

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

FIRST APPEAL NO. 969 OF 2018

Vishweshwar Gulabrao Arsad (dead)
through LRs

1. Smt. Usha Vishweshwar Arsad,
Aged – 58 years, Occupation- Household,
2. Shri Arvind Vishweshwar Arsad,
Aged – 42 years, Occupation- service,
3. Shri Manish Vishweshwar Arsad,
Aged about – 35 years, Occupation- service,

Nos.1 to 3 resident of Hanuman Ward,
Indira Chowk, Near Weekly Market, Arvi,
Tahsil Arvi, District Nagpur.

4. Sau. Ranjana W/o Hemant Gandole,
Aged about 38 years, Occupation – Household,
Resident of Kotwal Nagar, Near House of
Satish Chaturvedi, Nagpur,
Tahsil and District Nagpur.

...APPELLANTS

V E R S U S

1. The State of Maharashtra,
through Collector, Wardha,
Tahsil and District Wardha.
2. The Executive Engineer,
Lower Wardha Project Division,
Wardha, District Wardha.
3. Special Land Acquisition Officer,
Vidarbha Path Pandhare Vikas
Mahamandal, Collectorate Office,
Wardha, Tahsil and District Wardha

...RESPONDENTS

Shri Tushar Darda, Advocate for appellants.
Ms H.N. Jaipurkar, A.G.P. for respondent Nos.1 & 3.
Ms A.S. Athalye, Advocate for respondent No. 2.

CORAM : PUSHPA V. GANEDIWALA, J.
DATED : 8th OCTOBER, 2021.

ORAL JUDGMENT :

Heard.

2. In this appeal, appellants/legal representatives of original claimant take exception to the judgment and award dated 17.10.2011 passed in Land Acquisition Case No.76 of 2005 by the learned 2nd Joint Civil Judge, Senior Division, Wardha, wherein the learned Reference Court awarded compensation for the dry crop land of the appellants situated at Survey No.15/3 admeasuring 1.85 H.R., village Mahimapur, Tahsil Arvi, District Wardha at the rate of Rs.1,16,000/- per hectare.

3. Learned counsel Shri Tushar Darda appearing for the appellants submitted that this matter can be disposed of as the issue involved in this case is already covered by the judgment of this Court in Cross Objection No.31 of 2018 in First Appeal No.433 of 2014, wherein this Court has awarded compensation at the rate of Rs.1,68,000/- per hectare for dry crop land of the claimants therein situated at Mahimapur, Tahsil Arvi, District Wardha decided on 05.02.2020.

4. A perusal of the judgment in the aforesaid appeal would reflect that the Co-ordinate Bench of this Court adjudicated the award in the above appeal as the respondent-VI.D.C. had accepted the said amount by withdrawing the appeal before the Lok-Adalat, which was preferred against the judgment and award of the Reference Court dated 02.05.2014 in Land Acquisition Case No.241 of 2006 wherein the Reference Court awarded the enhanced amount of compensation at the rate of Rs.1,68,000/- per hectare for dry crop land situated at Mauza Nababpur, Tahsil Arvi, District Wardha.

5. Learned counsel Ms Ashwini Athalye submits that the aforesaid award is with respect to village Nababpur and therefore the said award cannot be considered for the village Mahimapur. Learned counsel relied on the judgment of this Court in the case of **Kishor s/o Gajananrao Kale Vs. VI.D.C. and others** (Cross Objection No.57 of 2017 in First Appeal No.169 of 2014) decided on 18.12.2019 for the land situated at village Mahimapur, wherein this Court adjudicated compensation at the rate of Rs.1,30,679/- per hectare.

6. There is no doubt about the aforesaid adjudication by this Court in the case of **Kishor Kale** (supra). At the same time in Cross Objection No.31 of 2018 in First Appeal No.433 of 2014, the

Co-ordinate Bench of this Court found it appropriate to enhance compensation for the land situated at Mahimapur at Rs.1,68,000/- per hectare for dry crop land. In such circumstances when two different awards for the similarly situated lands are available, the higher amount has to be considered for enhancement in compensation to the appellants.

7. Since the land of the appellants in the present appeal is situated at village Mahimapur and the said land was acquired under the same Notification issued under Section 4(2) published on 12.04.1999, the appellants herein would be entitled to receive compensation at the rate of Rs.1,68,000/- per hectare.

8. In this view of the matter, for the reasons as stated in the judgment of this Court in Cross-Objection No.31 of 2018 in First Appeal No.433 of 2014, appellants/claimants herein are also entitled to receive compensation for dry crop land Survey No.15/3 admeasuring 1.85 H.R. situated at Nababpur at the rate of Rs.1,68,000/- with all statutory benefits and interest. Hence, appeal filed by the claimants is allowed. Consequently, the judgment and decree of the Reference Court is modified as under :

(i) The appellants/legal representatives of original claimant are entitled for enhanced compensation at the rate of Rs.1,68,000/- per hectare for land Survey No.15/3 admeasuring 1.85 H.R. situated at Nababpur, Tahsil Arvi, District Wardha alongwith all statutory benefits. Needles to mention, the amount of compensation which was already deposited by the respondent-VI.D.C., they are entitled to deduct the same.

(ii) Respondent-VI.D.C. to deposit enhanced amount of compensation in terms of above order within a period of four months and thereafter the claimants shall be entitled to withdraw the same.

(iii) The withdrawal of the enhanced amount of compensation shall be subject to payment of deficit amount of Court fee, if any.

(iv) The appeal stands disposed of with no order as to costs.

JUDGE

Wagh