2019 INSC 702

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2019
(Arising out of SLP(Civil) No.11433 of 2019)

The Executive Engineer, M.I.W. .....Appellant(s)

:Versus:

Vitthal Damodar Patil and Anr. ....Respondent(s)

J U D G M E N T

A.M. Khanwilkar, J.

1. Delay condoned. Leave granted.

2. This appeal takes exception to the judgment and order dated 26th October, 2015, passed by the High Court of Judicature at Bombay, Bench at Aurangabad, in First Appeal No.2536 of 2015, whereby the High Court partly allowed the appeal filed by the respondents-claimants against the decision of the Civil Judge, Senior Division, Jalgaon, in a reference filed

under Section 18 of the Land Acquisition Act, 1894 (for short "the Act"), and enhanced the compensation amount for the lands acquired for the purpose of construction of Minor Irrigation Tank at Village Pimpri, Block Dambhurni, Taluka Pachora, District Jalgaon, Maharashtra.

3. Briefly stated, a notification under Section 4 of the Act was published on 9th July, 1998, pursuant to which the land belonging to the respondents situated at Village Pimpri, Block Dambhurni, Taluka Pachora, District Jalgaon, Maharashtra, was acquired for the stated public purpose. After following the necessary formalities, the Special Land Acquisition Officer passed an award under Section 11 of the Act on 14th November, 2000, fixing the price at the rate of Rs.59,800/- per hectare for Jirayat land and Rs.1,500/- per hectare for Potkharab land. The possession of the acquired land was taken on 14th May, 1996. The respondents, however, resorted to a reference under Section 18 of the Act, which was decided by the Civil Judge, Senior Division, Jalgaon, vide judgment and order dated 19th September, 2015. Being dissatisfied with

the said judgment and order, the respondents carried the matter in appeal before the High Court which, as aforesaid, came to be partly allowed and resulted in the compensation amount being enhanced.

4. For considering the issue involved in the present appeal, suffice it to observe that the respondents-claimants had relied on the Valuation Report dated 10th October, 1998, prepared by Mr. Ravindra Ghanshyam Chaudhari. Besides relying on the said valuation report, the respondents had examined Mr. Ravindra Ghanshyam Chaudhari as their witness to prove the same. The Reference Court adverted to the said evidence and noted as follows:

> "11/- There is contention of the claimants that the opponents have not given the compensation to the fruit bearing trees as per the fruits quality, quantity. To support their contentions, they have examined valuer of fruit bearing trees Dr. Ravindra Ghanshyam Chaudhari and Dr. Kamalnayan Uttamchand Sanghavi in respective references. Witness deposed that he is well experienced in horticulture. They have produced the valuation report of fruit bearing trees to show the income of fruit bearing trees and rate of the fruit trees.
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> 12/- In L.A.R. No.354/03 the claimant submitted that in his land there were 65 Chiku trees, 1 mango tree and 678 custard apple trees. As per his pleadings, he valued per tree of Chiku Rs.1,500/- mango Rs.10,000/- and custard apple Rs.2,000/-. The valuer has produced the report and he

categorized custard apple tree in three categories. He has shown the valuation of per fruit tree custard apple Rs.7,358/-, Rs.6,889/- and Rs.6,420/-, mango local Rs.21,600/- and Chiku Rs.4,648/-.

13/- In L.A.R. No.365/03 the claimants claimed that there were 2 mango trees and value of per mango tree was Rs.30,251/-. The valuer has produced the report. He has submitted that mango trees were local and he has shown the value of each fruit tree and mango local Rs.30,250/-.

14/- **If we perused the pleadings of the claimant in L.A.R. No.354/03 then value of each tree is contrary to the report of valuer and how the valuer made categories of custard apple, nothing is brought on record.** The claimant has also produced the market rates of A.P.M.C., Jalgaon to show the rates in the year 1995-96."

(emphasis supplied)

5. The Reference Court then proceeded to refer to the Government Resolution regarding average yield statement of fruit trees (irrigated fruit crops) and concluded as follows:

"17/-Considering the abovesaid ratio, I fix the rates of fruit bearing trees as above. The S.L.A.O. has already awarded the compensation of Rs.9,05,864/- which is more than the rate which is fixed by this Court. Therefore, the compensation for the custard apple trees need not to be considered.

18/- The advocate for the claimants fairly submitted that they are not claiming the compensation to the land which is occupied under the trees. If we calculate the area then land for custard apple is acquired near about 1 hectare and for Chiku 010 Ares land i.e. total land is acquired 1H10Ares. Therefore, compensation to the vacant land is required to be given."

6. The respondents carried the matter in appeal before the High Court and primarily relied on the valuation report and the evidence of their witness. That argument has been noted by the High Court in paragraph 2 of the impugned judgment as follows:

> "2]….The Reference Court without any reason has not relied on the said report of the valuer who was an expert. The learned counsel submits that no reasons are given while not accepting the valuation made by expert valuer and also did not give any reasons while fixing the valuation of the trees as done by him. The learned counsel submits that the same valuers report in another matter was accepted by Apex Court in the case of Chindha Fakira Patil (D) through L.Rs. V/s Special Land Acquisition Officer, Jalgaon reported in AIR 2012 SC 481. It was same valuer who had valued in the present matter. There was no impediment to consider the valuation made by the expert."

7. The High Court, after considering the rival argument in reference to the evidence pressed into service by the respondents, concluded as follows:

> "5] I have considered the submissions canvassed by the learned counsel for respective parties. The major issue in the present appeal is with regard to the valuation of the fruit bearing trees. Number of fruit bearing trees as per award passed by SLAO is not disputed. The number of trees existing is a matter of record, and none of the parties has disputed the same.
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> 6] **The valuer has given the report. The said valuer is an expert. The valuer has proved the report by examining himself, he has been also cross examined. Perusing the valuation report it is manifest that while**

valuing the same, the valuer has taken reference of various literatures such as that of Dr. Panjabrao Deshmukh Krishi Vidyapeeth Dainandini 1995-96, Fruit Culture in India Book, Average market rates of fruits taken from APMC Jalgaon.

7] The Apex Court in the case of Chindha Fakira referred supra, has observed that the High Court committed error by rejecting the report submitted by Shri Ravindra Ghanshyam Choudhari who was examined by the appellants. This witness is a consultant in Agriculture and Horticulture. He personally visited the acquired land and gave the details of the trees standing on different parts of the land, their present and future age, condition, height, width, spread and annual fruit production capacity. The valuation made by him was amply supported by the market rates of fruits fixed by Agriculture and Horticulture Department of Government of Maharashtra. In the cross examination, the witness stood by reports Exhibits 36 to 41 given by him. This being the position, the High Court had no reason to overturn the finding recorded by the Reference Court on the issue of existence of trees on the acquired land and their valuation.

8] **In the present case also the same valuer Mr. Ravindra Ghanshyam Choudhari has submitted the report. The valuation made by him was supported by market rates of the fruits fixed by the APMC. In the cross examination also said report has not been impeached. The said aspect is required to be considered. The valuer has categorised the Custard Apple trees into very good, good and average condition and has valued the said trees accordingly. Going by report there was no impediment to accept the said report. However, with certain deduction as was made by Apex Court in the case of Chindha Fakira referred supra, the Apex Court in the said case has deducted 20% of the valuation made in the report. In the present matter also I follow the same course. More particularly in view of the fact that Reference Court has not given any reasons while valuing the fruit bearing trees at a lesser rate. He has not considered evidence produced on record. Considering**

> **above, after deducting 20% from the valuation made by valuer, that is Rs.50,60,255/- less 20%, the same would come to Rs.40,52,204/-. As far as compensation for lands are concerned, it has been observed by the Reference Court that even claimants fairly submitted that they are not claiming the compensation towards the land which is occupied under the trees which is to the extent of 1 hectare 10 R.**"
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> (emphasis supplied)

8. The appellant has assailed this approach of the High Court on the principal ground that the High Court had failed to consider the entire evidence in its proper perspective. The High Court mechanically accepted the subject valuation report merely because another valuation report of the same witness came to be accepted by this Court in respect of some other acquisition proceedings. Instead, it ought to have analysed the factual position emanating from the evidence produced by the parties in the present case, on its own merits. According to the appellant, the witness examined by the respondents-claimants was extensively cross-examined on various aspects, including regarding his competence and eligibility to issue valuation report as a recognized Government valuer, his experience and capability to discern the market value of the acquired property

and more so, regarding the faulty procedure followed by him in preparing the valuation report based on inputs which were not for the relevant period but for a subsequent period, such as rate of Agriculture Produce Market Committee of the year 2001-2002 and also, lack of proof to justify the valuation done by him or the accuracy and correctness thereof. Even the credibility of the witness has been questioned as being an interested witness and having prepared the stated valuation report (providing for an unrealistic and exaggerated value of the acquired property) at the behest of the respondents-claimants. In that, the report is on the basis of a visit made by him on 21st April,1996, on the request of the respondents even before possession of the land was taken on 14th May, 1996 and moreso, two years before the issuance of the notification under Section 4 of the Act on 9th July, 1998. The report was prepared without any prior notice to the Government officials and was replete with inaccurate inputs. It is a self-serving valuation report and ex-facie unreliable. Resultantly, the High Court was obliged to consider all these aspects and not

mechanically accept the valuation report relied upon by the respondents merely because another valuation report of the same witness commended to this Court, thereby disregarding the tangible material and evidence on record in this case which reinforces that the valuation by the Reference Court is proper.

9. Per contra, the respondents have relied on the decision of this Court in ***Chindha Fakira Patil (dead) through LRs. Vs. Special Land Acquisition Officer, Jalgaon,***[1] and have supported the view taken by the High Court, being a possible view. According to the respondents, the valuation report has been duly proved by the expert witness Mr. Ravindra Ghanshyam Chaudhari. It is urged that the said witness has been extensively cross-examined but such cross-examination was not enough to discard his version, much less the contents of the valuation report, which have been duly proved. It is submitted that the witness possessed the necessary qualification and was competent to prepare the subject

[1] (2011) 10 SCC 787

valuation report. The procedure adopted by him has been explained in his evidence which commended to the High Court and that view being a possible view, needs no interference. It is submitted that this appeal must fail both on the ground of delay as also on merits.

10. We have heard Mr. Sandeep S. Deshmukh, learned counsel for the appellant and Mr. P.S. Patwalia, learned senior counsel for the respondents-claimants.

11. At the outset, we reject the objection regarding the appeal being barred by limitation. In our opinion, in the peculiar facts of the present case, the explanation offered by the appellant for condoning the delay in filing of this appeal is a just and plausible explanation. As regards the merits of the controversy, we agree with the appellant that neither the Reference Court nor the High Court has analysed the evidence of Mr. Ravindra Ghanshyam Chaudhari, witness examined by the claimants in its proper perspective and more particularly in the context of the issues raised by the appellant about his competency, capability and including the procedure followed

by him in preparing the valuation report and without providing any proof to justify the opinion formulated by him as regards the valuation of the acquired property. All these points, though raised by the appellant, as is manifest from the tenor of his cross-examination by the appellant, have not received proper attention of the High Court which was dealing with the first appeal, both on facts and on law.

12. The High Court, in our opinion, misapplied the decision in the case of ***Chindha Fakira Patil*** (supra). We say so because in that case, the principal argument was regarding discarding of Exhibit-28, concerning the relied-upon sale instance for the purpose of determining the market value. That can be discerned from paragraph 7 of the reported judgment, which reads as follows:

> "7. Shri Pallav Shishodia, learned Senior Counsel appearing for the appellants assailed the impugned judgment mainly on the ground that the reasons assigned by the High Court for discarding Exhibit 28 are not only irrelevant but are based on pure conjectures. He emphasised that while determining the amount of compensation, the Reference Court was entitled to take into consideration the sale instance which represented highest value paid for similar land and the High Court committed an error by basing its judgment on the average value of the sale instances referred to in the award passed by the respondent. In support of this

> argument, Shri Shishodia relied upon the judgments of this Court in *M. Vijayalakshmamma Rao Bahadur* v. *Collector of Madras*, *State of Punjab* v. *Hans Raj* and *Anjani Molu Dessai* v. *State of Goa*."

13. The judgment essentially deals with that contention. Indeed, the reported decision has adverted to the observation made by the Reference Court concerning the testimony of Mr. Ravindra Ghanshyam Chaudhari, who is the same witness. That has been noted in paragraph 11 of the reported judgment. The Court, no doubt, in paragraph 22 of the reported decision, has noted that there was no reason to discard the valuation report of Mr. Ravindra Ghanshyam Chaudhari. However, what is significant to bear in mind is that neither the Reference Court nor this Court in the aforesaid decision was called upon to consider the question about the eligibility and competency of the witness examined by the claimants. That issue has been specifically raised by the appellant in the present case, relying on the purported admission of the witness. Whether this contention raised by the appellant deserves acceptance or otherwise, is a matter

which ought to have been examined at least by the High Court on its own merits. In other words, the reported decision is of no avail because every reference proceeding must be decided on the basis of the evidence produced and the issues raised by the parties in the concerned proceeding. Thus, the evidence of the witness examined by the claimants and the analysis thereof by this Court in some other reference case arising from an independent notification issued in earlier point of time concerning another village/Taluka cannot be the basis to mechanically hold that since the valuation report has been prepared by the same witness, it must be accepted as duly proved in all respects in the reference under consideration, moreso in respect of the justness of the valuation of the subject property.

14. As aforesaid, in the present case, the Reference Court discarded the valuation report on the finding that the valuer did not explain or bring on record how he made categories of custard apple. The High Court overturned that finding but failed to examine the nuances of the cross-examination of the

witness brought on record by the appellant and the purported admission given by him, including the contention that he had failed to produce any proof to establish that he was ever been approved by the Government at the relevant time as an approved valuer and also to justify the valuation of the subject property. The High Court relied upon the subject valuation report essentially because the same witness had prepared a similar valuation report and submitted it in some other reference proceeding, which came to be accepted by this Court in the case of ***Chindha Fakira Patil*** (supra). There is no proper analysis of the oral evidence which has come on record in the present case and moreso the efficacy of lengthy cross-examination of the said witness by the appellant in respect of matters such as his eligibility, competence and including credibility, reliability and admissibility of the evidence given by him regarding the contents of the valuation report. We do not wish to analyse the said evidence and the contentions raised by the appellant in that regard for the first time in the present

appeal. That ought to have been done by the High Court which was considering the first appeal, both on facts and on law.

15. Accordingly, without expressing any opinion on the issues raised in the present appeal, we allow this appeal, set aside the impugned judgment and relegate the parties before the High Court for consideration of First Appeal No.2536 of 2015 afresh, on its own merits and in accordance with law.

16. We may note that the respondents wanted to rely on new material which, presumably, was not part of the reference proceedings, in support of the argument that the witness examined by them was duly qualified and eligible to issue such valuation report. However, we make it clear that even this plea will have to be considered by the High Court on its own merits subject to just exceptions and objections available to the appellant regarding production of additional evidence, if any. All contentions available to both the parties, which can be legitimately pursued in the first appeal, are left open.

17. Appeal is allowed in the above terms. No order as to costs. All pending applications are disposed of in terms of this order.

.....J.
(A.M. Khanwilkar)

.....J.
(Ajay Rastogi)

New Delhi;
July 01, 2019.