

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

**FIRST APPEAL NO.1092/2013**

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

... Appellant.

-Versus-

1. Bhanudas Amrutnarao Toney,  
Aged about 55 years,  
R/o.-Near Manjusha Mangal Karlyalaya, Yavatmal.
2. The State of Maharashtra,  
through the Collector, Yavatmal,  
Tq. & Dist. Yavatmal.
3. The Special Land Acquisition Officer, (On RA)  
Bembla Project, Yavatmal. .... Respondents.

Mr. M.A. Kadu, Advocate for appellant.  
Mr. A.R. Ingole, Advocate for respondent no.1.  
Mr. M.A. Kadu, AGP for respondents no.2 and 3.

**CORAM : AVINASH G GHAROTE, J.**  
**DATE : 25-11-2022.**

**ORAL JUDGMENT**

. Heard Mr. Kadu, learned Counsel for the appellant,  
Mr. A.R. Ingole, learned Counsel for respondent no.1 and Mrs.  
Mayuri Deshmukh, learned AGP for respondent nos.2 and 3.

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

| <b>Date of Notification under Section 4 of the Land Acquisition Act</b>    |                                     |                                   | <b>13/08/1998</b>                        |
|----------------------------------------------------------------------------|-------------------------------------|-----------------------------------|------------------------------------------|
| <b>Property details</b>                                                    | <b>Area of property</b>             | <b>LAO Award dated 21/03/2002</b> | <b>Ref. Court Award Dated 14-02-2010</b> |
| Plot No.-83<br>Village- Nagargaon<br>Tahsil -Babhulgaon<br>Dist- Yavatmal. | Plot Area -<br>281.50 Sq.Mtr.       | Rs.70/-per<br>sq.mtr.             | Rs.650/- per sq.mtr.                     |
|                                                                            | Constructed area-<br>172.50 Sq.Mtr. | Rs.1104/-<br>per sq.mtr.          | Rs.2200/-per sq.mtr.                     |

3. The appeal challenges the judgment of the Reference Court dated 14-02-2010, 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.2200/- per sq.mtr., in respect of Plot No. 83, as detailed above.

4. The claimant/respondent no.1 has relied upon the evidence of PW-2 Satish Pathak in support of the claim that as per his report he is entitled to Rs.1076/-per sq.mtr. for construction. However, the evidence of PW-2 indicates that he has not obtained any sale deed from village Nagargaon or the adjacent villages for the purpose of determining the valuation, but has relied upon the sale instances of villages Pahur and Dighi, which admittedly are larger villages with better facilities and well connected, as against which village Nagargaon is in the interior, as per his examination, PW-2 has also not verified the construction from the Gram Panchayat nor verified the rate or the location of the plot, considering which his

evidence regarding the valuation becomes doubtful. The evidence of PW-1/claimant, is self-serving and is of no assistance to come to any conclusion regarding the valuation of the plot or the construction. There is no other material on record in that regard.

5. In First Appeal No. 707/2011 (VIDC Vs. Nivrutti 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, it 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 the case of *Nivrutti Toney* (supra), considering which, the rate of Rs. 2200/- per sq.mtr. granted by the learned Reference Court cannot be interfered with, in view of the fact that that there is no cross objection.

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. Rest of the judgment is maintained.

JUDGE