



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

FIRST APPEAL NO.337 OF 2024

Prashant S/o. Nagorao Vitalkar,
Aged about : 45 Yrs., Occ.: Service,
R/o. Ratnapur, Tah. Deoli,
District Wardha.
Presently residing at 602, Echelon,
Baner-Pashan Link Road, Opp.
Regent Plaza, Pune

... APPELLANT
On R.A.
(Original Claimant)

// VERSUS //

1. **State of Maharashtra,**
Through Collector, Wardha,
District Wardha.
2. **Special Land Acquisition Officer (General),**
Wardha, Tah. & Dist. Wardha
3. **Executive Engineer,**
Central Railway, Ajni, Nagpur
Tah. & District Nagpur

... RESPONDENTS
On R.A.
(Non-applicant)

WITH
FIRS APPEAL NO. 338 OF 2024

The Executive Engineer,
Central Railway, Ajni, Nagpur
Tah. & District Nagpur

.... APPELLANT
(Original non-applicant on R.A.)

// VERSUS //

1. **Shri Prashant S/o. Nagorao Vitalkar,**
Aged about : 39 Yrs., Occ.: Agriculturist,
R/o. Ratnapur, Tah. Deoli,
District Wardha.
2. **The State of Maharashtra,**
Through its Collector, Wardha,
Tah. & Dist. Wardha.
3. **Special Land Acquisition Officer (G),**

Wardha, Tah. & Dist. Wardha

... RESPONDENTS
(Original Applicant on R.A.)

First Appeal No. 337 of 2024

Mr Amol B. Patil, Advocate for the appellant
Ms Prachi Joshi, AGP for respondent Nos. 1 and 2.
Mr V. M. Gadkari, Advocate for the respondent No.3

First Appeal No. 338 of 2024

Mr Nitin Lambat, Advocate for the appellant
Mr Amol B. Patil, Advocate for the respondent No.1
Ms Prachi Joshi, AGP for respondent Nos. 2 and 3

CORAM : G. A. SANAP, J.

DATE : 18/04/2024

COMMON JUDGMENT :

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

2. These two appeals are arising out of the judgment and award dated 12.06.2019 passed by the learned Civil Judge Senior Division Wardha (for short, 'Reference Court'). The appellant in First Appeal No.338/2024 is the acquiring body. The acquiring body is aggrieved by the enhancement of compensation to Rs.5,00,000/- (Rupees Five Lacs Only) per hectare. The appellant in First Appeal No.337 of 2024 is a claimant, who is aggrieved by the inadequacy of the compensation awarded by treating his land as a dry crop land.

In view of above, both appeals are being disposed of by this common judgment. In this judgment, the parties would be referred to by their nomenclature in the reference as a claimant and the acquiring body.

3. Background facts:

The claimant is owner of land bearing survey No.18 admeasuring 7.16 H.R. situated at village Ratnapur Taluka Deoli District Wardha. The land admeasuring 0.78 H.R. was acquired by the acquiring body for laying Wardha-Nanded via Yavatmal-Pusad New Railway Line. The notification under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act of 1894') was issued on 07.02.2013. The Land Acquisition Officer passed the award on 11.11.2013 and determined the market price of the acquired land @ of Rs.2,47,300/- (Rupees Two Lacs Forty Seven Thousand Three Hundred Only) per hectare. The claimant being unsatisfied with this compensation, filed the reference before the Collector. The Collector made over the reference to the Civil Court.

4. It is the contention of the claimant that his land was good quality black soil land. The land was fertile land. It is further stated that the land was irrigated. There is a constructed well in the land of the claimant. The Reference Court despite sufficient evidence on record, treated the land of the claimant as a dry crop land and awarded compensation @ of Rs.5,00,000/- (Rupees Five Lacs Only) per hectare. Being aggrieved by this Judgment and order, the claimant has filed the appeal. The acquiring body has filed the appeal contending that the compensation awarded @ of Rs.5,00,000/- (Rupees Five Lacs Only) per hectare was excessive and exorbitant.

5. I have heard the learned Advocate Mr Amol Patil for the claimant, learned Advocate Mr V. M. Gadkari for respondent No. 3 in First Appeal No. 337 of 2024, learned advocate Mr N. P. Lambat for the appellant in First Appeal No. 338 of 2024 and Ms Prachi Joshi, learned Assistant Government Pleader for the State. Perused the record and

proceedings.

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

- (i) *Whether the claimant has proved that his land was irrigated land?*
- (ii) *Whether the enhanced compensation awarded by the Reference Court treating the land as a dry crop land is just, proper and reasonable?*
- (iii) *What Order?*

7. Before addressing the above points, it would be appropriate to decide Civil Application No. 1774 of 2023 made by the claimant for leading additional evidence in this appeal. The claimant is intending to produce 7/12 extract of the acquiring land to show that there was a constructed well and the land was irrigated land. The claimant is also intending to produce on record a copy of the order dated 31.10.2019 passed by the competent authority under Section 3-G (5) of the National Highways Act, 1956 in respect of the acquisition of the land bearing survey No.339, which was in the vicinity of the acquired land of the claimant. He is also intending to

produce on record certificate of Talathi and a map to establish the distance between the two lands. As far as the 7/12 extract sought to be produced is concerned, it is nothing but the repetition of the 7/12 extract of the acquired land already produced on record. The said 7/12 extract already produced on record is sufficient to establish the existence of the well and the crops grown in the land. Therefore, the production of 7/12 extract is not at all necessary.

8. The next document which is sought to be produced as an additional evidence is the order dated 31.10.2019 passed by the competent authority under Section 3-G(5) of the National Highways Act, 1956. It is submitted that in respect of survey No.339, the competent authority has awarded the compensation @ of Rs.825/- (Rupees Eight Hundred Twenty Five Only) per Sq. Mtr. considering the commercial potential and the location of the land. It is submitted that in view of this order passed by the competent authority, the claimant in this appeal would also be entitled to get higher compensation.

Learned Advocate for the claimant submitted that the land of the claimant and the land which is the subject matter of the order dated 31.10.2019 are similarly situated in all respects. Learned Advocate submitted that this additional evidence is necessary to decide the higher market price of the land of the claimant. Learned Advocate Shri Patil in support of his submission relied upon a decision in the case of *Sabhia Mohammed Yusuf Abdul Hamid Mulla (Dead) by LRs and Others vs. Special Land Acquisition Officer and others* reported in (2012) 7 SCC 595.

9. Learned Advocate for the acquiring body submitted that the additional evidence in the form of the order of the competent authority sought to be adduced cannot be allowed. It is pointed out that it is not the case of the claimant that his land had a commercial or NA potential. Learned Advocate submitted that the additional evidence cannot be allowed to be brought on record in the absence of the pleading of the material facts. Learned Advocate submitted that it is the case of the

claimant that his land was irrigated land. Learned Advocate further submitted that the acquisition of the land of the claimant was under the Act of 1894 and the acquisition of the land which is the subject matter of the order sought to be placed on record, was under the National Highways Act, 1956, where the provisions of the newly enacted Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 are *ipso facto* applicable.

10. As far as the reliance placed on decision in the case of ***Sabhia Mohammed (supra)*** is concerned, in my view, the proposition which can be culled out states that while fixing the market value of the acquiring land, the Land Acquisition Officer is required to keep in mind the following factors :

- (i) Existing geographical situation of the land.
- (ii) Existing use of the land.
- (iii) Already available advantages, like proximity of National or State Highway or road and/or developed area.

(iv) Market value of other land situated in the same locality/ village/area or adjacent or very near the acquired land.

11. It is held that the material/factors, as above, are required to be considered. Learned Advocate for the claimant, relying upon this judgment submitted that considering the fact that both the lands are situated in the same locality having the same potential, the claimant is entitled to get higher compensation on the basis of the order dated 31.10.2019 of the competent authority.

12. Permission to lead the additional evidence falls within the discretion of the Court. Before granting leave to lead additional evidence, the Court must be satisfied that the basic requirements of Order XLI Rule 27 of the Civil Procedure Code are fully established. In this case, the impugned judgment was passed by the Reference Court on 12.06.2019. Section 4 notification was issued in February 2013. The land

Acquisition Officer considered the prevailing market price of the lands in the area and on that basis, determined the market price of the acquired land. The acquisition proceeding, which is the subject matter of the order sought to be produced as an additional evidence, was initiated in 2015, and the final award was passed by the competent authority on 31.10.2019. It needs to be stated that the land holder in the said case was able to establish the commercial/NA potential of the land to satisfy the competent authority to award the compensation @ Rs.825/- (Rupees Eight Hundred and Twenty Five Only) per sq. Mtr.

13. In my view, a request made in the application for leading additional evidence and particularly for the production of the order in question, cannot be granted for more than one reason. As far as settled legal position is concerned, there is hardly any dispute about the same. It is the case of the claimant that his land was good quality, fertile land. It is also his case that his land was irrigated land. The claimant has adduced evidence consistent with his pleadings in the reference

application. There is no pleading in the reference application that the land had a commercial or the NA potential. The evidence has also not been adduced by the claimant that his land had commercial or NA potential. It needs to be stated that NA potential or commercial potential of a particular land is a question of fact and the same has to be decided on the basis of the facts and evidence adduced by the parties. In this case, there is an inherent defect in this application. The additional evidence is sought to be adduced in the absence of pleadings and evidence. It is to be noted that on the basis of this additional evidence a case is sought to be improved and that too without pleading that the land of the claimant had commercial/NA potential. It is a cardinal principle of law that a trial must be fair to both the parties. If the production of additional evidence is allowed, then it would be without pleading and evidence. The acquiring body had no notice of such a claim of the claimant. It is seen that considering the basic contention of the claimant that land was irrigated land, the evidence was not adduced by the acquiring body. In my view, therefore, in the

absence of any pleading and evidence of the claimant before the Reference Court, production of document by way of additional evidence before this Court cannot be allowed. If it is allowed then it would cause great prejudice to the acquiring body. In view of this, I am not inclined to grant the application for leading the additional evidence, as prayed for. As such the application deserves to be rejected.

As to point Nos.1 to 3:

14. Learned Advocate for the claimant submitted that Reference Court has not at all considered the documentary evidence adduced by the claimant in support of his contention that the land was irrigated land. Learned Advocate took me through the 7/12 extract of the land at Exh.25 and pointed out that in 7/12 extract, the existence of a constructed well has been categorically mentioned. Learned Advocate for the claimant on the basis of the crop pattern reflected in 7/12 extract submitted that the land was irrigated and the crops mentioned in 7/12 extract were taken by the claimant. Learned

Advocate submitted that the Reference Court has not at all dealt with this 7/12 extract. It is submitted that it is a public document. Learned Advocate submitted that the claimant, in his evidence has categorically stated that his land was irrigated land. He has pointed out that the crops grown by him in the land have been stated in the evidence. Learned Advocate submitted that his evidence was discarded on the basis of some innocuous admission given in the cross-examination. Learned Advocate submitted that the Reference Court has awarded compensation @ of Rs.5,00,000/- in respect of the dry crop land and therefore, the appellant is entitled to get double the price of the dry crop land in respect of his land.

15. Learned Advocate for the acquiring body submitted that 7/12 extract cannot be made sole basis to decide the fate of this appeal. Learned Advocate submitted that the existence of the constructed well by itself may not be sufficient to conclude that the entire land was under irrigation. Learned Advocate submitted that the part of a land was used for cultivation of

crops such as wheat and gram. Learned Advocate therefore, submitted that considering the area used for the cultivation of such a crops would not be *ipso facto* sufficient to jump to a conclusion that the land was irrigated land. Learned Advocate submitted that the Reference Court has properly appreciated the evidence on record and rejected the contention of the claimant that his land was irrigated.

16. The claimant is the owner of survey No.18, admeasuring 7.16 HR. The acquiring body acquired 0.78 HR land out of 7.16 HR land of the claimant for laying the railway line. I have perused the judgment and order passed by the Reference Court for the purpose of addressing the issue raised by the learned Advocates. On going through the judgment and award passed by the Reference Court, it is seen that the Reference Court has not at all considered the 7/12 extract at Exh.25 to address the basic contention of the claimant. It needs to be stated that the existence of constructed well is not

in dispute. It is also not the case of the acquiring body that the well has no sufficient water. In the absence of concrete evidence in rebuttal, the Reference Court was required to consider the existence of a constructed well as a prime factor in favour of the claimant. The Reference Court was also required to take into consideration the crop pattern from the 7/12 extract. Wheat and gram cannot be grown without the source of water. It is not the case of the acquiring body that 7/12 extract is manipulated or has been brought into existence to substantiate the claim of the claimant. Perusal of the 7/12 extract at Exh.25 would show that the land admeasuring 1.20 H.R. was under cultivation for wheat crop and the land admeasuring 0.50 H.R. was under cultivation for gram. It is further seen on perusal of the 7/12 extract, which is produced with the application for additional evidence, that other crops which cannot be grown without water have been shown in the 7/12 extract.

17. Perusal of the judgment of the Reference Court

would show that the Reference Court has not at all addressed this issue. In my view, the evidence adduced by the claimant that his land was irrigated land has been corroborated by the documentary evidence. The acquiring body has not adduced evidence in rebuttal to disapprove this fact. The Reference Court ignoring this evidence has treated the land of the appellant as a dry crop land. In my view, this finding is contrary to the evidence on record. The evidence is sufficient to prove that the land was irrigated land.

18. The acquiring body has also filed an appeal and made the grievance that compensation awarded @ of Rs.5,00,000/- per hectare in respect of dry crop land is excessive and exorbitant. An attempt has been made to demolish the reasons recorded by the Reference Court to arrive at this conclusion. In my view, the evidence on record is sufficient to reject the submission advanced on behalf of the acquiring body. The claimant has relied upon one sale-deed to substantiate his contention that the market price of the

acquired land was more than the one awarded by the Land Acquisition Officer. The sale-deed is at Exh.27. The claimant further produced the judgment and award passed by the Reference Court in Reference Application No.197 of 2014 in respect of the land of the same village situated in the vicinity of the land of the claimants. The Reference Court decided the market price of the acquired land by placing reliance on this decision. It is undisputed that the acquiring body was a party to the said decision. The First Appeal No.1021 of 2018 filed by the acquiring body against the judgment and award dated 24.01.2017 in Land Reference Case No.197/2014 has been dismissed by this Court vide order dated 18.04.2024. It is therefore, apparent that the judgment and award in Land Acquisition Case No.197/2014 has attained finality. The Reference Court relied upon the said decision for deciding the market price of the acquired land.

19. At this stage, it is not out of place to mention that the judgment in Reference Case No.197/2014 was produced

before the Reference Court at a later stage. It was not given exhibit mark. Learned Reference Court keeping in mind the provisions of the Section 74 of the Evidence Act, 1872 relied upon the said decision. There was no mistake on the part of Reference Court in admitting the judgment in Reference No.197/2014 in evidence. It needs to be stated that the land in Reference No.197/2014 and the land of the appellant situated at the same village and acquired for the same project under the same notification. The Reference Court in Land Acquisition Case No.197/2014 determined the market price of the land at the rate of Rs.10,00,000/- (Rupees Ten Lacs Only) per hectare. It was irrigated land.

20. The Reference Court, in this case came to a conclusion that the land of the appellant was dry crop land and as such determined the market price at the rate of Rs.5,00,000/- (Rupees Five Lacs Only) per hectare i.e. 50% of the market price of the irrigated land. In my view, as far as the market price determined by the Reference Court for dry crop

land is concerned, there is no mistake or error on the part of the Reference Court. The Reference Court only erred while addressing the contention of the claimant on the issue of nature of land. In this case, the claimant has proved that his land was irrigated land. In my view, therefore, the claimant is entitled to get compensation @ Rs.10,00,000/- (Rupees Ten Lacs Only) per hectare in respect of his acquired land. Issue Nos.1 and 2 are answered accordingly.

19. In view of above, appeal filed by the acquiring body i.e. First Appeal No.338 of 2024 is dismissed. The appeal filed by the claimant i.e. First Appeal No.337 of 2024 is allowed.

20. The respondents and particularly the acquiring body is directed to pay compensation to the claimant @ of Rs.10,00,000/- (Rupees Ten Lacs Only) per hectare in respect of the acquired land. As far as other statutory benefits and interest is concerned, the order passed by the Reference Court is maintained. The amount in terms of this order be deposited

within four months from today.

21. The appellant/claimant in First Appeal No.337/2024 is directed to pay the deficit Court fee, if any, on the enhanced amount of compensation. If the deficit Court fee is not paid by the appellant/claimant, then the same shall be recovered/deducted from the enhanced compensation amount.

22. The first appeals stand disposed of accordingly. No order as to costs. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)

Manisha