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

FIRST APPEAL NO. 985 OF 2010

APPELLANT : **1.** Mohd. Hanif s/o Sk. Maddu,
Aged about 78 years, Occ: Agriculturist
R/o Mahuli Jahagir, Tah and
Dist: Amravati
Through power of attorney holder, Mohd. Sardar Mohd. Hanif, aged about 58 years,
Occ: Agriculturist
R/o Mahuli Jahagir, Tah. & 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

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

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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 appellant-claimant for enhancement of the compensation.

3. Background facts:-

The land of the appellant, bearing survey No. 119, situated at village Mahuli Jahangir, Tahsil and District Amravati area 0.12 R, 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 Rs.1,46,700/- (Rupees One Lac Forty Six Thousand Seven Hundred Only) per hectare in respect of 0.3 R land and at the rate of Rs.1,16,201/- (Rupees One Lac Sixteen Thousand Two Hundred and One Only) per hectare for 0.9 R land. The Land Acquisition Officer awarded a lump sum compensation of Rs.49,509/- (Rupees Forty Nine Thousand Five Hundred and Nine only) for orange, guava, sitafal and mango trees.

4. The reference was filed by the appellant. The Reference Court enhanced the compensation to Rs.1,50,000/- (Rupees One Lac Fifty Thousand Only) for the land and awarded Rs.2,500/- (Rupees Two Thousand Five Hundred Only) per orange tree. The compensation awarded for other trees by the Land Acquisition Officer was maintained. Being aggrieved by this partial enhancement, the appellant has filed this appeal.

5. I have heard Mrs. Swati Paunikar, learned Advocate for the appellant 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 appellant submitted that the Reference court has not properly considered the sale deed at Exh.26 dated 28.01.2005. Learned Advocate submitted that the sale instance at Exh.26 was from the village of Mahuli Jahangir. Learned Advocate pointed out that the Reference Court has given unnecessary weightage to the distance between the land of the appellant and the land in the sale instance and discarded the said sale deed. Learned Advocate submitted that the land of the appellant 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 appellant and the land in the sale instance are similarly situated in all respect. Learned Advocate submitted that both lands are 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 land was not less than Rs.2,00,000/- (Rupees Two Lacs Only) per hectare on the date of the 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. As far as the orange trees are concerned, the learned Advocate submitted that the orange trees were six years old. Sufficient evidence has been adduced to prove that the price of the per tree was more than Rs.2,500/-. Learned Advocate submitted that in the three connected appeals in respect of similar trees, the Reference Court has awarded the compensation of Rs.4,000/- (Rupees Four Thousand Only) per orange tree. Learned Advocate submitted that in order to prove the price of the trees, the appellant has examined the valuer. It is submitted that the Reference Court has not properly appreciated the evidence of the valuer. The evidence of the valuer has been partially relied upon.

9. 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.26 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.

10. It needs to be stated that while determining the market price of the acquired land, 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 appellant. It needs to be stated that the consideration, in terms of a price, received for land under a *bona fide* 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 good guidance to determine the market value of the acquired land. 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.

11. 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.26 is also an irrigated land. The lands are situated at the same village. In my view, therefore, the sale instance at Exh.26 dated 28.01.2005 would be required to be taken into consideration. As per the sale deed at Exh.26, 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 appellant, 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 appellant at the rate of Rs.2,00,000/- per hectare. The appellant has stated

that his land is good quality fertile land. He has stated that his land and the land from the sale instance is similarly situated in all respects 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.26 is a genuine transaction. It is not the case of the respondents that the sale instance at Exh.26 was brought into existence to claim higher compensation for the lands proposed to be acquired. It is further pertinent to note that the area of the land at Exh.26 was near about 2 hectare. In my view, this is one more factor to conclude that this was a genuine and comparable sale transaction.

12. In the facts and circumstances, in my view, the appellant would be entitled to get compensation for his land at the rate of

Rs.2,00,000/- (Rupees Two Lacs Only) per hectare.

13. As far as the price of the orange trees is concerned, in my view, the Reference Court has failed to consider the age of the trees, the yield from the trees and the evidence of the valuer. It is seen that in the connected appeals, for the orange trees of six years old, the compensation has been awarded at the rate of Rs.4,000/- (Rupees Four Thousand Only) per tree. The valuer, in his evidence, has stated that the price of the per tree would be Rs.5,558/-. In order to arrive at this price, he has taken into consideration the age of the trees, overall growth of the trees and the income per year from the trees. The Reference Court, on doing some guess work, determined the compensation at the rate of Rs.2,500/- per tree. In my view, considering the price awarded for the orange trees in connected appeals, the appellant would be entitled to get Rs.4,000/- (Rupees Four Thousand Only) per orange tree. As far as the remaining trees are concerned, the compensation awarded by the Land Acquisition Officer was found reasonable by the Reference Court. On consideration of the evidence, I do not see any reason to interfere in the same. As such, I conclude that the Reference Court has not properly determined the market price of the land as well as orange trees.

Accordingly, the point is answered.

14. 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 appellant is entitled to compensation @ Rs.2,00,000/- (Rupees Two Lacs Only) per hectare in respect of the acquired land.

iv) The appellant is entitled to get Rs. 4,000/- (Rupees Four Thousand Only) per orange tree in respect of 30 orange trees.

v) The appellant is entitled to get the difference of the amount and all other statutory benefits granted by the Reference Court.

vi) Respondent No.3, in terms of this judgment, shall deposit the difference amount within four months with the

Registry of this Court

vii) Decree be drawn up accordingly.

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

(G. A. SANAP, J.)

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