted that sufficient evidence has been adduced to prove that the land of the appellants and the land in the sale instance are similarly situated in all respect. Learned Advocate submitted that both the lands are the irrigated lands. Learned Advocate submitted that the sale instance was prior to the date of the issuance of notification under Section 4 of the Act and the sale deed clearly proves that the market price of the acquired lands was not less than Rs.2,00,000/- (Rupees Two Lacs Only) per hectare on the date of issuance of notification under Section 4 of the Act. Learned Advocate submitted that therefore, in the teeth of this evidence interference is required in the order passed by the Reference Court.

8. Learned AGP for respondent Nos.1, 2 and 3/State submitted that the Reference Court has properly appreciated the evidence. Learned AGP submitted that the sale instance at Exh.15

was discarded for the sound reasons recorded in the judgment and order. Learned AGP, in short, supported the judgment and order passed by the learned Reference Court.

9. It needs to be stated that while determining the market price of the acquired lands, the Court has to take into consideration various factors. The sale instances of the lands in the vicinity of the acquired property can be taken into consideration. In this case, the Reference Court has determined the market price of the acquired land keeping in mind the sale instances relied upon by the appellants. It needs to be stated that the consideration, in terms of a price, received for land under bonafide transaction, on the date of notification under Section 4 of the Act or a few days before or after the issue of notification generally shows the market value of the acquired land. The value of the acquired land is therefore, required to be assessed in terms of those transactions. A transaction immediately preceding or succeeding Section 4 notification would afford a good guidance to determine the market value of the acquired lands. The sale instances reflect the current price of the land on or before the date of section 4 notification. The sale instances are therefore, required to be considered. If the sale instance is of irrigated land

situated in the vicinity or of the same village is relied upon, the same deserves proper consideration.

10. In this case, the acquired land is irrigated land. There is hardly any dispute about the nature of the land at the behest of the respondents. The compensation has been awarded in respect of the orange and other trees. The source of water for irrigation has been stated in the reference application. It has therefore, been proved that the acquired land was irrigated land. The land of sale instance at Exh.15 is also an irrigated land. The lands are situated at the same village. In my view, therefore, the sale instance at Exh.15 dated 28.01.2005 would be required to be taken into consideration. As per the sale deed at Exh.15, the land bearing survey No.199/1-A, area 1 hectare 99 R was sold for Rs.4,20,000/- (Rupees Four Lacs Twenty Thousand Only). The Reference Court has observed that the said land was sold at Rs.2,00,000/- (Rupees Two Lacs Only) per hectare. The Reference Court has observed that said land was situated near to the village. It is to be noted that while comparing the land from the sale instance with the land of the appellants, the Reference Court has considered the N.A. potentiality of the land of the sale instance. The Reference Court has observed that the land from

the sale instance was near to the village. In my view, the Reference Court was not right in denying the compensation to the appellants at the rate of Rs.2,00,000/- per hectare. The appellants have stated that their lands are of good quality fertile lands. They have stated that their lands and land from the sale instance is similarly situated in all respect including quality and fertility. It is pertinent to mention that while determining the market price of the irrigated land a different price cannot be awarded to the irrigated land near to the village and to the irrigated land away from the village. The irrigated land situated near the village or at some distance from the village could fetch the same price. The buyer would always consider the potentiality of the land as an irrigated land. In my view, therefore, the Reference Court was not right in discarding the sale instance and determining the compensation at the rate of Rs.1,50,000/- (Rupees One Lac Fifty Thousand Only) per hectare. In my view, the sale instance at Exh.15 is a genuine transaction. It is not the case of the respondents that sale instance at Exh.15 was brought into existence to claim higher compensation for the land proposed to be acquired. It is further pertinent to note that the area of the land at Exh.15 was near about 2 hectare. In my view, this is one more factor to conclude that this was a genuine and comparable sale transaction.

11. In the facts and circumstances, in my view, the appellants would be entitled to get compensation for their land at the rate of Rs.2,00,000/- (Rupees Two Lacs Only) per hectare.

12. As far as the orange trees are concerned, the Reference Court has awarded Rs.4,000/- (Rupees Four Thousand Only) per orange tree. The appellants have relied upon the evidence of the valuer. The Reference Court has taken into consideration the age of the orange trees, the growth and quality of the orange trees and the annual income of the orange trees. The Reference Court found that the valuation of the orange trees by the valuer was on higher side. On going through the evidence on record, I am satisfied that the Reference Court was right in awarding the compensation @ Rs.4,000/- (Rupees Four Thousand Only) per orange tree. As such, on this count, no interference is warranted. As far as the land is concerned, the appellants would be entitled to get compensation of the acquired land @ Rs.2,00,000/- (Rupees Two Lacs Only) each per hectare. As such, the point is answered accordingly.

13. Hence I pass the following order:-

ORDER

- i) The Appeal is partly allowed.
- ii) The judgment and decree dated 05.05.2010, passed by the learned 2nd Joint Civil Judge, Senior Division, Amravati stands modified.
- iii) The appellants are entitled to compensation @ Rs.2,00,000/- (Rupees Two Lacs Only) per hectare in respect of the acquired lands.
- iv) The appellants are entitled to get the difference of the amount and all other statutory benefits granted by the Reference Court.
- v) Respondent No.3, in terms of this judgment, shall deposit the difference amount within four months with the Registry of this Court
- vi) Decree be drawn up accordingly.

14. First Appeal stands disposed of. No order as to costs. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)