

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 5611-5612 OF 2021
(Arising out of SLP(Civil) No(s). 36247-36248 of 2016)

BHUPENDRA RAMDHAN PAWAR

....APPELLANT(S)

VERSUS

**VIDARBHA IRRIGATION DEVELOPMENT
CORPORATION, NAGPUR AND ORS. ETC.**

....RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 5613 OF 2021
(Arising out of SLP(Civil) No(s). 13859 of 2019)

CIVIL APPEAL NO(S). 5614 OF 2021
(Arising out of SLP(Civil) No(s). 13874 of 2019)

J U D G M E N T

Rastogi, J.

Civil Appeals @ SLP(Civil) Nos. 36247-36248 of 2016

1. Leave granted.

2. The appellant has challenged the judgment and order dated 23rd October, 2015 passed by the High Court of Bombay determining the compensation payable to the appellant in reference to the acquisition proceedings which were initiated pursuant to a notification under Section 4 of the Land Acquisition Act, 1894(hereinafter being referred to as the 'Act") dated 14th August, 1997.

3. The total land admeasuring 9 hectares and 98 ares situated at Mouza Khandala, Tq. Manora, District Washim came to be acquired by the respondents pursuant to the acquisition proceedings initiated under Section 4 of the Act published in the Gazette dated 14th August, 1997. In furtherance thereof, declaration was made under Section 6 of the Act which was published in the Government Gazette on 20th August, 1998. The land acquisition officer pursuant thereto passed an award dated 20th August, 1999 in respect of the acquired land and valued the land under field Gat No. 1/1 and 1/ 2 at the rate of Rs. 35,000/- per hectare for dry crop land and under Gat No. 11 at the rate of Rs. 46,600/- per hectare on the basis of revenue assessment with standing trees. On appeal being preferred

at the instance of the present appellant under Section 54 of the Act read with Section 96 of Civil Procedure Code, 1908, the High Court under the impugned judgment, after hearing the parties, granted him the following reliefs:-

- (i) The claimant Bhupendra Ramdhan Pawar is entitled to compensation at the rate of Rs. 1,00,000/- per hectare for land admeasuring 7 H 98 Ares, out of the acquired land admeasuring 9 Hectares 98 Ares deducting land admeasuring 2 H on which orange trees were cultivated.**
- (ii) Claimant is held entitled to compensation at the rate of Rs. 3000/- per tree for 554 orange trees in Gat no. 1/1 and 1/ 2.
- (iii) Claimant is held entitled to Rs. 91,305/- as compensation for well in Gat No. 1/1 and for well in Gat No. 1 /2 to Rs. 26,000/-.
- (iv) Claimant is held entitled to compensation for 327 firewood trees at the rate of Rs. 300/- per tree.
- (v) Claimant is held entitled to compensation at the rate of Rs. 500/- per tree for 400 Sindhi trees.
- (vi) Claimant is held entitled to compensation at the rate of Rs. 250/- per tree for 30 berry trees.
- (vii) The claim in respect of 100 mango trees at the rate of Rs. 1000/- per tree, as has been awarded by the reference Court, is rejected.**
- (viii) Rest of the statutory entitlements of the claimant including solatium under Section 23(2) of the Act, interest under Section 28 of the Act and component under Section 23-A of the Act of 1894 be calculated accordingly along with future interest at the rate of 15 % per annum till full realization.**

- (ix) The judgment and order dated 17th of April, 2008 passed by reference Court in LAC No. 170 of 1999 stands modified accordingly.
- (x) The reference Court is directed to calculate the compensation payable to the claimant after giving notice to both sides within four months from the date of receipt of writ and certified copy of the judgment.
- (xi) If any amount is withdrawn by the claimant, same shall be taken into consideration while making ultimate payment of dues to the claimant.
- (xii) The amount deposited by the appellant in Appeal No. 1265 of 2013 if found to be in excess, the same shall be refunded to the appellant.
- (xiii) In the circumstances, there shall be no order as to costs.”

4. Learned counsel for the appellant submits that the compensation @ Rs. 1,00,000/- per hectare awarded by the High Court is not adequate and under the two sale deeds dated 28th December, 1994 and 12th March, 1996, the market price comes to Rs. 50,000/- per hectare in the year 1994 and on the basis of second sale deed of March, 1996, the market price came to Rs. 75,000/- per hectare and the present acquisition being of the year 1997, adequate appreciation has not been made while computing compensation and it deserves further enhancement.

5. Learned counsel submits that the compensation of Rs. 1,00,000/- has been determined with reference to sales statistics and that being so, trees will have to be valued separately and this what has been held by this Court in **Ambya Kalya Mhatre(Dead) through LRs and Others Vs. State of Maharashtra**¹ and submits that the finding recorded by the High Court depriving the appellant of computing compensation in reference to 2 hectares of acquired land needs to be interfered by this Court.

6. Learned counsel further submits that the findings which have been recorded by the High Court rejecting the claim in respect of 100 mango trees awarded by the reference court needs to be interfered by this Court.

7. Per contra, learned counsel for the respondents, while supporting the order passed by the High Court, submits that compensation which has been determined by the High Court of Rs. 1,00,000/- per hectare for the acquired land is based on the factual matrix and appellant has relied upon two sale instances, (i) sale deed dated 28th December, 1994 of 39 ares land consideration was

¹ 2011(9) SCC 325

Rs. 20,000/- (thus market value of 1 Hectare = Rs. 50,000/-) (ii) sale deed dated 12th March, 1996 about 2 hectare 1 Are land for the consideration of Rs. 1,50,000/- (thus market value of 1 Hectare = Rs. 75,000/-). It can be noticed that the sale instance of 12th March, 1996 is one year prior to Section 4 notification, even by adding 10% increase in the value, market value of 1 hectare would be Rs. 82,500/-.

8. Learned counsel further submits that compensation of Rs. 1,00,000/- per hectare granted for the whole land is a fair compensation and it needs no further indulgence by this Court.

9. Learned counsel further submits that so far as the claim in respect of mango trees which has been rejected by the High Court is concerned, reliance was placed by the reference court on survey report at Annexure P-1 (page 41 of the paper book) which was prepared on 23rd November, 1994 and the finding has been recorded that for the period 1990-91 to 1993-94, there is reference to 277 orange trees and 100 mango trees while in 7/12 extracts Exhibit-46 for the period from 1994-95 to 1998-99, there is no mention of mango trees from 1994-95 onwards, though there is a

reference of 277 orange trees. Since, there was no evidence on record establishing existence of 100 mango trees as claimed on the date when the acquisition proceedings were initiated in August 1997, the claim was rightly rejected by the High Court.

10. Learned counsel further submits that the valuation of orange trees has been made at the rate of Rs. 3000/- per tree and 2 hectares of land for which compensation has not been computed may be considered in the light of judgment in **Ambya Kalya Mhatre(Dead) through LRs and Others**(supra).

11. After we have heard learned counsel appearing for the parties, we are of the view that the compensation of Rs. 1,00,000/- per hectare as awarded by the High Court in the impugned judgment is a fair compensation duly supported by the material on record and that needs no interference from this Court.

12. So far as the claim in respect of 100 mango trees is concerned, it was awarded by the reference Court at the rate of Rs. 1000/- per tree. The High Court after appreciation of the evidence has rejected the claim based on the following findings:-

“Having considering the above aspect and on considering 7/12 extracts of the acquired land, we further find that as per 7/12 extract Exh. 47 and Exh. 44 for the period from 1990-91 to 1993-94 there is reference to 277 orange trees in each of Gat No. 1/1 and 1/2 and 100 mango trees while in the 7/12 extracts Exh. 46 for the period from 1994-95 to 1998-99 there is no mention of mango trees from 1994-95 onwards, though there is reference of 277 orange trees each in above Gat numbers, 400 Sindhi trees and 30 berry trees during above period. As such, we find that claimant has failed to produce satisfactory evidence establishing existence of 100 mango trees as claimed and in fact from his evidence we find that claimant is even not aware as to in which field there were mango trees.”

13. After going through the finding of fact recorded by the High Court, we find no reason to interfere.

14. Admittedly, for 2 hectares of land, compensation has not been awarded and it is not disputed that the land value has been determined with reference to sales statistics and this Court in **Ambya Kalya Mhatre(Dead) through LRs and Others**(supra) held that in a case where the land value has been determined with reference to the sales statistics, the trees will have to be valued separately. The relevant paras as referred hereunder:-

34. The High Court has also held that once the compensation is awarded for the land, there cannot be additional or separate compensation for the trees. For this purpose, the High Court has relied upon the following observations of this Court in *State of Haryana v. Gurcharan Singh* [1995 Supp (2) SCC 637]

“3. ... It is settled law that the Collector or the court who determines the compensation for the land as well as fruit-bearing trees cannot determine them separately. The compensation is to the value of the acquired land. The market value is determined on the basis of the yield. Then necessarily applying suitable multiplier, the compensation needs to be awarded. Under no circumstances the court should allow the compensation on the basis of the nature of the land as well as fruit-bearing trees. In other words, market value of the land is determined twice over; once on the basis of the value of the land and again on the basis of the yield got from the fruit-bearing trees. The definition of land includes the benefits which accrue from the land as defined in Section 3(a) of the Act. After compensation is determined on the basis of the value of the land as distinct from the income applying suitable multiplier, then the trees would be valued only as firewood and necessary compensation would be given.”

35. We are afraid that the High Court has misread the said decision in regard to valuing the land and trees separately. If the land value had been determined with reference to the sale statistics or compensation awarded for a nearby vacant land, then necessarily, the trees will have to be valued separately. But if the value of the land has been determined on the basis of the sale statistics or compensation awarded for an orchard, that is land with fruit-bearing trees, then there is no question of again adding the value of the trees. Further, if the market value has been determined by capitalising the income with reference to yield, then also the question of making any addition either for the land or for the trees separately does not arise. In this case, the determination of market value was not with reference to the yield. Nor was the determination of market value in regard to the land with reference to the value of any orchard but was with reference to vacant agricultural land. In the circumstances, the value of the trees could be added to the value of the land.

15. Admittedly, in the instant case, the land value has been determined with reference to the sales statistics by the High Court in the impugned judgment. That being the factual position, in our considered view, the appellant is entitled for compensation for 2 hectares of land in reference to which compensation has not been awarded under the impugned judgment at the rate of Rs. 1,00,000/- per hectare along with statutory entitlement to the claimant/appellant as referred to by the High Court in para (viii) till realization under the impugned judgment.

16. Consequently, the appeals partly succeed and accordingly allowed. The appellant shall be entitled to compensation @ Rs. 1,00,000/- per hectare for the land admeasuring 2 hectares situated at Mouza Khandala, Tq. Manora, District Washim along with statutory entitlement as referred to by the High Court in para (viii) of the impugned judgment dated 23rd October, 2015 till realization. The compliance be made within three months. No costs.

17. Pending application(s), if any, stand disposed of.

Civil Appeal @ SLP(Civil) No. 13859 of 2019

Civil Appeal @ SLP(Civil) No. 13874 of 2019

18. Learned counsel for the appellant(s) submits that the compensation of Rs. 1,00,000/- per hectare awarded by the High Court in the impugned judgment is inadequate and deserves enhancement in the given facts and circumstances.

19. We have declined the claim for enhancement of compensation in our judgment in the connected appeals being Civil Appeals @ SLP(Civil) Nos. 36247-36248 of 2016.

20. Consequently, the appeals are without substance and accordingly dismissed. No costs.

21. Pending application(s), if any, stand disposed of.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(ABHAY S. OKA)

NEW DELHI
SEPTEMBER 09, 2021