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

**FIRST APPEAL NO.30 OF 2008
WITH
CROSS OBJECTION NO.53 OF 2015**

FIRST APPEAL NO.30 OF 2008

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

..... **Appellant.**

:: V E R S U S ::

1. Shobhachand s/o Harimal
Kotecha, since dead through its
Legal heirs.

1(a) Smt.Gulabbai wd/o Shobhachand
Kotecha, aged about major.

1(b) Shri Kantilal s/o Shobhachand
Kotecha, aged major.

1(c) Shri Ravindra s/o Shobhachand
Kotecha, aged major.

1(d) Shri Naresh s/o Shobhachand Kotecha.

1(e) Shri Manoj s/o Shobhachand
Kotecha, aged about 36 years.

All the legal heirs No.1(a) to (e) are
R/o Pahur, taluka Babhulgaon, district Yavatmal.

1(f) Sau.Meenabai w/o Rameshchandra
Sona (daughter), r/o Vaifad, taluka and district Wardha.

1(g) Sau.Ushabai w/o Subhashchandra
Duggad, r/o Majalgaon, district Bhid.

1(h) Sau.Varsha w/o Manoj Bafna, r/o
Chongi, taluka Patur, district Akola.

2. The State of Maharashtra,
Through the Collector, Yavatmal.

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

..... **Respondents.**

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

Mrs.Vijaya Thakre, Counsel for Respondent Nos.1(a) to 1(h).

Mrs.M.H.Deshmukh, Assistant Government Pleader for Respondent
Nos.2 and 3.

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CROSS OBJECTION NO.53 OF 2015

1. Shobhachand @ Sameermal s/o Harimal Kotecha,
since dead through his Legal heirs.

1(a) Smt.Gulabbai wd/o Shobhachand
Kotecha, dead.

1(b) Shri Kantilal s/o Shobhachand
Kotecha, aged major.

1(c) Shri Ravindra s/o Shobhachand
Kotecha, aged major.

1(d) Shri Naresh s/o Shobhachand
Kotecha, age major.

1(e) Shri Manoj s/o Shobhachand Kotecha,
age : major.

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All the legal heirs No.1(a) to (e) are
R/o Pahur, taluka Babhulgaon, district Yavatmal.

1(f) Sau.Meenabai w/o Rameshchandra
Sona (daughter), r/o Vaifad, taluka and district Wardha.

1(g) Sau.Ushabai w/o Subhashchandra
Duggad, r/o Majalgaon, district Bhid.

1(h) Sau.Varsha w/o Manoj Bafna, r/o
Chongi, taluka Patur, district Akola.

2. The State of Maharashtra,
Through the Collector, Yavatmal.

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

..... Cross objectors.

:: VERSUS ::

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

..... Respondent.

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Mrs.Vijaya Thakre, Counsel for Cross objectors No.1(a) to 1(h).
Mrs.M.H.Deshmukh, Assistant Government Pleader for the State.
Shri A.B.Patil, Counsel for the Respondent.

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CORAM : V.M.DESHPANDE, J.
DATE : NOVEMBER 18, 2021

ORAL JUDGMENT

1. The appeal and the cross objection arise out of

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judgment and decree dated 14.2.2007 passed by learned 1st Ad hoc District Judge, Yavatmal in Land Acquisition Case No.198/2003.

2. By the judgment and decree impugned in the appeal and the cross objection, learned Judge of the Reference Court partly allowed the reference and directed respondents/acquiring body i.e. Special Land Acquisition Officer, Bembla Project, Yavatmal, district Yavatmal and the Executive Engineer, Bembla Project Division, Yavatmal to pay amount Rs.5,76,568/-. The respondents were also directed to pay 12% additional component on enhanced amount of compensation from the date of Notification i.e. 31.12.1998 till date of award i.e. 31.7.2000. The respondents were also directed to pay 30% solatium on enhanced amount of compensation. They were also directed to pay interest @ 9% per annum on enhanced amount of compensation from the date of Award i.e. 31.7.2000 till one year. They were also directed to pay interest @ 15% per annum on arrogate amount of compensation from 31.7.2001 till its actual realization.

3. On 4.7.2008, this appeal was admitted by this Court (Coram : A.P.Bhangale, J.). Notice was issued to claimant-

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Shobhachand s/o Harimal Kotecha. During pendency of the appeal, the claimant passed away and, therefore, his legal representatives were brought on record. Legal representatives also filed a cross objection since they also felt aggrieved by amount of compensation granted in favour of their predecessor in title. The cross objection is also admitted.

4. Heard learned counsel Shri A.B.Patil for the Vidarbha Irrigation Development Corporation (VIDC); learned counsel Mrs.Vijaya Thakare for claimants/cross objector Nos.1(a) to 1(h), and learned Assistant Government Pleader Mrs.M.H.Deshmukh for the State.

5. According to learned counsel for the VIDC and learned counsel for claimants/cross objectors, learned Judge of the Reference Court has not properly granted compensation. According to learned counsel for the VIDC, excessive amount of compensation is granted. Whereas, learned counsel for claimants/cross objectors, submitted that inadequate compensation is granted.

6. In view of rival submissions, only point that falls for

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determination of this Court is as under:

(1) Whether learned Judge of the Reference Court has granted adequate compensation in favour of the claimant?

(2) What order?

7. The State issued Section 4 Notification under the Land Acquisition Act on 31.12.1998 disclosing its intention to acquire various lands including plot Nos.67 and 113 for irrigation project namely known as Bembla Irrigation Project.

8. Undisputedly, late Shobhachand resident of Barad was lawful owner and was in possession of plot Nos.67 and 113.

9. In pursuance to proceedings initiated under the Land Acquisition Act for acquiring these two properties, Land Acquisition Case No.15/47/97-98 of village Barad was registered on the file of Special Land Acquisition Officer of Bemla Project, Yavatmal. The Land Acquisition Officer declared Award on 31.7.2000. The Land Acquisition Officer in the Award bifurcated open lands as well as area under construction. Insofar as plot

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No.67 is concerned, undisputedly total plot area is 304.70 square meters and upon that 254 square meters is construction. Whereas, on plot No.113, total plot area is 161.40 square meters and upon that 49.80 square meters is construction.

10. As per the Award, in respect of plot No.67, the owner was granted compensation at Rs.18,282/- for plot area and Rs.3,10,565/- towards cost of construction. Whereas, in respect of plot No.113, the owner was granted compensation at Rs.9,684/- for plot area and Rs.3,490/- towards cost of construction.

11. The claimant was dissatisfied with the determination of the compensation as market value of lands and for constructed areas of his properties acquired, as determined by the Special Land Acquisition, and, therefore, he filed a reference under Section 18 of the Land Acquisition Act within a period of limitation before the Reference Court. The said was registered as Land Acquisition Case No.198/2003. In the claim, the claimant submitted that he is entitled for price of open plot @ Rs.75/- per square feet and cost of construction @ Rs.275/- per square feet in respect of plot No.67 and Rs.200/- per square feet in respect of plot No.113.

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12. Respondent Nos.1 and 2, the State of Maharashtra and the Special Land Acquisition Officer, before the Reference Court filed their written statement (Exhibit-10) and the Executive Engineer of the VIDC filed its separate written statement (Exhibit-13). Common thread of their statements is of denial of the claim put forth by the claimant. In view of the rival pleadings, issues were struck. Learned Judge of the Reference Court framed two issues namely, whether the claimant is entitled for enhancement and whether the reference is filed within a period of limitation.

13. In order to substantiate the claim, the claimant examined two witnesses, (i) Ravindra Samirmal Kotecha as (PW1) and (ii) Architect and Valuer Shri Suhas Sudhakar Rao Puri as (PW2). Worth to note here that no officer, either from office of the Collector or from the Special Land Acquisition Officer or any other officer from the VIDC, stepped inside witness box. Needless to mention that witnesses examined by the claimant were cross examined.

14. In the judgment and decree, impugned in this appeal and the cross objection, learned Judge of the Reference Court

found that the reference filed by the claimant was well limitation. Though the appeal is filed challenging the judgment and decree passed by learned Judge of the Reference Court, no ground is raised to show that the reference was filed belatedly. Even, during the course of oral submissions, learned counsel for the VIDC submitted that the reference filed by the claimant was well within limitation.

15. According to learned counsel for the VIDC, determination of the compensation for both open plots as well as for constructed area is on higher side. He submitted that learned Judge of the Reference Court has considered Sale Instances (Exhibits-51 & 52) prior to the date of Notification. Sale Instances are from villages Pahur and Dighi. Village Pahur is at a distance of one kilometer and village Dighi is at a distance of three kilometers from village Barad. At village Pahur, area 605.25 square feet, i.e. 25.25 square meters, was sold for Rs.50,000/- in the year 1994. Whereas, at village Dighi, area 220 square feet, i.e. 20.40 square meters, was sold for Rs.6,000/- in the year 1992.

16. In my view, looking to proximity of village Barad, *qua*

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distance of these two villages, learned Judge of the Reference Court has rightly compared these two sale instances for determining the market value of plots' areas situated at village Barad. Undisputedly, village Barad is also a developing place though not much faster.

17. In order to prove the claim, Architect Shri Suhas Puri was examined as (PW2) before the Reference Court by the claimant. He is a Bachelor of Architecture and he is a Member of Associate of the Indian Institute of Architects, Bombay and also a Member of Council of Architecture, Delhi. His evidence shows that on 5.7.1998 he visited site and, thereafter, he examined cost of plot No.67 along with structure @ Rs.9,97,478/- . He proved valuation report in respect of plot No.67 which is available on record at Exhibit-55. Similarly, his valuation report for plot No.113 is at Exhibit-56. According to him, plot structure would fetch value as Rs.2,37,417/-. From the witness box, Shri Puri stated that the construction was in teak-wood in respect of panel doors and windows. He stated that while calculating rate of construction, he took into consideration CSR rates of Building and

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Construction Department of the year 1998.

18. Though Architect and Valuer Shri Suhas Puri (PW2) was available for his cross examination, learned District Government Pleader, Yavatmal did not cross examine him rather he adopted cross examination of learned counsel for the VIDC. Perusal of cross examination shows that except suggestion there is nothing to show that Architect Shri Puri has not properly valued properties. Worth to note here that in cross examination learned cross examiner has not even touched Exhibits-55 and 56, the valuation reports. Therefore, in my view, those two reports were rightly relied upon by learned Judge of the Reference Court while determining the compensation. There is nothing to show that Architect Shri Puri has exaggerated the value of properties. In view of the unchallenged documentary evidence of Architect Shri Puri, who is expert, in my view, learned Judge of the Reference Court has rightly relied upon his oral as well as documentary evidence which he has duly proved.

19. Though cross objection is filed, in my view, it appears that it was filed only to give a counter blast to the appeal filed by

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the VIDC inasmuch as nothing is brought on record to show that valuation done by learned Judge of the Reference Court is on the lesser side. Resultantly, I record a finding that learned Judge of the Reference Court was right in reaching to conclusion that the compensation determined by the Land Acquisition Officer was on lower side and, therefore, he has rightly determined the market value. In this view of the matter, no interference is called for in the judgment and decree, passed by learned Judge of the Reference Court, which is a well reasoned decree. Consequently, I pass following order:

ORDER

(1) First Appeal No.30 of 2008 preferred by the VIDC strands **dismissed**.

(2) Cross Objection No.53 of 2015 preferred by claimants also stands **dismissed**.

(3) As per order dated 4.7.2008, the VIDC deposited entire decretal amount before this Court. It is stated before this Court that 50% of the deposited amount is withdrawn by claimants.

Judgment

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Claimants are permitted to withdraw balance 50% amount along with interest accrued thereon.

The first appeal so also cross objection are disposed of accordingly. No costs.

JUDGE

!! BRW !!

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