

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 5008 OF 2018
(Arising out of SLP(C) No.31761/2016)****BILQUIS****...Appellant****Versus****THE STATE OF MAHARASHTRA
& OTHERS****...Respondents****J U D G M E N T****MOHAN M. SHANTANAGOUDAR, J.**

Leave granted.

2. The judgment dated 02.09.2014 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in First Appeal No. 83 of 1994 is called in question in this appeal. By the impugned judgment, the High Court has reduced the compensation to Rs.50,000/- per hectare for irrigated land and Rs.9,500/- per hectare for dry land from Rs.1,62,500/- per hectare awarded (uniformly) by the Reference Court. The High Court has also set aside the award of compensation to the claimant at Rs.1200/- per orange tree.

3. Brief facts leading to this appeal are as under:

The land bearing survey no. 32 admeasuring 9 Hectares and 20 Ares of village Pimpri Mokhed, Taluka Karanja, District Akola, Maharashtra was acquired for the purpose of construction of 'Percolation Tank' at village Pimpri Mokhad; notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act') was issued on 13.11.1986; declaration under Section 6 of the Act was published on 11.04.1987; award was passed on 31.03.1988 by the Special Land Acquisition Officer granting compensation at the rate of Rs.9,500/- per hectare for the dry land and Rs.12,500/- for irrigated land; the award amount was received by the claimant 'under protest', and she thereafter filed a reference application under Section 18 of the Act seeking enhanced compensation with all statutory benefits.

4. The claimant examined six witnesses and relied upon certain relevant documents in support of her case before the Reference Court. On behalf of the State, one witness was examined. The Reference Court, on evaluation of the material on record and after hearing both sides, enhanced compensation to the tune of Rs.1,62,500/- per hectare for the land, and Rs.1200/- per orange tree (325 orange trees) totalling to Rs.3,90,000/-. The Reference Court also awarded a compensation of Rs.10,000/- towards barbed fencing, babul trees and underground pipe line etc., apart from other statutory benefits. On appeal by the State, the High Court has reduced compensation to

Rs.50,000/- per hectare for irrigated land and Rs.9,500/- per hectare for dry land. As mentioned supra, the compensation awarded by the Reference Court in respect of orange trees and barbed fencing etc. was also set aside by the High Court.

5. While reducing the compensation, the High Court has relied upon another judgment of the High Court dated 14.08.2008 passed in First Appeal No. 282 of 2000 and connected matters. There is nothing on record to show that the said judgment was relating to the lands acquired under the very notification dated 13.11.1986 under which the land in question is acquired. The High Court, while discussing the material on record to arrive at the conclusion based on a capitalisation method, has overlooked the ample material on record. Though, the High Court, while observing in paragraph 11 of its judgment that the plantation of about 325 orange trees was done in the year 1981-1982, as is apparent from Exhibit 27, as well as relying upon the report of the Tahsildar, Exhibit 26, disclosing about 300 to 325 plants of oranges, has strangely refused to grant compensation for orange trees solely on the ground that these orange trees were not fruit bearing trees. Except referring to the afore-mentioned factor, no other factor is discussed by the High Court while coming to the conclusion on the point of grant of compensation based on capitalisation method.

6. Exhibit 21 is the copy of the valuation report. Exhibit 23 is the signed valuation report of the well situated in survey no. 32 and the same was drawn by Assistant Engineer, Minor Irrigation, Karanja. Exhibit 24 is the signed letter of Assistant Engineer addressed to the Tahshildar, Karanja regarding crop panchanama. Exhibit 26 is the copy of the crop panchanama of the land in question dated 19.10.1986. Exhibit 27 is the copy of the revenue extract of the land bearing survey no. 32 for the years 1978-1979 to 1985-1986. All these records were produced and marked through PW1-Ashok Vibhute.

7. The evidence of PW2-Harun Haji (son of the claimant) discloses that cotton was being grown without affecting the orange plantation; the claimant used to grow Chilli, Tur crop and Moong crop also at different years; that there was barbed fencing around the whole land, that there were about 325 orange trees in the said land and about 40 babul trees on the boundary. According to PW-2, the land in question was an irrigated land, inasmuch as the land is fed with the water from the well situated in the land for irrigation purposes. The well was constructed with stones and cement and an electric 3HP motor was installed on the well. According to PW-2, there was a perennial source of water and the land was being irrigated for 12 months. According to him, his family was getting a net income of Rs.2,00,000/- per annum from the agricultural crops; that the orange trees were 4 to 5 years old

and were fruit bearing at that point of time; that the income from orange trees was Rs.1,50,000/- per annum. He has also deposed about the population of the Karanja village and about the situation of the land and the connectivity of the land through road. Nothing is brought out in the cross-examination of PW-2 to discard his evidence. Evidence of PW-3-Vimal Dongaokar also fully supports the evidence of PWs 1 and 2 to the effect that there was a well and the same was used for irrigating the land with the assistance of motor pump and pipe line. He has also deposed about the barbed fencing around the land and about the situation of babul trees on the boundaries. PWs 4, 5 and 6 are the neighbouring land owners. All of them have also deposed supporting the case of the claimant. Though these witnesses were cross-examined in detail on behalf of the State Government, we do not find any credible material so as to discard the evidence of these witnesses.

8. The only witness examined on behalf of the State was a 'Talathi' (inferior revenue officer in the village). He has admitted that he has not personally visited the land at survey no. 32, and that he has given evidence about the assessment as per the record. He also admits that the assessment was determined in the year 1927 and the same was continuing so far. He has also clearly admitted that prior to 1988, generally the people were executing sale deeds showing lesser price

than the market price to save stamp duty. He had not brought even the revenue assessment record before the Court at the time of deposing. In the light of such evidence adduced by the State and in the light of the fact that no relevant records were produced by the State, there is no reason as to why the evidence put forth on behalf of the appellant which has almost remained unrebutted should be ignored by the High Court.

9. There is ample material on record to show that the claimant's land is situated at a distance of five kilometers from Karanja town, which is having about a population of 50,000 to 60,000, and is having an Agriculture Produce market. Though the Special Land Acquisition Officer has shown only 4 to 6 hectares as irrigated land, the panchanama prepared by the Tahsildar clearly shows that the claimant's acquired land contained 8 hectares of irrigated land out of total extent of about 9 hectares. Be that as it may, there cannot be any doubt that a major portion of the land (i.e. about 85% to 90%) of the claimant was irrigated land and the land was being fed with water drawn from the well situated in that very land. Based on the record, the Reference Court also found that the well was having a perennial source of water, the same was being drawn with the electric motor pump set, and the water was sufficient to irrigate the whole extent of the claimant's land. It is also borne out from the order of the

Reference Court that the underground pipe line is in four hectares of land and the land was fully surrounded by barbed fencing. The records of the acquisition including the panchanama by the authorities at the time of taking possession clearly reveal that there were more than 300-325 orange trees which were about 4 to 5 years old. The documents also reveal the existence of babul trees on the boundary of the land acquired. The price of babul trees is also found in the valuation report. Though, the Reference Court has relied upon certain sale statistics of lands, we find that all those sale statistics are pertaining to the post acquisition period and hence we do not propose to rely upon such sale statistics.

10. Though the High Court has clearly observed that there were more than 300 orange trees which were about 4 to 5 years old, it has strangely not awarded any compensation in respect of orange trees. The High Court has also totally ignored the income from the crops grown over the land.

11. It is not in dispute that generally, the orange trees would start yielding fruits from the fifth year. Since the orange plants were about 4 to 5 years old, the Reference Court was justified in observing that the orange trees had just then started yielding fruits to the claimant. Even otherwise, this Court cannot ignore the fact that the trees were very much ripe for yielding orange fruits. Therefore, in our considered

opinion, the Reference Court was justified in awarding compensation in respect of the orange trees. The Reference Court on facts has determined price of each orange tree at Rs.60 which will remain undisturbed. However, in our considered opinion, the Reference Court was not justified in adopting twenty years purchase as a multiplier while qualifying the market value of each orange tree. Rather, in the facts and circumstances of the case, it would have been proper had the Reference Court used the ten years purchase as a multiplier. Thus, in our considered opinion, the claimant would be entitled to Rs.600/- ($60 \times 10 = 600$) per orange tree, instead of Rs.1200/- ($60 \times 20 = 1200$) awarded by the reference Court. Therefore, the total compensation in respect of 325 orange trees would be Rs.1,95,000/- ($600 \times 325 = 1,95,000$).

12. The High Court has ignored the higher revenue assessment of the land of the claimant. The revenue assessment of the land of the claimant is about Rs.30. As mentioned supra, the Special Land Acquisition Officer has shown 4 to 6 hectares of the land in question as irrigated land, but the panchanama, Exhibit 26 prepared by the Tahsildar shows 8 hectares of the land of the claimant as irrigated land. Thus, it is clear that as on the date of taking possession, 85%-90% of the acquired land was irrigated land. It is also clear from the record that one well having perennial source of water and an

electric motor pump was installed for the same. The land acquired was being used for growing varieties of crops in different years including chilli crops and cotton. Since irrigation facilities were available to the claimant for 12 months in a year, the Court may take notice of the fact that there was sufficient agricultural income from the land in question. Since the land in question is irrigated land having perennial source of water for 12 months, the High Court, in our considered opinion, is not justified in awarding compensation of Rs.50,000/- per hectare for irrigated land and Rs.9,500/- for dry land. In our considered opinion, the Reference Court has assigned certain valid reasons for coming to the conclusion. Totality of the facts lead us to the conclusion that the claimant/appellant is entitled to compensation of Rs.1,50,000/- per hectare of the land. She is also entitled to Rs.10,000/- towards barbed fencing, babul trees, underground pipe line etc. Thus, in all, the claimant/appellant is entitled to the following compensation:

- a) the claimant/appellant shall be awarded Rs.1,50,000/- per hectare of the acquired land; Rs.10,000/- as compensation towards barbed fencing, babul trees, underground pipe line etc.; Rs.1,95,000/- towards compensation for orange trees (600 x 325 = 195,000);
- b) the claimant/appellant shall be entitled to all statutory benefits including solatium and interest as per law.

13. The instant appeal is allowed in the aforesaid terms. The judgment of the High Court is set aside accordingly. No order as to costs.

.....J.
[KURIAN JOSEPH]

.....J.
[MOHAN M. SHANTANAGOUDAR]

New Delhi;
May 11, 2018.

ITEM NO.1501

COURT NO.5

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 31761/2016

BILQUIS

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA AND ORS.

Respondent(s)

Date : 11-05-2018 This petition was called on for Judgment today.

For Petitioner(s) Mrs. Sudha Gupta, AOR

For Respondent(s) Mr. Kunal Cheema, Adv.
Mr. Nishant R. Katneshwarkar, Adv.

Ms. Nidhi, AOR

Hon'ble Mr. Justice Mohan M. Shantanagoudar pronounced the non-reportable Judgment of the Bench comprising Hon'ble Mr. Justice Kurian Joseph and His Lordship.

Leave granted.

The appeal is allowed.

Pending Interlocutory Applications, if any, stand disposed of.

(JAYANT KUMAR ARORA)
COURT MASTER(RENU DIWAN)
ASSISTANT REGISTRAR

(Signed non-reportable Judgment is placed on the file)