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

FIRST APPEAL NO.98 OF 2021

APPELLANT (Ori. Claimant on R.A.) : Daud S/o Jumma Sayani
(Dead) through his legal heirs.

1. Sakinabai W/o Daud Sayani
Aged about 82 years, Occ. House Wife.
2. Firoz S/o Daud Sayani
Aged about 57 years, Occ. Agriculturist.
3. Farzana W/o Mohd. Husain Parekh
Aged about 38 years, Occ. House wife.

All R/o Taj Nagar, Digras, Tq. Digras
Distt. Yavatmal.

//VERSUS//

RESPONDENTS (Ori. Respondents On R.A.) :
1. The State of Maharashtra,
represented by the Collector Yavatmal.
2. The Special Land Acquisition Officer,
Benifited Zone, Yavatmal, Tq. & Distt.
Yavatmal.

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Shri Jafar A. Malnas, Advocate for the Appellants.
Shri N.R. Patil, AGP for the Respondents.

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CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 24th JANUARY, 2022.

ORAL JUDGMENT

01] This is an appeal under Section 54 of the Land Acquisition Act, 1894, assailing the judgment dated 20th March, 1992, passed by learned Civil Judge, Senior Division, Pusad in old L.A.C. No.72/1987 (new L.A.C.

No.246/1990). By the impugned judgment, the Reference Court has granted compensation at the rate of Rs.40,000/- per hectare in respect of dry crop land admeasuring 1.94 hectares and Rs.60,000/- per hectare in respect of irrigated land admeasuring 1.01. hectares from Survey Nos.11/1-A, 11/1-K and 11/1-D situated at village Ukhali Tq. Digras, Distt. Yavatmal.

02] The brief facts necessary to decide this appeal are as under:

The Appellants, were the owners of the property under Survey Nos.11/1-A, 11/1-K and 11/1-D total admeasuring 2.95 hectares situated at Ukhali, Tq. Digras Distt. Yavatmal. The Government had acquired the said land for the purpose of submergence of Arunawati River. The Notification under Section 4 was published on 4th July, 1981 and the Land Acquisition Officer passed an award on 23rd September, 1986. The Land Acquisition Officer classified the land as A group, which was stated to be of inferior quality with low fertility and awarded compensation at the rate of Rs.8,500/- per sq. mtr. Being dissatisfied with the compensation awarded by the Land Acquisition Officer, the Appellants filed a Reference under Section 18 of the Land Acquisition Act, 1894 (for short “the said Act”). Upon considering the evidence on record, the Reference Court enhanced the compensation as stated above. Aggrieved by the quantum of compensation awarded by the Reference Court,

the Appellants have filed this appeal.

03] Shri Jafar A. Malnas, learned counsel for the Appellants states that the case is covered by the judgment dated 12th January, 2021 passed by this Court in First Appeal No.653/1992. By the said judgment, this Court has enhanced the compensation at the rate of Rs.5/- per square foot in respect of the land situated in the same village, acquired by the same notification and for the same purpose. Relying upon the said judgment, he contends that the Appellants are also entitled for compensation at the rate of Rs.5/- per square foot, equivalent to Rs.5,00,000/- per hectare.

04] Shri N.R. Patil, learned AGP for the Respondents/Acquiring Body states that while deciding the First Appeal 653/1992, this Court had relied upon the decision in First Appeal No.13/1995, wherein this Court had enhanced the rate of the land at the rate of Rs.5/- per square foot. He states that the land, which was the subject-matter of First Appeal No.13/1995, was abutting Digras town and was acquired by Notification dated 09.02.1986 i.e. almost five years after the notification in the present case. He further states that the said land was acquired for rehabilitation of Project Affected Person. He contents that the nature of the said land was not similar to the subject land and in view of the above facts, the said judgment cannot be relied upon for determining the compensation in respect of the acquired land. Moreover, the compensation in respect of same land acquired by the same notification

was already determined by this Court in First Appeal Nos.89/1995 and 123/2020.

05] I have perused the records and considered the submissions advanced by learned counsel for the respective parties.

06] It is not in dispute that the acquired land is situated in the village Ukhali and it is partly dry crop land and partly irrigated land. The said land was acquired for Arunawati River Project *vide* Notification dated 4th July, 1981. It is true that by judgment dated 12th January, 2021 in First Appeal No.653/1992, this Court had allowed the appeal and enhanced the compensation from Rs.40,000/- per hectare to Rs.5,00,000/- per hectare. This was based upon the decision of this Court in First Appeal No.492/1994 with First Appeal No.13/1995, wherein learned Single Judge of this Court had enhanced the compensation to Rs.5/-per square foot. Paragraphs 3 and 4 of the said judgment in First Appeal No.653/1992 read thus:

> *"3. Learned counsel for the appellants states that by judgment and award dated 07-07-2010 in First Appeal No.492/1994 with First Appeal No.13/1995, this Court has dismissed the appeal filed by the State and has allowed the appeal filed by the appellant being First Appeal No.13/1995 and enhanced the compensation to Rs. 5/- per square foot along with all statutory benefits on the enhanced compensation. Learned Counsel for the appellants states that the land which was the subject matter of the said First Appeal No.13/1995, was also*

acquired under the same notification and for the same purpose.

4. Learned Additional Government Pleader does not dispute that the land which was the subject matter of the First Appeal No.13/1995 was also acquired by the same notification. It is also brought to my notice that the nature of land in both these proceedings is similar with similar advantages and disadvantages. Learned Additional government Pleader fairly concedes that the matter in hand is fully covered by the judgment in First Appeal No.13/1995."

07] A plain reading of the aforesaid paragraphs reveals that the judgment in First Appeal No.13/1995 was relied upon in determining the market value of the land mainly on the basis of the statement of the learned counsel for the Appellant and the learned AGP that the land, which was the subject-matter of the First Appeal No.13/1995, was acquired by the same notification and for the same purpose and further in view of the statement made by learned AGP that the said matter was fully covered by the judgment in First Appeal No.13/1995.

08] Shri N.R. Patil, learned AGP has brought to my notice that the land which was the subject-matter in First Appeal No.13/1995 was not acquired by the same notification, in fact, it was acquired almost five years after the present acquisition. Furthermore, the land in First Appeal No.13/1995 was situated in the close vicinity of Digras town. It is recorded

in paragraph 5 of the judgment that the said land is about 3 to 4 feet from the boundary of Digras town, whereas in the present case the land is situated in the village Ukhali. Learned counsel for the Appellants and learned AGP appearing in First Appeal No.653/1992 had also not brought to my notice that by judgment dated 03.04.2009 in First Appeal No.89/1995, this Court had determined compensation in respect of the land situated in Ukhali village, which was acquired by the same notification, at the rate of Rs.2,40,000/- per hectare. Furthermore, relying upon the said judgment in First Appeal No.89/1995, learned Single Judge of this Court (Coram: M.G. Giratkar, J.) by judgment dated 30th January, 2020 in First Appeal No.123/2020 had awarded compensation at the rate of Rs.2,40,000/- for irrigated land and Rs.1,20,000/- for dry crop land. This judgment was also not brought to my notice while deciding First Appeal No.653/1992. On the contrary, a false statement was made that the land which was the subject-matter in First Appeal No.13/1995 was acquired for the same purpose, was of the same nature and situated in the same locality. Learned AGP had also conceded that First Appeal No.653/1992 was covered by the previous judgment in First Appeal No.13/1995. It was under these circumstances, reliance was placed on the previous judgment and compensation was enhanced to Rs.5,00,000/- per hectare. It is well settled that if a wrong is committed in earlier case, it cannot be perpetuated. A wrong order or decision in favour of any particular party does not entitle

any other party to claim benefits on the basis of the wrong decision. Reference can be made to the judgment of the Hon'ble Supreme Court in the case of ***Basawaraj & Anr. Vs. The Special Land Acquisition Officer*** reported in ***(2013) 14 SCC 81.*** Hence, the petitioner cannot claim enhanced compensation on the basis of the said judgment, which was based on a wrong statement and wrong concession and was obtained by suppressing the relevant decisions in First Appeal Nos.89/1995 and 123/2020.

09] The evidence on record reveals that by judgment dated 30th January, 2020 in First Appeal No.123/2020, this Court had determined compensation in respect of the land from the same village, acquired by the same notification at the rate of Rs.2,40,000/- per hectare for irrigated land and Rs.1,20,000/- per hectare for dry crop land.

10] A perusal of the Award of the Land Acquisition Officer reveals that the Land Acquisition Officer had classified the acquisition of land in two groups i.e. Group A – inferior land with low fertility, which was valued at Rs.8,500/- per hectare and Group B – which was stated to be of superior quality with high fertility and the same was valued at Rs.9,500/- per hectare. The judgment in First Appeal Nos.89/1995 and 123/2020 is in respect of fertile land classified as Group B, whereas the subject land was classified as Group A – of inferior quality and low infertility. The Appellants have not challenged the classification of their land and have not proved that

their land was fertile and of superior quality. In the absence of such evidence, it has to be inferred that the subject land was of low fertility as compared to the land, which was the subject matter of the previous judgment in First Appeal Nos.89/1995 and 123/2020. Hence, the market rate of the acquired land cannot be at par with the said land. Upon deducting Rs.20,000/- towards disadvantageous factor, the market rate is fixed at the rate of Rs.2,20,000/- per hectare for irrigated land and Rs.1,00,000/- per hectare for dry crop land.

11] Under the circumstances and in view of the discussions (supra), the Appeal is partly allowed. It is held that the Appellants are entitled for compensation at the rate of Rs.2,20,000/- per hectare for irrigated land admeasuring 1.01 hectares, and Rs.1,00,000/- per hectare for dry crop land admeasuring 1.94 hectares with interest on the enhanced compensation from the date of admission of the appeal till final realization. The judgment and award of the Reference Court stands modified to that extent. No order as to costs.

12] The enhanced amount shall be deposited within a period of four months before the Reference Court.

(SMT. ANUJA PRABHUDESSAI, J.)

Signed By:VIJAY KUMAR
Personal Assistant
Vijay
Signing Date:01.02.2022 17:47