



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. OF 2024
(Arising out of SLP (C) Nos. 4494-95 of 2023)

MANIK PANJABRAO KALMEGH

...APPELLANT(S)

VERSUS

**EXECUTIVE ENGINEER BEMBLA
PROJECT DIVISION YAVATMAL & ORS.**

...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. Leave granted.
2. The appeal is directed against the common judgment and order dated 02.12.2021 of the High Court in First Appeal No.492 of 2017 and in Cross Objection No.65 of 2017 filed therein. The High Court has allowed the appeal of the respondents and had dismissed the cross objections of the appellant herein.

3. The controversy in this appeal is regarding determination of fair and adequate compensation for the acquired land, the fruit trees existing thereon and the borewell.

4. The appellant was the owner of the lands bearing Survey No.14 admeasuring 4.32 hectares, Survey No.15 admeasuring 1.40 hectares and Survey No. 17 admeasuring 5.87 hectares situate in village Barad, taluka Babhulgaon, District Yavatmal, Maharashtra. The aforesaid land was acquired for the benefit of Vidarbha Irrigation Development Corporation by the State of Maharashtra by issuing a notification dated 24.07.2003 under Section 4 of the Land Acquisition Act, 1894¹. The Land Acquisition Officer² passed an award on 27.06.2005 offering compensation of the aforesaid land to the appellant as under:

¹ Hereinafter referred to as 'the Act'

² In short 'LAO'

S.No.	Land Details	Amount of land (per hectare)	Amount for fruit bearing tree/others
1	Survey No.14	Rs.83,099/-	Rs.7,27,669/-
2	Survey No.15	Rs.83,245/-	Rs.23,600/-
3	Survey No.17	Rs.82,904/-	No compensation for alleged <i>awala</i> trees and borewell.

5. The appellant was not satisfied by the compensation offered by the LAO. Therefore, he accepted the compensation amounting to Rs.17,13,445/- under protest and preferred a reference under Section 18 of the Act for the enhancement of compensation, claiming an additional amount of Rs.2,06,88,000/-. The Civil Judge Sr. Division allowed the reference in part and granted additional compensation vide judgment and order dated 04.04.2015.
6. The appellant still not satisfied, applied for review of the aforesaid judgment and order alleging that in respect of land bearing Survey No.17, he had not been granted any compensation for the 1824 fruit bearing *awala* trees existing thereon as well as the borewell. The review application was allowed and the compensation in respect of

the aforesaid *awala* trees and the borewell was also determined and awarded vide order dated 05.08.2015.

- 7.** Thus, aggrieved by the order passed on the review application granting compensation for the *awala* trees and the borewell situate on land bearing Survey No.17, the respondents preferred an appeal under Section 54 of the Act before the High Court. The appeal was admitted only on the limited aspect whether the award of compensation for the trees and the borewell is permissible in a review, but subsequently the order admitting the appeal on the above limited ground was modified and the appeal was ordered to be heard on merits without any restrictions. In the said appeal, cross objections were filed by the appellant claiming further enhancement.
- 8.** The High Court by the impugned order dismissed the cross-objections of the appellant and partly allowed the appeal holding that the award of compensation for the *awala* trees and the borewell existing on land bearing Survey No.17 is *per se* illegal and, thus, the award was accordingly directed to be modified.

9. We have heard Shri Pallav Sisodia, learned Senior Counsel for the appellant and Shri Uday B. Dube, learned Senior Counsel for the respondent.
10. The main thrust of the argument of Shri Pallav Sisodia, learned Senior Counsel for the appellant, is that in awarding the compensation for the land, reliance was placed upon an exemplar sale deed of the year 1994 and since the present acquisition was of the year 2003, 10% rise per year was allowed in awarding the compensation but this 10% rise per year ought to have been with cumulative effect. In this connection, he has relied upon **Ramrao Shankar Tapase v. Maharashtra Industrial Development Corporation and Others**³. The second limb of the argument of Shri Pallav Sisodia, learned Senior Counsel for the appellant, is that on lands bearing Survey Nos.14 and 15, there existed 600 orange trees but compensation in respect of only 500 orange trees have been granted. This apart, there existed 1824 *awala* trees and the borewell on land bearing Survey No.17 as is reflected from the 2nd Joint Measurement Report⁴ dated 08.07.2015. However, in

³ (2022) 7 SCC 563

⁴ In short 'JMR'

respect thereof compensation granted by the reference court, while considering the review application, has been set aside illegally by the High Court.

- 11.** Shri Uday B. Dube, learned Senior Counsel for the respondent, submitted that the entire record was considered by the High Court in passing the impugned order and the court was satisfied that no admissible evidence was adduced to establish the existence of the *awala* trees and the borewell on the land bearing Survey No.17 on or before the acquisition. The grant of compensation for the land by allowing 10% increase per year on the basis of the exemplar sale deed of 1994 is perfectly justified and it is not in every case that the court is obliged to allow the said increase cumulatively. In the event, the court has exercised its discretion not to grant cumulative increase in the market value, it cannot be said that the court has acted arbitrarily and has committed any error of law in determining the fair market value of the land for the purpose of award of compensation.
- 12.** Let us first examine as to whether the appellant was entitled to any compensation in respect of 1824 *awala* trees

and the borewell as claimed by him; and as was allowed in the review application which had ultimately been set aside by the High Court.

- 13.** The reference court, in the review application, granted Rs.1,000/- each for 1824 *awala* trees and a sum of Rs.40,000/- for the borewell situate on land bearing Survey No.17.
- 14.** A perusal of the award of the reference court dated 04.04.2015 clearly reveals that it had rejected the claim for compensation of *awala* trees as the same were newly planted and were not fruit bearing at the relevant time. The plantation was reported to be of the year 2003-2004 which is subsequent to the proposal to acquire the land. The court also recorded that no substantial evidence was brought on record to prove the existence of the aforesaid trees or that they were fruit bearing trees. The court while allowing the review application had placed reliance upon the 2nd JMR which was not part of the evidence. The said report or the representations in that connection were produced by the appellant along with the review application and were never proved and were marked as exhibits. Thus, the said 2nd

JMR and the representations were inadmissible in evidence which could not have been relied upon by the court while considering the review application. Moreover, the review application has been allowed in a manner as if the court considering it, was sitting in appeal or was deciding the reference afresh. The manner in which it has been decided was not within the scope of the review jurisdiction and could not have been allowed, that too on the basis of inadmissible evidence. Therefore, in our opinion, the High Court very rightly set aside the grant of compensation for the alleged *awala* trees said to be existing on land bearing Survey No.17.

- 15.** Since the court in review jurisdiction could not have allowed any additional compensation as the evidence produced during review was inadmissible, the grant of compensation for borewell is also unsustainable.
- 16.** Accordingly, no illegality has been committed by the High Court in passing the impugned order insofar as the relief granted in a review application was ordered to be set aside.
- 17.** Though, emphasis was also laid for the grant of compensation for additional 100 orange trees and for 1

tamarind tree (*imli* tree) but we do not find any discussion in this context by the High Court probably for the reason that no such argument was pressed before it. The argument, not raised and pressed before the High Court, cannot be permitted to be raised for the first time herein this appeal, more particularly, when there is no evidence to even substantiate the same except for the 2nd JMR which has been held to be inadmissible.

- 18.** In determining the market value of lands bearing Survey Nos.14 and 15, the reference court had relied upon an earlier judgment in LAC No.48 of 2007 (*Exh.68*). The land involved in the aforesaid judgment was also acquired for the same project situate in the adjoining village. In the aforesaid judgment, reliance was placed upon an exemplar sale deed of the year 1994 (*Exh.35*). Therefore, the reference court granted increment of 10% per year as per the market value determined on the basis of the exemplar sale deed of the year 1994. The aforesaid judgment and order (*Exh.68*) is final and conclusive and no evidence or material has been brought on record to establish that the same was in any manner modified so as to grant cumulative increase of

10% in the market value. Therefore, it would not be a prudent exercise to award cumulative increase as claimed by the appellant in the case at hand.

- 19.** In **Ramrao Shankar Tapase** (supra), this Court only observed that a cumulative increase of 10-15% per year in the market value of the land may be accepted in the facts and circumstances of the case. A plain reading of paragraph 28 of the aforesaid decision itself would make it clear that the grant of cumulative increase in the market value of the land is not an absolute rule and that it is optional and may be granted in a given case only. In the instant case, it has rightly not been granted for the simple reason that the *Exh.68* which is a relied upon judgment pertaining to the same acquisition, no such cumulative increase was permitted. The said exhibit has to be accepted wholly and not in part. Thus, there is no arbitrary exercise of power in simply permitting 10% increase in the market value as determined on the basis of exemplar sale deed of the year 1994 as relied upon in the judgment i.e., *Exh.68*.

20. In view of the aforesaid facts and circumstances, we find no merit in these appeals and the same are dismissed with no order as to costs.

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

..... **J.**
(PANKAJ MITHAL)

..... **J.**
(R. MAHADEVAN)

NEW DELHI;
NOVEMBER 06, 2024