

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

FIRST APPEAL NO.594 OF 2021

The Executive Engineer,
Irrigation Project, Yavatmal Division,
District Yavatmal. **Appellant.**

:: V E R S U S ::

1. Dnyaneshwar Ramraoji Devkatte,
Aged major, occupation agriculturist,
R/o Nagri, taluka Babhulgaon, district Yavatmal.

2. Sunand w/o Dnyaneshwar Devkatte,
Aged major, occupation agriculturist,
R/o Nagri taluka Babhulgaon, district Yavatmal.

3. State of Maharashtra, through district
Collector, Yavatmal.

4. Special Land Acquisition Officer,
Bembla Project, Yavatmal. **Respondents.**

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Shri P.B.Patil, Counsel for the Appellant.
Shri A.B.Nakshane, Counsel for Respondent Nos.1 & 2.
Mrs.S.Haider, Assistant Government Pleader for Respondent Nos.3
and 4.

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CORAM : **V.M.DESHPANDE, J.**
DATE : **NOVEMBER 23, 2021**

ORAL JUDGMENT

1. Heard learned counsel Shri P.B.Patil for the appellant/ the Executive Engineer, Irrigation Project, Yavatmal Division, district Yavatmal; learned counsel Shri A.B.Nakshane for respondent Nos.1 and 2/claimants, and learned Assistant Government Pleader Mrs.S.Haider for respondent Nos.3 and 4/the State of Maharashtra. **Admit.** By consent of learned counsel appearing for parties, the matter is taken up forthwith for final hearing since even according to learned counsel for the appellant, the appeal is covered against the appellant. Therefore, there is no need for calling of record and proceedings from learned Judge of Reference Court.

2. By this appeal, the appellant/the Executive Engineer, Irrigation Project, Yavatmal Division, district Yavatmal has set up a challenge to judgment and decree dated 12.1.2015 passed by learned Civil Judge Senior Division, Yavatmal in Land Acquisition Case No.399/2005.

3. The State of Maharashtra acquired a plot and house

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property bearing plot No.20 along with structure of house standing thereon. The said plot was belonging to respondent Nos.1 and 2, who will be hereinafter referred to as, “claimants” for the sake of brevity, at village Nagri, taluka Babhulgaon, district Yavatmal for Submergence of Bembla Project. Plot area of the said plot was 32 square meters and structure of house standing thereon was also 32 square meters. In Land Acquisition Case No.24/47/97-98 at village Nagri, the Land Acquisition Officer declared Award on 5.12.2000 and fixed market price for open space at the rate of Rs.60/- per square meter and for structure of house at the rate of Rs.1410/- per square meter. As claimants were dissatisfied with the said fixation of the market price, though they withdrew the amount under protest, they approached to Reference Court by filing a reference under Section 18 of the Land Acquisition Act, 1894. Needless to mention that the said was registered as Land Acquisition Case No.399/2005. In the said reference, claimants claimed compensation at the rate of Rs.500/- per square meter for open space and at the rate of Rs.5000/- per square meter for constructed structure of house. Also, they claimed other statutory

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benefits. The reference was contested by respondents therein and issues were struck.

4. On behalf of claimants, two witnesses entered into witness box. Whereas, nobody adduced oral evidence on behalf of Authorities. Learned Judge of the Reference Court partly allowed the reference and enhanced compensation in favour of claimants at the rate of Rs.500/- per square meter for open space i.e. plot No.20 and at the rate of Rs.2041/- per square meter for constructed structure of house standing thereon the open space.

5. While determining the price, learned Judge of the Reference Court, in paragraph No.10 of his judgment, elaborated reasons. Learned Judge found that in the year 1998 Section 4 Notification under Land Acquisition Act, 1894 was issued in respect of village Nagri and a plot and constructed structure of house standing thereon were acquired. The claimant, in the said proceeding, filed a reference which was registered as Land Acquisition Case No.300/2005 and learned Judge of Reference Court granted compensation at the rate of Rs.500/- per square

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meter for the plot. The said judgment and decree was placed in this proceeding at Exhibit-55.

At the bar, learned counsel Shri P.B.Patil for the appellant submitted that the said judgment and decree delivered in Land Acquisition Case No.300/2005 was challenged before this Court in First Appeal No.1224/2018, however the appeal was dismissed by this Court (Coram : M.G.Giratkar, J.) on 13.1.2020.

6. Be that as it may, judgment dated 13.1.2020 passed by this Court (Coram : M.G.Giratkar, J.) in First Appeal No.1224/2018 is placed for perusal of this Court. In the said judgment also, there is a reference of judgment and decree passed by learned Judge of Reference Court in Land Acquisition Case No.300/2005 and after considering the said, this Court dismissed appeal i.e. First Appeal No.1224/2018 filed on behalf of the appellant/the Executive Engineer, Irrigation Project, Yavatmal Division, district Yavatmal. Facts in the present appeal and facts in First Appeal No.1224/2018 arise out of the very same Section 4 Notification under the Land Acquisition Act. If that be so, in my

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view, the present appeal needs no any other treatment than the treatment given in judgment dated 13.1.2020 passed by this Court (Coram : M.G.Giratkar, J.) in First Appeal No.1224/2018.

7. In this view of the matter, I pass following order:

ORDER

(1) First Appeal No.594 of 2021 is **dismissed**.

(2) No costs.

JUDGE

!! BRW !!

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