

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.252 OF 2020

1. Bhujanga s/o Sarangdhar Sarkate,
Aged about 60 years, occ.
Agriculturist,
2. Uttam s/o Sarangdhar Sarkate,
Aged about 58 years, occ.
Agriculturist,

Both r/o Harad, Tq. Risod,
Distt. Washim.

... APPELLANTS

...VERSUS...

1. The State of Maharashtra,
through District Collector Washim,
District Washim.
2. Special Land Acquisition Officer
No.2, Washim, Distt. Washim.
3. V.I.D.C. Minor Irrigation Project,
Washim, Distt. Washim.

...RESPONDENTS

Shri Sandeep Marathe, Advocate for the appellants
Ms T.H. Udeshi, AGP for the respondent Nos.1 & 2
Ms Ujwalla A. Patil, Advocate for respondent No.3

CORAM : SMT. M.S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 06/09/2022

DATE OF PRONOUNCING THE JUDGMENT : 22/11/2022

JUDGMENT

Heard. Heard finally by consent of the learned Counsel for both the parties.

2. The present appeal is filed challenging the judgment and order dated 19/04/2017 passed by the learned Civil Judge, Senior Division, Washim in Land Acquisition No.98/2002.

3. The facts of case in brief are as under:

The State of Maharashtra decided to construct a Dam at village Haral and for that reason started to acquire the land from the villagers. The appellant's land in Survey No.372 admeasuring 2.74 H.R. land in Haral came to be acquired by the respondent no.2 vide Land Acquisition Proceedings No.12/47/96-97. The Section 4 Notification came to be published on 13/11/1997. Section 6 Notification published on 12/01/2000 and the final award came to be published on 02/06/2000. The Land Acquisition Officer awarded an amount of Rs.1,45,314/- for the acquired land.

4. The appellants preferred reference against the aforesaid award and claimed for compensation @ Rs.3,00,000/- per hector and an amount of Rs.90,000/- for the trees and well. The

Reference Court by its order dated 05/04/2010 enhanced the compensation to the tune of Rs.3,28,800/- for acquired land. It has also awarded amount of Rs.80,253/- for the trees and well. The entire compensation awarded was Rs.16,03,613/-. The respondent no.3 (Land Acquisition Officer) challenged the said judgment before this Court, on the ground that though it is an acquiring body, it was not made a party before the learned Reference Court and therefore, prayed for quashing of the judgment and award dated 05/04/2010.

This Court by its judgment dated 29/04/2016 allowed the appeal and remanded it back with directions to implead the Vidarbha Irrigation Development Corporation as party respondent and with liberty to the parties to prosecute the proceedings in accordance with law. After remanding back the matter, the learned Reference Court passed the impugned judgment without giving proper opportunity to the appellants nor considering the evidence adduced by the appellant in Reference Case No.49/2002. The said judgment and order is being challenged in the present appeal.

5. The learned Counsel for appellants contended that the appellants used to take double crops in a year. They used to earn

annual income Rs. 8000/- per annum from fruit bearing trees. He also used to take Kharip as well as Rabbi crops in the acquired land. The land is a black soil land and having superior quality and having perennial source of water and substantial potentiality.

6. It is further contended by the learned Counsel for appellants that the learned Reference Court has committed patent illegality in holding the matter to be decided in time bound manner. Reference came to be decided without giving an opportunity to appellants of hearing or to produce additional evidence on record. The joint measurement report clearly show existence of a well in the field of appellants. The learned Reference Court committed illegality in observing that there is no evidence about the well and not awarded compensation for the same. The acquired land of the appellants was fertile black soil and irrigated land. The rate of such land was much higher. The learned Reference Court has not properly assessed valuation of acquired land on the basis of its productivity, non-agricultural potential and thus impugned judgment needs to be quashed and set aside.

7. Learned Counsel for appellants relied on citation in the case of *Special Land Acquisition Officer (N) and another Vs. Gracinda Braganza(D) Thr. L.Rs. Reported in 2018(5) Mh.L.J. 529.*

8. It is contended by the respondent no.1 that the land acquired is not black soil or fertile or irrigated land. It is also denied that the land is near to the village. The acquired land is dry Kharip crop medium quality land having no potentiality value. The applicant has not produced any evidence to prove the presence of trees in the acquired land. The grounds are not raised by the applicant for enhancement of compensation which are raised now are incorrect and false.

9. It is further contended that the land acquisition officer before passing the award has taken into consideration, the sale instances of the land in the vicinity for determination of the compensation. Therefore, the compensation awarded is adequate and reasonable and as per the market value.

10. Heard both the parties. It is a matter of record that matter was remanded back as acquiring body was not the party before the learned Reference Court. Acquiring body- VIDC after remand, not filed any documentary or oral evidence and filed pursis that it do not want to examine the witnesses. In view thereof, evidence already laid by the applicant ought to have considered by the learned Referral Court. After remand, the learned Referral Court reduced enhancement from Rs. 1,30,00/- to Rs. 67,000/-.

11. I have perused earlier judgment passed by the learned Civil Judge, Senior Division, Washim dated 05/04/2010 in Land Acquisition Case No.98/2002 as well as judgment after remand dated 19/04/2017. It is the matter of record that the added respondent No.3 filed their written statements vide Exhibit 32, however, by filing pursis Exhibit 34 informed that the respondent No.3 do not wish to lead any oral evidence. As such, evidence already laid by the parties, was for consideration before the learned Referral Court. As held in *Special Land Acquisition Officer Vs. Gracinda Braganza, 2018(5) Mh.L.J. 529*, this Court in similar matter held that the contention of acquiring body that

compensation cannot be enhanced in absence of new evidence, such claim cannot be considered as earlier evidence laid by claimants does not stand wiped off after matter is remanded. As such, no new evidence laid by respondent no.3, the earlier evidence laid is required to be considered.

12. After going through the judgment passed by learned Referral Court after remand, it appears that the learned Referral Court has not appreciated the evidence already laid and without there being any reason to discard the same, it was discarded. The earlier judgment was perfectly justified in view of the evidence laid before it. The contention raised by VIDC is totally misconceived and without any basis. In the award passed by Special Land Acquisition Officer, there is specifically mention of well in the acquired field so also trees. The learned Senior Division, in earlier judgment rightly appreciated the said factual position. He has also considered the sale instances before the Special Land Acquisition Officer itself and the judgment passed in Land Acquisition Case No.49/2002. It is in respect of the same village and the market price is fixed in the said Land Acquisition Case as Rs.1,00,000/- per hectare for dry crop

land. In fact, there was order that this land acquisition case was directed to be heard along with Land Acquisition Case No.49/2002, reference of this order is in paragraph no.21 of the judgment passed after remand as well as there is reference of this order in paragraph no.16 of the judgment passed before remand. As such, price which was fixed as Rs.1,30,000/- by the judgment before remand is perfectly justified.

13. As there is no additional evidence adduced by the VIDC and the learned Judge before remand has taken into account of the documents placed on record along with the evidence laid by the applicant. In fact, after remand, in view of the fact that no evidence laid by the respondent no.3, the learned Referral Court ought to have considered the evidence laid by the appellant prior to remand. Admittedly, in view of findings recorded by the land acquisition officer, there is reference of trees as well as of well. The said land is situated 2.5 k.m. away from Washim-Risod road and 2.5 k.m. away from the main road. There is educational facility, weekly market and water facility from well as well as from river. There is Post, Bank, Schools, Electric Line available in the village. There were 25

sale instances referred in the award itself.

14. All these aspects are being taken into account by the learned Referral Court before remand. After remand, the learned Referral Court without recording any reasons for discarding sale instances which were rightly considered by the learned Referral Court prior to remand, discarded the same. If there is no additional evidence adduced by the respondent No.3 (acquiring body) and in the similarly situated circumstances accepted the enhanced amount of Rs.1,00,000/- per hectare in case of Land Acquisition Case No.49/2002, there is no reason at all to the learned Referral Court to take contrary view as if, it is setting in the appeal. As such, I am satisfied that the judgment and order passed on 19/04/2017 is liable to be quashed and set aside. The order is required to be passed as per order passed in 05/04/2010 by Civil Judge, Senior Division before remand. Hence I proceed to pass the following order:

ORDER

- i) The appeal is partly allowed.
- ii) It is held that the marked price of the land is

fixed as Rs.1,30,000/- per hectare appellant is entitled for enhanced compensation on the basis of this market value of land.

iii) The applicant is also entitled for compensation for Mango trees and well @ Rs.32,009/- and Rs.48,244/- respectively.

iv) The applicant is entitled for other statutory benefits on enhanced compensation.

The appeal is disposed of accordingly.

(Smt. M.S. Jawalkar, J.)

R.S. Sahare