

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

FIRST APPEAL NO. 810 OF 2018

The Executive Engineer,
Bembla Project Division, Yavatmal,
Tq. & Dist. Yavatmal.

..... **APPELLANT**

...VERSUS...

- 1] Arun Krushnaji Khobragade,
Aged about 55 years.
- 2] Harida Krushnaji Khobragade,
Aged about 53 years,
- 3] Manohar Krushnaji Khobragade,
Aged about 53 years,
All Farmers, R/o Kopra (BARAD)
Tq. Babhulgaon, Dist. Yavatmal.
- 4] State of Maharashtra,
through Collector, Yavatmal.
- 5] The Special Land Acquisition Officer,
Bembla Project, Yavatmal. ...

Matter is dismissed
against Res. Nos. 2 and 3.
As per Registrar (J) order
dt. 05.06.2018.

RESPONDENTS

Shri M.A. Kadu, Advocate for Appellant.
Shri A.B. Nakshane, Advocate for Respondent Nos. 1 to 3.
Shri A.S. Fulzele, Additional Government Pleader for
respondent Nos. 4 and 5.

CORAM: **S.M. MODAK, J.**
DATE: **14.12.2020**

ORAL JUDGMENT

1] This is an appeal filed by the acquiring body against the enhancement granted by the learned Reference Court in Land Acquisition Case No. 832/2006.

2] The fact is that, in this appeal, the two plots bearing plot Nos. 83 and 79 along with structure were acquired for the purpose of Bembla Project. The Special Land Acquisition Officer, while passing the award has granted compensation and reference was made for both the plots. However, the learned Reference Court considered only plot No. 83 and totally ignored plot No. 79. Unfortunately, the claimant for the reasons best known to him (including lack of knowledge, financial capacity etc.,) has not preferred a cross-objection, so for non-granting compensation in respect of plot No. 79.

3] In this appeal, the only issue arisen is whether the compensation @ Rs. 550/- per square meter for plot No. 83 and compensation @ Rs.1900/- per square meter for the structure standing thereon is excessive or it is proper.

4] The claimant before the learned Reference Court examined himself and also examined one Sunil Chendkapure. No

evidence was adduced on behalf of the appellant and on behalf the State. Witness Shri Sunil Keshavrao Chendkapure is the valuer who has inspected the house and given report. The claimant has relied upon the sale-deed. It is in respect of the plot situated at village Pahur, Dist. Yavatmal. Whereas, the acquired land plot No. 83 situated at village Kopara (Barad), Tah. Babhulgaon, Dist. Yavatmal. The area of the plot is 62.40 square meter and the area of the construction is 40.04 square meter. The learned Reference Court has rightly rejected the referred sale-deed for the reasons mentioned in para No.9 of the above order. The learned Reference Court has also rejected to consider the rate fixed in another Land Acquisition Case No. 15/47-1997-98 and the Court case number is Land Acquisition Case No 99/05. It was not considered for the reason that the LAC numbers are different and date of notification under Section 4. It has been discussed in Para No.10 of the judgment.

5] The learned Reference Court has relied upon the rate fixed in another proceeding No. 19/47/1997-98 and award is dated 09.02.2001, rate of Rs. 550 was fixed per square meter for the open plot in that proceedings. On that basis, as per the impugned judgment, rate of Rs. 550/- per square meter was

granted by the learned Reference Court.

6] So far as the construction is concerned, the learned Reference Court has considered the valuation of Rs. 3300/- per square meter opined by the valuer. By comparing the rate offered by the Special Land Acquisition Officer on one hand and the rate opined by the valuer on the other hand, the learned Reference Court has granted rate of Rs.1900/- per square meter. According to the appellant/VIDC, the enhancement is by 733.33% for the plot and 251.77% for the construction is highly exorbitant. According to them, this rise is excessive. In addition to that, it is pleaded that in another appeals, the matters are withdrawn or compromised if the rate of Rs. 500/- per square meter is fixed for open plot, if it is from the same village i.e. Kopra (Barad). Whereas the learned advocate for the claimant relied upon the judgment passed by this Court on 06.02.2020 in First Appeal No. 882/2018. This Court has refused to interfere in the judgment in Land Acquisition Case No. 834/2006 when the rate of Rs. 550/- per square meter was fixed by the learned Reference Court.

7] I am not impressed by the arguments advanced on behalf of the appellant. If the Special Land Acquisition Officer has

offered altogether a less rate, the learned Reference Court can enhance the rate on the basis of available material. It is true that there are certain parameters, if enhanced rate is to be granted. It depends upon the time gap in between the earlier rate and new rate. But what I think is that when the learned Reference Court has already granted rate of Rs. 550/- per square meter in Land Acquisition Case No. 540/2005 (Exhibit No.35), there is no illegality in present Reference to grant compensation on that rate. I am inclined to take that view also for the reason that it is the fault of the learned Reference Court not to award compensation in respect of plot No. 79. At this stage, it is difficult to consider compensation for that plot, but this Court can certainly remedy the injustice by confirming the rate enhanced by the learned Reference Court. So, I do not think that any case for interference is made out. Hence, the order:-

ORDER

- a] The appeal stands **dismissed**.
- b] The parties to bear their own costs.
- c] The appellant is directed to deposit amount, if any, remaining within two months and the respondent

No.1 is at liberty to withdraw the principle amount and the interest amount, if not withdrawn earlier and deposited hereinafter.

d] Office to take steps.

JUDGE

RKN