

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

FIRST APPEAL NO. 93 OF 2011

APPELLANT: Vidarbha Irrigation Development Corporation
Through its Executive Engineer,
Bembla Project Division, Yavatmal,
Tq. & Dist. Yavatmal

...VERSUS...

RESPONDENTS: 1] Vasant Natthuji Gaikwad
aged 45 years, Occ. Cultivator

2] Eknath Natthuji Gaikwad
aged 50 years, Occ. Cultivator

Both R/o. Thalegaon,
Tq. Babhulgaon, Dist. Yavatmal

3] The State of Maharashtra,
through the Collector, Yavatmal

4] The Special Land Acquisition Officer,
Bembla Project Yavatmal,
Tq. And Dist. Yavatmal

Mr.A.B.Patil, Advocate for appellant
Mr. K.S.Narwade, Advocate for Respondent Nos. 1 and 2
Mrs. Mayuri Deshmukh, AGP for respondent Nos. 3 and 4

CORAM : AVINASH G. GHAROTE, J.
DATE : 23/11/2022.

[Oral Judgment]

1] Heard Mr. Patil, learned counsel for the appellant, Mr. Narwade, learned counsel for Respondent Nos.1 & 2 and learned AGP for Respondent Nos. 3 and 4.

2] The appeal questions the award under Section 18 of the Land Acquisition Act dated 18.08.2009, whereby the compensation granted by the Land Acquisition Officer for open plot at the rate of ₹.70/- per sq.mtr has been enhanced to ₹.650/- per sq.mtr and the compensation for construction at the rate of ₹.1255/- per sq.mtr has been enhanced by the Reference Court to ₹. 2100/- per sq.mtr.

3] Mr. Patil, learned counsel for the appellant points out that in so far as village Thalegaon is concerned, in which the plot in question i.e. plot no. 96, admeasuring 421.70 sq.mtr., having construction of 11.52 sq.mtr is situated, this Court in **VIDC vs. Waman Mahajan**, First Appeal No. 580/2010, decided on 21.11.2022 has fixed the rate of compensation for an open plot for village Thalegaon at ₹.500/- per sq.mtr.

4] Mr. Narwade, learned counsel for Respondent Nos.1 and 2, therefore fairly concedes that he is bound by the decision of this Court as indicated above and therefore, the impugned award in so far as it fixes the compensation for the open plot at the rate of ₹.650/- per sq.mtr is required to be modified.

5] In so far as the compensation for the construction is concerned, the constructed area admittedly is 11.52 sq.mtr in respect of which there is no dispute from the side of Mr. Narwarde, learned counsel for the respondents. The Land Acquisition Officer has granted compensation for the construction at the rate of ₹.1255/- per sq.mtr., which has been enhanced by the Reference Court to ₹.2100/- per sq.mtr. Though Mr. Patil, learned counsel for the appellant submits that this is on the higher side, a perusal of the judgment of the Reference Court would indicate that the Court has already taken into consideration earlier judgments in respect of awarding the compensation for construction of village Thalegaon, which indicates the price of construction to be around ₹.1900/- per sq.mtr (para 15). Of course, the rate for construction would depend

upon the nature and quality of the construction, which in the instant case based upon the report of the expert PW-2 Chandrashekhar is of stone foundation, brick walls, GI roof and of doors and windows. Though the PW-2 as an expert has in his valuation report indicated the price of construction to be ₹.4693/- per sq.mtr, however, that clearly appears to be on a higher side, as he takes into consideration the costs of construction at village Dighi and Pahur. In the instant matter, there also appears to be some wooden material used in the construction, and therefore, the award of compensation at the rate of ₹.2100/- per sq.mtr as granted by the learned Reference Court cannot be faulted with.

6] In view of the above, the impugned judgment and decree dated 18.08.2009 passed by the learned Reference Court is hereby modified by reducing the compensation for the open plot no.96 from ₹ 650/- per sq. mtr to ₹ 500/- per sq.mtr. Rest of the judgment is maintained as it is. No costs.

JUDGE

Digitally sign by RAJESH
VASANTRAO JALIT
Location:
Signing Date: 24.11.2022 17:00