

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

FIRST APPEAL NO.621/2016

Vidarbha Irrigation Development Corporation
through Executive Engineer,
Bembla Project Division No.5,
Yavatmal, Tq. & Dist. Yavatmal.

... Appellant.

-Versus-

On RA

1. Jagannath Keshav Ajmire,
Aged 50 years, Occ.-Farmer,
R/o.-Pahur (Dhaba), Tq. Babhulgaon,
District Yavatmal.

2. The State of Maharashtra,
through the Collector, Yavatmal,
Tq.& Dist. Yavatmal.

3. Special Land Acquisition Officer,
Minor Irrigation Works No.II,
Yavatmal, Tq.& Dist. Yavatmal.

.... Respondents.

Mr. P.B. Patil, Advocate with Mr. Vinay Rathi, Advocate for appellant.
Mr. R.D. Hajare, Advocate for respondent no.1.
Mr. M.A. Kadu, AGP for respondents no.2 and 3.

CORAM : ABHAY AHUJA, J.

DATE : 17-11-2022.

ORAL JUDGMENT

. Heard.

2. **Admit.** By consent of learned Counsel for the parties, the

matter is being finally heard.

3. This is an Appeal filed under Section 54 of the Land Acquisition Act, 1894 (the "said Act") read with Section 96 of the Code of Civil Procedure, 1908 by the V.I.D.C. being the body that acquired land consisting of part of Plot No.781 admeasuring 148.69 sq.mtrs and also constructed structure of 72.21 sq.mtrs owned by respondent no.1 situate at village Pahur, Taluka Babhulgaon, District Yavatmal, for the Bembla Irrigation Project under notification dated 11-05-2000, pursuant to Section 4(1) notification of the said Act. The award was passed on 17-10-2003 and the Land Acquisition Officer granted compensation at the rate of Rs. 80/- per sq.mtr. for the acquired land and compensation at the rate of Rs.1693/- per sq.mtr. for the acquired structure. Since the respondent no.1 was not happy with the compensation awarded to him, he received the compensation on 18-06-2004 under protest and went ahead and filed a reference under Section 18 of the said Act before the Civil Judge, Senior Division, Yavatmal. The Reference Court awarded enhanced compensation at the rate of Rs. 900/- per sq.mtr. for the open plot and a rate of Rs. 2116/- per sq.mtr. for the constructed area.

4. Being aggrieved by the aforesaid enhancement, the acquiring body has preferred this Appeal.

5. Mr. P.B. Patil duly assisted by Mr. Rathi, learned Counsel for the acquiring body as well as Mr. R.D. Hajare, learned Counsel

for respondent no.1/claimant would submit that the subject matter of this Appeal is covered by a decision of this Court dated 28-03-2019 in First Appeal No.424/2019 as well as decision dated 19-12-2018 in First Appeal Stamp No.189/2018 where in respect of open plot of land acquired from the same village Pahur for the same Bembla Irrigation Project under the same Section 4(1) notification dated 11-05-2000, this Court has held that the claimants are entitled to receive an amount of Rs.750/- per sq.mtr. for the plot and have retained the rate awarded by the Reference Court for the constructed area.

6. I have heard learned counsel for the parties and with their able assistance, I have perused the papers, proceedings and the decisions relied upon by them.

7. Before proceeding further, it would be apposite to set out the relevant paragraphs of the judgment dated 28-03-2019 of this Court in First Appeal No.424/2019 as under :-

"2. It is submitted by the learned counsel for the parties that in view of the adjudication in First Appeal St.No.189/2018 (VIDC and another Vrs. Vasant Nanaji Patre and others) dated 19/12/2018 arising from village Pahur, Taluka Babhulgaon, Dist. Yavatmal, the present appeal can be disposed of.

3. In First Appeal St.No.189/2018, this Court has held that an amount of Rs.750/ per square meter for an open plot of land acquired from village Pahur, Taluka Babhulgaon, Dist Yavatmal would be fair compensation.

The Notification under Section 4 of the Land Acquisition Act, 1894 in this appeal is dated 11/05/2000 which was the same notification in the appeal mentioned above.

4. Hence, for the reasons stated in First Appeal St. No.189/2018 (VIDC and another Vrs. Vasant Nanaji Patre and others) dated 19/12/2018, this appeal is partly allowed as under :

1) The Judgment of the Reference Court in L.A.C. No.221/2009 dated 14/11/2014 is partly modified.

2) The claimants are held entitled to receive an amount of Rs.750/ per square meter for Plot No.631 admeasuring 279.60 square meters and for plot No.552 admeasuring 60 square meters. They are also entitled to receive an amount of Rs.2,950/ per square meter for constructed portion admeasuring 279.60 square meters and Rs.1,670/ for 30.70 square meters respectively.

3) Other directions in the award are confirmed.

4) The claimants are at liberty to withdraw the amount of compensation in terms of this Judgment along with accrued interest.

5) The balance amount, if any, be refunded to the appellant with accrued interest."

8. It is observed that the acquisition of the plot in question in this Appeal as well as in First Appeal No.424/2019 and in First

Appeal Stamp No.189/2018, relate to the same Bembla Irrigation Project in respect of land from the same village Pahur and under the same Section 4(1) notification dated 11-05-2000. In the two appeals relied upon by the learned Counsel also, there has been acquisition of a plot of land along with constructed area. As such, the acquisition in the case at hand as well as the cases relied upon are similar. No material difference between these acquisitions has been brought to my notice. As such the facts in this case and the facts viz. the project, the village as well as the Section 4(1) notification under the said Act are the same and the claimants also appear to be similarly placed.

9. The Hon'ble Apex Court in the case of **D. Eswara Naidu and others V/s Special Deputy Collector (Land Acquisition) (2019) 13 SCC 785** has laid emphasis on the principle of parity when in Paragraph No.5, the Apex Court observes that similarly situated persons covered by the very same notification may not be discriminated on the ground of delay. Paragraph No.5 of the said decision is pertinent and is quoted as under :

"5. Needless to say that in case similarly situated persons covered by the very same notification have been granted compensation @ Rs.4000 per lemon tree, the petitioners herein may not be discriminated on the ground of delay. However, in the event of grant of enhancement, they shall not be entitled for interest for the period of delay."

(emphasis supplied)

10. In view of the above discussion, I do not propose to take any other view in the matter. The respondent no.1 is entitled to compensation at the rate of Rs. 750/- per sq.mtr. in respect of the said plot of 148.69 sq.mtrs being part of Plot No.781 in village Pahur. The rate of Rs.2116/- per sq.mtr. awarded by the Reference Court for the structure of 72.21 sq.mtrs to remain as it is.

11. In accordance with the aforesaid discussion, the appellant to pay/deposit the amount of compensation after deducting the compensation already paid to the respondent no.1 by the Land Acquisition Officer.

12. The judgment of the Reference Court stands modified to the above extent.

13. In addition, the respondent no.1 is entitled to -

(i) an amount of component at the rate of 12% per annum as per Section 23(1-A) of the said Act on the amount of enhanced compensation for the period commencing from the date of publication of notification under Section 4(1) of the said Act till the date of award of the Land Acquisition Officer or till the date of taking possession, whichever is earlier.

(ii) to solatium at the rate of Rs. 30% per annum as per Section 23(2) of the said Act on the amount of enhanced compensation.

(iii) to interest on the amount of enhanced compensation, component and solatium at the rate of Rs. 9% per annum, as per Section 28 of the said Act for one year from the date of taking possession on amount due and at the rate of 18% per

annum for the subsequent period till realization of entire amount.

14. The appellant to deposit the amounts as above, if not already deposited in this Court, within a period of six months.

15. After deposit by the appellant, if not already deposited, the respondent no.1 is at liberty to withdraw the amounts as above along with accrued interest. Registry to act accordingly.

16. The Appeal stands allowed in the above terms. No costs.

17. All to act on an authenticated copy of this decision.

JUDGE