

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

FIRST APPEAL NO.644/2012

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

...VERSUS...

RESPONDENTS : 1. Bhanudas Amrutrao Toney
Aged : Major, Occ – Cultivator
R/o Near Manjusha Mangal Karyalaya,
Yawatmal, Tq. & Distt. Yavatmal.

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

3. The Special Land Acquisition Officer,
Bembla Project Yavatmal,
Tq. & Dist. Yavatmal.

Shri A.B. Patil, Advocate for appellant
Shri R.S. Nagpure, Advocate for respondent no.1 is absent
Mrs. M.H. Deshmukh, AGP for respondent nos.2 & 3

CORAM : AVINASH G. GHAROTE, J.

DATE : 25/11/2022

ORAL JUDGMENT

1. Heard Shri A.B. Patil, learned Counsel for the appellant
and Mrs. M.H. Deshmukh, learned Assistant Government Pleader for

the respondent nos.2 and 3. Shri R.S. Nagpure, learned Counsel for the respondent no.1 is absent.

2. The factual position in the present appeal is as under -

Date of Notification under Section 4 of the Land Acquisition Act			13/08/1998
Property details	Area of property	LAO Award Dated 21/03/2002	Ref. Court Award Dated 28/10/2009
Plot No: 91 Village: Nagargaon Tahsil Babhulgaon, District : Yavatmal.	Plot Area : 518 Sq.mtr.	Rs.70/- per Sq.mtr.	Rs.650/- per Sq.mtr.
	Construction: 231 Sq.mtr.	Rs.1812/- per Sq. mtr.	Rs.2600/- per Sq. mtr.

3. The appeal challenges the judgment of the Reference Court dated 28/10/2009, whereby the learned Reference Court has enhanced the compensation for the open plot to Rs.650/-per sq.mtr. and has granted compensation for the constructed area at the rate of Rs.2600/- per sq.mtr., in respect of Plot No. 91, as detailed above.

4. The evidence of PW 2 – Satish Kashinath Pathak (Pg.47) indicates that he has suggested the rate for open plot as Rs.1076/-

per sq. mtr. and for constructed area of Rs.3,300/- per sq. mtr. However, the said rate is based upon the sale transaction of the village Pahur, which admittedly is one village beyond Nagargaon and is a larger village with all essential facilities and therefore cannot form a reasonable basis for the rate as given by PW -2. In the cross-examination itself PW-2 has admitted that Nagargaon is at a distance of 6 kms. from Pahur and is on the interior side and is a smaller village with lesser facilities. He further admits that he has neither made any enquiries with the office of Sub Registrar to ascertain whether there are any sale instances of village Nagargaon at the relevant time nor any report from the Town Planning Officer has been obtained regarding the rate. He also admits not to have procured any sale-deed from the adjoining villages nor made any enquiry thereof, considering which, the rate which he has quoted for the open land has no reasonable basis whatsoever. That apart, he has also in his cross-examination not specified the nature and quality of construction nor the age has been specified, considering which, no reliance can be placed upon the valuation report of PW-2. That is the only evidence available on record. There is no other evidence available on record except that of the respondent no.1, which does

not shed any light on the issue of valuation of the land or the construction and is a self-serving evidence, considering which, that also cannot be relied upon.

5. In First Appeal No. 707/2011 (VIDC Vs. Nivruttin Deorao Toney and others) decided on 24/11/2022, the rate of open land for the village Nagargaon, has been decided as Rs.500/- per sq.mtr., considering which, the impugned judgment under reference which grants the rate of Rs.650/- per sq.mtr. needs to be modified.

6. Insofar as the rate for constructed area is concerned, the construction, is admittedly in stone and cement foundation having brick walls. The rate of construction for village Nagargaon, has been fixed Rs.2300/-per sq.mtr. in *Nivruttin Toney* (supra). However, according to Shri Patil, learned Counsel for the appellant the policy of the appellant permits acceptance of an increase of 30% over and above the rate granted by the Land Acquisition Officer, which comes to Rs.2890/- per sq.mtr. and therefore he submits, that as a concession, based upon the aforesaid policy the respondent no.1 can be granted rate of 2356/- per sq.mtr. in the present matter, considering the rate which has been awarded by the Land

Acquisition Officer. As pointed out above, perusal of the material on record, and so also the evidence of PW-2 does not indicate any factors to arrive at a conclusion of the rate of Rs.2600/- per sq.mtr. in view of which, the same needs to be modified to Rs.2300/- per sq.mtr., however, considering the concession above granted by Shri Patil, learned Counsel for the appellant in view of the policy of the appellant, the rate for construction is granted at Rs.2356/- per sq.mtr., in view of the concession alone.

7. The judgment of the Reference Court is therefore modified by reducing the rate for open plot from Rs.650/- per sq.mtr, to Rs.500 per sq.mtr. and reducing the rate of construction from Rs.2600/- per sq.mtr to Rs. 2356/- per sq.mtr. Rest of the judgment is maintained. The first appeal is accordingly partly allowed in the above terms. No order as to costs.

(AVINASH G. GHAROTE, J.)