

IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH
NAGPUR.

FIRST APPEAL NO. 1024 OF 2007
WITH
CIVIL APPLICATION (CAF) NO. 278 OF 2015

Vidarbha Irrigation Development
Corporation, through Executive
Engineer, Bembla Project Division
Awadhootwadi, Yavatmal.

APPELLANT.

VERSUS

1] Gowardhan Shamrao Ingale,
aged 50 yrs., Occu.Agriculturist,
R/o Barad, Tal. Babulgaon,
Distt. Yavatmal.

2] The State of Maharashtra
through Collector, Yavatmal.

3] The Special Land Acquisition
Officer, Bembla Project Division,
Yavatmal.

RESPONDENTS.

Shri A. B. Patil, Counsel for the appellant.

Shri R. Maheshwari Counsel h/f Shri Anand Parchure, Counsel for
respondent no. 1.

Shri M. Ekaray, Assistant Government Pleader for respondent nos. 2 & 3.

CORAM: A. S. CHANDURKAR J.

Dated : OCTOBER 05, 2015.

ORAL JUDGMENT:

Present appeal filed under Section 54 of the Land Acquisition Act (for short the said Act) takes exception to the judgment of the Reference Court dated 03.04.2007.

2] Plot bearing no. 49 admeasuring about 284.80 sq. mt. was the subject matter of acquisition in proceedings under said Act. Open plot of land was admeasuring 142.40 sq. mt. while the constructed area was admeasuring 132.40 sq.mt.. In the award dated 31.07.2000 the Land Acquisition Officer granted Rs. 112/- per sq. mt. for the open land and Rs. 926/- per sq. mt. for the constructed portion. In the reference proceedings filed by the appellant the compensation was enhanced to Rs. 400/- per sq. mt. for open land, at Rs. 1510/- per sq. ft. for the constructed portion. Hence this appeal.

3] The claimant has filed Civil Application No. 278 of 2015 for disposal of the appeal on the ground that First Appeal No. 1335 of 2008 filed by present appellant in similar circumstances had been compromised by the appellant. It is stated that Rs. 500/- per sq. mt. was granted for the open plot of land and Rs. 1178/- per sq. mt. for the constructed portion. Reference is also made to the order dated 30.04.2015 in First Appeal no. 1067 of 2008 along with Cross Objection No. 3 of 2010. It is, therefore, submitted by relying upon following judgments that even though cross objections in the present appeal have not been filed, similar amounts deserve to be granted to the respondent:

1] *Bhim Singh And Others (2003) 10 Supreme Court Cases 529;*

2] *Sub Collector Vs. R. S. Raveendran decided by the Madras High Court on 26th September, 2005;*

3] *Pralhad And Others Vs. State of Maharashtra And Another (2010) 10 Supreme Court Cases 458;*

4] *Ambya Kalya Mhatre (dead) through L.Rs. and others Vs. State of Maharashtra 2012(1) Maharashtra Law Journal 9.*

4] Shri A. B. Patil, learned counsel for the appellant submitted by relying upon the judgment of the Supreme Court dated 28.01.2015 in *Civil Appeal no. 474 of 2013 Patel Jathabhai Punajbhai Vs. North Gujarat University & anr.* that in absence of any appeal or cross objection enhancement in the amount of compensation is not permissible. He submitted that in First Appeal No. 1335 of 2008 the Reference Court had granted enhancement at the rate of Rs. 550/- per sq. mt. for open land and Rs. 1300/- per sq. mt. for constructed portion. While entering into compromise with the respondent therein lesser amounts were paid to the land owner both for the open plot and constructed area. He further submitted that in First Appeal No. 1067 of 2008 the claimant had filed cross objections and hence enhancement in the amount of compensation was partly granted. It was further submitted that in the present appeal so far as the constructed portion is concerned the amount of compensation granted is on the higher side and same deserves to be reduced.

5] In so far as the prayer for enhancing amount of compensation is

concerned, it is not in dispute that in the present appeal no cross objections have been filed. The Supreme Court in *Tummala Atchaiah Vs. Venka Narasigarao* AIR 1978 Supreme Court 725 has held that in absence of any cross objections, the decree passed by the trial Court cannot be altered by exercising powers under Order 41 Rule 33 of the Code. Similar view has been taken in *Hardevinder Singh Vs. Paramjit Singh and ors.* 2014(2) *Maharashtra Law Journal* 126. In *Pralhad and others* (supra) the question before the Supreme Court was with regard to granting additional benefits under Section 23(1-A) of the said Act. It was held by the Supreme Court that in view of the settled legal position as per the judgment of the Constitution Bench in *K. S. Paripoornan Vs. State of Kerala* (1994) 5 *Supreme Court Cases* 593 the land owners were entitled for said benefit. It is in that background that aforesaid relief was granted to the land owners under provisions of Order 41 Rule 33 of the Code. The submission that whatever was granted in the earlier acquisition deserves to be granted in the present appeal by relying upon the decision in *Bhim Singh And others* (supra) would apply only if cross objections would have been filed. Present is not a case where some statutory entitlement is being claimed without filing cross objection. Similarly reliance on the judgment in *Ambya Kalya Mhatre* (supra) is misplaced. In *Patel Jathabhaji Punajbhai* (supra) Supreme Court in para 11 has upheld the order of High Court declining to enhance compensation in absence of any cross-objection.

6] Thus in the present case when the respondent is seeking

enhancement in the amount of compensation on the basis of adjudication in another appeal where such an enhancement was granted in view of cross-objections filed therein, same relief cannot be granted to the respondent herein in absence of cross objections. As regards the amount granted by the Reference Court for the constructed portion the evidence on record indicates that the Reference Court has taken into consideration the evidence of the Valuer and has thereafter granted compensation at the rate of Rs. 1510/- per sq. mt. There is nothing in the cross-examination of said witness to reduce the amounts granted. Considering the evidence on record the aforesaid adjudication appears to be just and proper not requiring any interference. Moreover, the valuation given by the Valuer for the constructed portion was Rs. 5,02,600/- and the Reference Court has granted less than 50% of said amount at Rs. 1510/- per sq. mt.

In view of aforesaid discussion there is no reason to interfere with the impugned judgment. First Appeal No. 1024 of 2007 is dismissed with no order as to costs. Similarly Civil Application no. 278 of 2015 is also disposed of. No costs.

JUDGE

svk

