



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

FIRST APPEAL NO. 72 OF 2022

APPELLANT : 1. Vidarbha Irrigation Development Corporation, Through its Executive Engineer, Amravati Medium Project Division, Amravati (Earlier – Amravati Irrigation Division, Amravati) Taluka and District Amravati
(Ori. NA No.3 on RA)

//VERSUS//

RESPONDENTS : 1. Ashok s/o Kisanrao Mandawgade, Aged about 38 years, Occ. Agriculturist, R/o Kumbhe Gaurkheda, Tq. Achalpur and Dist. Amravati
(Ori. Claimants on RA)
Ori. Deft. No.1 on RA 2. State of Maharashtra, through Collector Amravati, Tq. and Dist. Amravati
Ori. Deft. No.2 on R.A. 3. Special Land Acquisition Officer, Minor Irrigation Works Amravati, Tq. and Dist. Amravati

Ms A.S. Thalye, Advocate for the appellant.

Mr. Pawan Sarise, Adv. h/f Mr. R.J. Shinde, Advocate for respondent No.1.

Mr. H.D. Dubey, AGP for respondent Nos.2 and 3.

CORAM : G. A. SANAP, J.

DATED : 13th FEBRUARY, 2024

ORAL JUDGMENT

1. Heard finally with the consent of learned advocate for the respective parties.

2. In this appeal, the challenge is to the judgment and award, dated 05.02.2015, passed by the learned Civil Judge (Senior Division), Achalpur (for short 'Reference Court') in Land Acquisition Case No.62/2008, whereby the Reference Court allowed the reference filed by the respondent No.1-claimant and enhanced the compensation of the acquired land to Rs.7,91,600/- (Rupees Seven Lacs Ninety One Thousand Six Hundred Only) per hectare from Rs.1,11,000/- (Rupees One Lac Eleven Thousand Only) per hectare.

3. Background facts:

The land bearing Gat No.205/1, area 0.30R, belonging to respondent No.1 was acquired for the Kandali Distributory of Sapan Project. The notification under Section 4 of the Land Acquisition Act, 1894, was published on 22.03.2006. After a necessary inquiry, the award was passed on 21.04.2007. The compensation for the land, which was found to be jirayat land (dry

crop land), was quantified by the Special Land Officer, as above. Being aggrieved by this, respondent No.1 filed the reference application before the Collector. The Collector forwarded the said reference to the Reference Court. The Reference Court enhanced the compensation as stated above. The appellant-acquiring body is before this Court against this judgment and award.

4. I have heard Ms. Ashwini Athalye, learned Advocate for the appellant and Mr. Pawan Sarise, learned holding Advocate for respondent No.1 and Mr. H.D. Dubey, learned AGP for respondent Nos.2 and 3. Perused the record and proceedings.

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

- i) Whether the reference filed by the respondent No.1 was within limitation?
- ii) Whether the compensation determined/enhanced by the Reference Court is just, proper and reasonable?

6. Learned Advocate for the appellant/acquiring body submitted that on both the counts, the finding of fact recorded by the Reference Court is not consistent with the evidence on record.

It is submitted that the issue of limitation has not been properly considered.

7. Learned Advocate for respondent No.1 submitted that the sale instance of Jirayat land bearing Gat No/Block No.68 of village Wadura was taken into consideration for the purpose of determining the compensation by the Reference Court. Learned Advocate submitted that on the basis of this sale deed, Reference Court has determined the compensation/market price of the acquired land on the given date. Learned Advocate submitted that neither the acquiring body nor respondent Nos.2 and 3 adduced any evidence in rebuttal to deny the compensation to respondent No.1 on the basis of the sale instance relied upon by the respondent No.1.

8. I have gone through the record and proceedings. It is undisputed that neither the appellant nor the respondent Nos.2 and 3 adduced any evidence to rebut the evidence adduced by the claimant. Similarly, there is no other material to doubt the genuineness of the sale deed at Exh.29. It is to be noted that the market price of the acquired land has to be determined by taking into consideration various factors. One of the factors to be

considered is the sale instance of land, either from the same village or of the land within the vicinity of the acquired land. The acquired land was Gat No.205/1. The land which is subject matter for sale instance is Gat No.68. It is undisputed that the lands are situated at the village Mouza Wadura. The Gat numbers of both lands would show that the land of the sale instance was in close proximity of the acquired land. The land that is the subject matter of the sale instance is jirayat land. The land of respondent No.1, i.e. acquired land, was irrigated land. The Reference Court has taken the sale instance of block No.68 into consideration to determine the market price of the acquired land. As per the Reference Court, respondent No.1 was entitled to get compensation at the rate of Rs.7,91,600/- (Rupees Seven Lacs Ninety One Thousand Six Hundred Only) per hectare in respect of irrigated land because the market price of the jirayat land/dry crop land as per the sale deed at Exh.29 was Rs.3,95,800/- (Rupees Three Lacs Ninety Five Thousand Eight Hundred Only). The Reference Court found that, in respect of the irrigated land, respondent No.1 was entitled to get double the price of the dry crop land. The Reference Court has recorded the reasons to enhance the compensation.

9. Perusal of the evidence would show that the notification under Section 4 of the Land Acquisition Act, 1894, was issued on 22.03.2006. The sale deed at Exh.29 was executed on 09.03.2005. The lands sold as per Exh.29 was admeasuring 0.48 R. The acquired land in this case was admeasuring 0.30 R. The Reference Court, on the basis of the evidence, was right in concluding that the sale deed relied upon by respondent No.1 was genuine and has to be made the basis for determining the compensation. It needs to be stated that no evidence has been adduced by the acquiring body to rebut this oral and documentary evidence. The acquiring body, on the basis of other material, is not able to demonstrate that this sale deed was not genuine. There is no evidence to show that this sale deed was brought into existence to claim the hefty compensation of the acquired land in the area in a near future. In my view, therefore, the compensation determined by the Reference Court is based on the evidence on record. No interference is warranted in the judgment and order passed by the Reference Court.

10. The point of limitation has been answered against the appellant. Perusal of the reasons on that count would show that the Reference Court was right in recording the finding against the

appellant. It has been proved that notice under Section 12 (2) of the Land Acquisition Act, 1894, was served to the claimant-respondent No.1 on 06.05.2007. The reference was filed on 08.06.2007. It therefore, goes without saying that a reference was filed within 32 days from the date of receipt of the notice. The limitation provided for filing the reference is six weeks from the date of service of notice. In my view, on this count also the finding is supported by the evidence. The reference was within its limitation. Accordingly, I conclude that there is no substance in the appeal. Therefore, I answer both points in the affirmative.

11. The appeal is accordingly dismissed. No order as to costs. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)