



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

FIRST APPEAL NO. 74 OF 2006

Vidarbha Irrigation Development
Corporation, through Executive Engineer,
Medium project Division, Pusad,
Dist. Dist. Yavatmal

... **APPELLANT**

.....VERSUS

1 Jayant Umakant Karideo,
Aged about 30 years,
Occ. Agriculturist,
R/o. Darwaha,
Tq. Darwaha, Dist. Yavatmal

2 The State of Maharashtra
through Collector, Yavatmal,

3 The Executive Engineer,
Lower Pus Project, Pusad,
Dist. Yavatmal

...**RESPONDENTS**

Mr.Amit Chutke, AGP for Appellant
Mr. Abhay Sambre, Advocate for Respondent No. 1

CORAM :DR.SMT. SHALINI PHANSALKAR-JOSHI, J.

DATE : JULY 3, 2017.

ORAL JUDGMENT :

1 The judgment and decree dated 2.4.2005 passed by Civil Judge Senior Division, Darwaha in L.A.C. No. 1268 of 2004 is the subject matter of this appeal. By the said judgment and decree, the Reference Court has awarded enhanced compensation of Rs. 3,28,000/- to the respondent claimant. Being aggrieved by this enhancement awarded by the Reference Court, this appeal is preferred by the acquiring body – Vidarbha Irrigation Development Corporation.

2 Brief facts of the case can be stated as follows:

The land belonging to the respondent no.1, bearing Gut No. 155, admeasuring 3H situate at village Kumbharkinhi came to be acquired by the Government for Kumbharkinhi dam, in pursuance of the notification issued under Section 4 of the Land Acquisition Act, 1894. As per the Award declared by LAO on 30.6.1999, the amount of

compensation granted to respondent no. 1 was @ Rs.28,000/- per hector. No separate compensation was awarded towards trees standing in the said land.

3 Being aggrieved by the meager amount of compensation awarded by Land Acquisition Officer, respondent no.1 approached the Reference Court u/s 18 of the Land Acquisition Act contending inter-alia that his land was fertile and having high crop yielding potentiality; he was fetching income of Rs. 20,000/- per hector; despite that LAO has recorded compensation at a very low rate ignoring the sale instances of similar lands situate in adjacent villages. It was further submitted that his land was situated on Darwha to Kurhad road and nearer to the residential area of village Kumbharkinhi. The facilities of electricity, water supply, school, Gram Panchayat etc were available in that area which has resulted in rising the prices of the lands. LAO has not considered these factors and awarded the compensation at highly inadequate rate.

4 It was further submitted that there were four mango trees which were about 25 years old and fetching income of Rs. 1,000/- per year per tree. There were also 48 ber trees fetching the income of Rs. 400/- per year per tree. It was urged that LAO has awarded compensation for the trees also at very low rate and hence, compensation @ Rs. 2000/- per tree be awarded.

5 Respondent nos. 2 & 3 herein resisted the said reference vide written statement at exh. 10, denying fertility and income fetching potentiality of the acquired land. It was submitted that LAO has considered all the important factors and awarded compensation at proper rate prevailing at the time of notification and therefore, no interference is warranted in the award passed by LAO.

6 The present Appellant by filing separate written statement at exh. 19 adopted the same contentions which were raised by respondent nos. 2 & 3 herein. It was submitted that LAO has given proper opportunity to the

claimant to establish his claim and after considering all the submissions and the material produced before it, awarded just amount of compensation, therefore, reference has no merits.

7 On these respective pleadings of the parties, the Reference Court framed necessary issues for its consideration. In support of his claim, the claimant has examined himself and three more witnesses namely, the valuer Vishnu Shakar Paradkar and Namdeo Dive to prove the sale instances. All these witnesses were cross examined on behalf of the appellant and other respondents. Now even they have not preferred to lead any documentary evidence.

8 In the light of this evidence on record, the Reference court considered the sale instances and also the report of valuer and fixed market value of the land @ Rs. 90,000/- per hector and the value of mango tree @ Rs. 9000/- whereas of berry trees @ Rs. 1000/- per tree.

9 While challenging the impugned judgment and award of the learned Reference Court, the submission of learned counsel for the appellant is that the Reference Court has not considered the sale instances of the lands having similar potentiality or the similar quality. It is urged that the Reference Court ought to have considered that the lands covered under the sale instances of Ehx. 30 and 31 were situate away, at the far distance of 5 to 6 kilometer from the acquired land whereas sale instance at Exh. 32 was not of the same village. It is urged that Reference Court has given undue importance to the evidence of expert valuer and relying solely on his testimony, has enhanced the valuation of the trees and hence, the said valuation is not justified, therefore, needs to be interfered with.

10 The perusal of the judgment of the Reference Court and the evidence adduced before it, reveals that the Reference Court has considered all the sale instances, the certified copies of which were produced before it. It has

considered that the sale instance produced at exh. 28 which was pertaining to the land situated in the same village. Under the said sale instance, Shri Vilas Kale had purchased the land @ Rs. 45,000/- per acre on 8.12.1994. It was also noticed by the Reference Court that the said land was only at the distance of ½ kilometer from the acquired land and quality of both the lands was more or less similar. The reference Court has mainly relied on this sale instance.

11 No doubt, Reference Court has also taken into consideration the other sale instances, one of them pertains to the land situate at village Mankinhi which was only at the distance of 1 kilometer from the acquired land and under the said sale instance exh. 29 also the land at village Kankhini was sold for consideration of Rs. 40,000/- per acre on 6.12.1994. The Reference Court has in this respect also considered evidence on record showing that both the lands were of the similar quality.

12 Then, Reference Court has considered the sale instance of village Mahuli exh. 30. Under the said sale instance one Shri Premkuwar Kothar has purchased land on 30.3.1998 @ Rs. 1,23,000/- per hecter. The Reference Court found that the distance between village Mahuli and Kumbharkinhi was about 3 to 4 kilometer. Further, Reference Court considered one more sale instance of Darwaha which was for consideration of Rs. 1,06,600/- per hecter vide saledeed executed on 22.5.1995. The said land was at the distance of 7 to 8 kilometer from the acquired land.

13 Reference Court has also relied upon certified copy of the judgment in another Land Reference Case produced at Ehx. 34, in respect of the land situated in the same village Kumbharkinhi and acquired for the same project of Kumbharkinhi dam. It was land of Smt. Undaribai Rathod for which the learned court has awarded compensation at the rate of Rs. 90,000/- per hecter. The Reference Court found that the said land was having similar potentiality.

14 In para no. 19 of judgment learned Reference Court has considered the submissions advanced before it and found that though the sale instances produced at Exhs. 29 to 31 where of the lands situate in different villages but they was adjacent to the land acquired and except for sale instance ehx. 28, no other sale instance were available from the same village Kumbharkinhi. The learned Reference Court has also considered that these sale instances were prior to the date of notification within the range of 1 to 4 years and the lands covered under the said instances are more or less same quality and adjacent to the acquired land.

15 The learned Reference Court also considered the evidence of the expert Shri Paradkar who has stated that having regard to the quality, fertility and location the land of the claimant and also having regard to the sale instances of the adjacent lands, the market value of the acquired land can be in the range of Rs. 1 lac per hecter.

16 After considering the detailed reasoning given by the learned Reference Court and also the grounds which it has taken into consideration including the sale instance of even adjacent land, no fault can be found in the impugned judgment and order of the learned Reference fixing the market value of the respondent's land @ Rs. 90,000/- per hecter. Even for the sake of argument only, the sale instance of the same village in which acquired land is situated that of Kumbharkinhi is taken into consideration which is at Exh. 28, it can be seen that in the year 1994, the land in the same village was sold for Rs. 1,12,500/- per hecter. The notification us/ 4 of the Land Acquisition Act was issued in this case in the year 1996 and therefore, even if said sale instance and the compensation awarded by the Reference Court for the land acquired for the same purpose and from the same village is considered, which was Rs. 90,000/- per hecter, then the Reference Court has rightly held that in respect of the acquired land of claimant also, the same rate of compensation needs to be awarded.

Therefore, the compensation awarded by the Reference Court to the acquired land @ Rs. 90,000/- per hectore being just, reasonable, fair and adequate, no interference is warranted therein in this appeal.

17 Even as regards the compensation for the mango and berry trees, the Reference Court has considered the evidence of the claimant, that those mango trees were of 25 year old and each tree was giving income of Rs. 1000/- per year. Having regard, thereafter to the evidence of the Expert Shri Karadkar, the Reference Court has fixed compensation for four mango trees @ Rs. 9000/- per tree and for 22 berry tree Rs. 1000/- per tree. Thus, after properly considering the evidence adduced on record as the Reference Court has fixed market value of the mango and berry trees, no interference is warranted in the finding of the Reference Court in that aspect also. The total amount of compensation awarded by the Reference Court to the claimant @ Rs 3,28,000/- as enhanced compensation, being

thus just and correct, the appeal holds no merits, hence,
stands dismissed.

JUDGE

belkhede, PA