

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

C.A.F. NO.1631/2016 IN FIRST APPEAL ST. NO. 1266/2016

(V.I.D.C., THR.EX.ENGINEER, BEMBLA PROJECT DIVISION, YAVATMAL **VERSUS** SAHEBRAO
PUNDALIKRAO NAGPURE (SINCE DEAD) THR. HIS L.R.'S SAU.LEELABAI NAGPURE & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri J.B. Kasat, counsel for the applicant.
Shri R.S. Nagpure, counsel for the R-1(a) to 1(d) & R-2(a) to 2(d).
Shri M.A. Kadukar, A.G.P. for the R-4 & 5.

CORAM : N.W. SAMBRE, JJ.

DATE : MAY 04, 2017.

For the reasons stated in the application, the
delay in filing the first appeal is condoned.

The civil application is allowed and disposed of.

F.A. ST. NO.1266/2016.

This appeal is by the acquiring body questioning
the judgment and order, dated August 9, 2012 passed by the
Court of Joint Civil Judge (Senior Division), Yavatmal in Land
Acquisition Case No.825 of 2006.

The land of the present respondents was acquired
by the appellant for the submergence of an irrigation project
for which Section 4 notification came to be issued on
04.03.2004.

The respondents-land owners contested the
acquisition proceedings being the owners of Plot
No.4979, admeasuring 3125 square meters having built up
area of 96 square meters. Section 11 award came to be
passed on June 26, 2005 and land acquisition officer
awarded compensation of Rs.90/- per square meter for

open plot and Rs.2447/- per square meter for the built up area. Feeling aggrieved by inadequate compensation, a reference seeking enhanced compensation was moved under Section 18 as according to the land owners, the valuation of property and the actual damage caused was not properly appreciated.

Vide Exhibit 13 and Exhibit 20, the present appellant and special land acquisition officer respectively resisted the claim. The issues were framed at Exhibit 21.

The claimants examined Ajabrao at Exhibit 24 and produced certified copies of the sale-deed dated March 25, 1994 at Exhibit 27 in addition to the evidence of P.W.2-Raju at Exhibit 39, valuation report at Exhibit 40, whereas, no evidence was adduced by the respondents.

From the evidence of claimants, it was established that area admeasuring 3125 square meters out of Plot No.79 was jointly owned by the respondents which was having built up area of 401.90 square meters. The said property was located on Yavatmal – Chandur bus route at village Pimpalkhuta. The acquired property was having direct approach road from the highway.

The sale-deed Exhibit 27, was relied upon by the respondents-Claimants and also escalation was sought based on the date of the sale-deed.

Upon appreciating the evidence of the expert, the rate of the open land was found to be Rs.50/- per square foot. There is also appreciation of evidence *qua* the nature of construction as the same is based on a small hillock. The nature of construction is that of ‘Gadhi’ pattern.

The appellate Court then upon appreciating the evidence of the valuer, whose evidence had remained unchallenged in the cross-examination, proceeded to award the compensation of Rs.800/- per square meter for open plot and Rs.2600/- per square meter for constructed area and further permitted to deduct the amount which is already paid. Though a claim is made that the award of compensation is at a higher rate, the evidence of P.W.1 and P.W.2, a sale-deed Exhibit 27 and the valuation report Exhibit 40 have been rightly appreciated. No perversity could be noticed with the judgment and observations of the learned Court below. As such, in my opinion, the appeal lacks merit. Hence, the same stands dismissed with no order as to costs.

JUDGE

APTE