

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

FIRST APPEAL NO. 1028 OF 2007

- 1] Wamanrao Laxmanrao Pachaghare,
Aged about 66 years, Occu: Agriculturist,
R/o Pahur, Tq. Babhulgaon,
Dist. Yavatmal. [Dead]

Through Legal Representatives

- 1-a] Smt. Nalini wd/o Wamanrao Pachghare. Amendment is carried out as
1-b] Manoj s/o Wamanrao Pachghare. per Courts order
1-c] Dhananjay s/o Wamanrao Pachghare. dt. 15.11.2014.
Sd/- x Illegible x
C.F. Appellant.
- Appellant (1-a) to (1-c) all R/o Pahur,
Tq. Babhulgaon, District Yavatmal.

..... **APPELLANTS**

...V E R S U S...

- 1] The State of Maharashtra,
Through Collector, Yavatmal.
- 2] The Special Land Acquisition Officedr,
Minor Irrigation Works-II,
Yavatmal.
- 3] The Executive Engineer,
Bembala Project Division, Yavatmal,
Tq. & Dist. Yavatmal.

.....**RESPONDENTS**

Shri Abhay Sambre, Advocate for Appellants.
Shri H.D. Dubey, A.G.P. for Respondent Nos. 1 and 2.
Shri A.B. Patil, Advocate for Respondent No.3.

CORAM: **Z.A. HAQ, J.**
DATE: **6th September, 2018.**

ORAL JUDGMENT

1] Heard.

2] By the notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to “ the Act of 1894”) published on 11th May, 2000, the Land admeasuring 649.97 Sq. Mtrs with construction of 161.12 Sq. Mtrs. was acquired by the respondents for the Bembala Project. By the award dated 7th August, 2004, the Land Acquisition Officer determined the compensation for the land (plot area) at Rs. 80 Per Sq. Mtr and for the construction @ Rs. 1482/- per Sq. Mtr. Being dissatisfied with the award, the landowner requested for reference under Section 18 of the Act of 1894. By the impugned award, the Reference Court determined the compensation receivable by the landowner @ Rs. 200/- per Sq. Mtr for the land (plot area) and @ Rs. 3000/- per Sq. Mtr. for the construction. Being dissatisfied with the amount of compensation determined by the Reference Court, the landowner has filed this appeal.

3] According to the landowner, he is entitled for compensation for the land (plot area) @ Rs. 3400/- Per Sq. Mtr..

The learned Advocate for the appellant/landowner has further submitted that undisputedly there was a big Well and *Gober Gas* Plant in the acquired land, that Land Acquisition Officer granted only Rs. 500/- for the Well and nothing was granted for *Gober Gas* Plant and the Reference Court has overlooked the claim for the enhancement of compensation for these items. It is submitted that the landowner claims Rs. 1,00,728/- for the Well and Rs. 20,000/- for the *Gober Gas* Plant.

4] The learned Advocate for the respondent No.3 has pointed out that huge tracts of land have been acquired for the Bembala Project. It is submitted that all the lands situated in Village Pahur, Tq. Babhulgaon, District Yavatmal have been acquired. It is further submitted that around 475 persons (claimants) have settled the dispute and the claimants and the acquiring body have worked out compensation receivable by the claimants for the land (plot area) at Rs. 750 per Sq. Mtr. It is pointed out that the settlements are arrived at before the *Lok-Adalat*.

5] After hearing the learned advocates for the respective parties, I find that the following point arises for consideration:-

“Whether the amount of compensation receivable by the claimants determined by the Reference Court is just and proper?”

6] Most important and relevant factor in the present case is that the entire land of Village Pahur has been acquired for the same project and 475 claimants have settled the matter with the acquiring body before the *Lok-Adalat*. Considering these aspects, I find that the compensation for the land has to be @ Rs. 750/- per Sq. Mtr. along with the statutory benefits.

7] As far as the compensation for the construction is concerned, the Reference Court has awarded @ Rs. 3000/- per Sq. Mtr. and this is accepted by the respondents in as much as the appeal is not filed by them. Relying on the valuation report (Exhibit-36) the land owner claims that compensation for the construction has to be @ Rs. 3400/- per Sq. Mtr. Though, the learned Advocate for the respondent No.3 has submitted that the valuation report (Exhibit No.36) is given by the son of the claimant, it is not disputed that son of the claimant who has given the valuation report is Civil Engineer. Only because the report is given by the son of the claimant, it cannot be brushed aside.

Dhanjay Wamanrao Pachghare, who has given the valuation report (Exhibit No. 36) is examined on behalf of the claimant, and the respondents have not been able to bring on record anything in his cross-examination on the basis of which it can be said that his evidence in support of the valuation report cannot be accepted. Hence, I am of the view that the claim of the landowner for compensation for the construction @ Rs. 3400/- per Sq. Mtr. alongwith the statutory benefits is required to be accepted.

8] The learned Advocate for the claimants has pointed out that the Well in the acquired land was huge having diameter of 11 Mtrs. and depth of 17 Mtrs. Though the claimants have prayed that the compensation for the Well i.e. amount of Rs. 1,00,728/- be granted towards compensation for Well, the evidence on record is not sufficient to establish the claim of the landowner and it has to be a guess work and on that basis in my view the landowner is entitled for Bombay high court appellate side service rules 2000 amount of Rs. 60,000/- as compensation for the Well alongwith statutory benefit.

9] The claim of the land owner for compensation for the *Gober Gas Plant* as made in the appeal is justified and it has to be

held that he is entitled for Rs. 20,000/- towards compensation for *Gober Gas Plant*, alongwith statutory benefits.

10] The respondent (acquiring body) shall deposit the enhanced amount of compensation as per this judgment after deducting the amount already paid by it, within three months.

11] The impugned award is modified accordingly.

12] The appeal is **partly allowed** in the above terms. In the circumstances, the parties to bear their own costs.

Civil Application (CAF) No. 1305/2017.

In view of disposal of the Appeal, this application for grant of early hearing of the First Appeal does not survive. It is disposed accordingly. No costs.

JUDGE

rk n