

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

FIRST APPEAL NO.90 OF 2018

APPELLANTS : Jagram Balu Jadhao (Deceased by L.Rs)

(Ori. Petitioners)

1. Smt. Methibai Jagram Jadhao,
Dead-hence deleted.
2. Baliram Jagram Jadhao,
Aged about 60 years.
3. Panchibai Motiram Rathod
Aged about 57 years.
4. Renukabei Dhannu Rathod,
Aged about 55 years.
5. Dattatraya Jagram Jadhao,
Aged about 53 years
6. Tukaram Bhika Jadhao,
Aged about 75 years.
7. Shriram Bhika Jadhao,
Aged about 73 years
8. Sonabai Vasram Rathod,
Aged about 85 years
9. Kaniram Bhika Jadhao
Aged about 65 years.
10. Shakuntalabai Suryabhan Rathod
Aged about 60 years.
11. Premilabai Shankar Rathod
Aged about 55 years

All R/o. Mokh, Tq. Digras
Distt. Yavatmal.

--VERSUS--

RESPONDENTS : 1. The State of Maharashtra,
through Collector, Yavatmal

2. The Collector, Yavatmal,
District Yavatmal.
3. The Special Land Acquisition Officer,
Benefited Zone, Arunawati Project,
Yavatmal, Distt. Yavatmal.
4. The Executive Engineer,
Arunawati Project, Digras, Tq. Digras,
District, Yavatmal.

Shri. A. R. Chavhan, Advocate for the Appellants
Shri. H. D. Dubey, AGP for the Respondent Nos.1 to 3
Shri. M. A. Kadu, Advocate for Respondent No.4.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 25th JANUARY, 2022.

ORAL JUDGMENT

This is an appeal under Section 54 of the Land Acquisition Act, 1894, assailing the judgment of the Reference Court, Darwaha dated 25.01.2012 in Land Acquisition Case No.1425 of 2014. By the impugned judgment, the Reference Court has partly allowed the Reference under Section 18 of the Land Acquisition Act, 1894 (for short, 'the said Act') and enhanced the compensation from Rs.10,500/- per hectare to Rs.50,000/- per hectare in respect of the land under Survey No.19/2 admeasuring 6H 7R of village Mokh, Tq. Digras, Distt. Yavatmal.

2. The brief facts leading to this appeal are as under :

The appellants were the owners of the land under Survey No.19/2 of village Mokh, Tq. Digras, District Yavatmal. The said land admeasuring 6H 7R was acquired by the Acquiring Body (Respondent No.4) for the purpose of submergence of Arunavati Project. The Notification under Section 4 was published on 23.01.1986 and the Award was declared on 03.08.1988. The Land Acquisition Officer (LAO) determined the compensation at Rs.10,500/- per hectare. Not being satisfied with the quantum of compensation determined by the LAO, the appellants filed a Reference under Section 18 of the said Act.

3. The Reference Court relied upon the judgment in LAC No.287 of 2004 and LAC 122 of 2004 (Exh.37) wherein the compensation in respect of an irrigated land in the same vicinity, acquired by the same notification was enhanced to Rs.1,00,000/- per hectare. The Reference Court held that there was no evidence to prove that the acquired land was irrigated land and hence upon

deducting 50% towards this dissimilarity, awarded compensation at the rate of Rs.50,000/- per hectare. Aggrieved by the said judgment, the appellants have filed this appeal under Section 54 of the said Act.

4. Shri. A. R. Chavhan, learned Advocate for the appellants has relied upon judgment dated 20.02.2019 in First Appeal No.426 of 1996 (Dattaram S/o Tatyaji Paul vs. The State of Maharashtra and Ors.), wherein this Court (Coram : Arun D. Upadhye, J.) had enhanced the compensation in respect of the land under Survey No.93/4 of village Mokh from Rs.90,000/- per hectare to Rs.6,50,000/- per hectare. The enhancement was based on the judgment of the Hon'ble Supreme Court in Civil Appeal Nos.5146-5147 of 2011. Learned Advocate for the appellants submits that the land under Survey No.93/4 is of similar nature and is in close vicinity of the subject land. He further submits that the said land under Survey No.93/4 was acquired for the same purpose by the same Notification. He therefore contends that in view of the said judgment dated 20.02.2019 in First Appeal No.426 of 1996 and the decision of the Hon'ble Supreme Court in Civil Appeal

Nos.5146-5147 of 2011, the appellants are also entitled for compensation at Rs.6,50,000/- per hectare.

5. Shri. M. A. Kadu, learned Advocate for respondent no.4 has brought to my notice that by judgment dated 17.09.2010 in First Appeal No.87 of 1996, this Court had determined the compensation in respect of Survey No.93/4 at Rs.70,000/- per hectare. He submits that the appellants in First Appeal No.426 of 1996 got the compensation enhanced by suppressing the fact that the compensation in respect of the very same land was determined at Rs.70,000/- per hectare vide judgment dated 17.09.2010 passed in First Appeal No.87 of 1996. He therefore contends that no reliance can be placed on the judgment dated 20.02.2019 in First Appeal No.426 of 1996 in determining the market rate of the subject land.

6. Shri Kadu, learned counsel for the Acquiring Body further submits that the land which was subject matter of the appeal in Civil Appeal Nos.5146-5147 of 2011, before the Hon'ble Supreme Court was acquired for establishment of new gaothan of Mokh Village. He submits that the said land under Survey

No.126/1-B was close to the road and had NA potential. He further submits that the nature of the subject land is not similar to the land, which was the subject matter of Civil Appeal No.5146 of 2011, and hence, the valuation of subject land cannot be based on the decision of the Hon'ble Supreme Court in the said Appeal No.5146 of 2011.

7. He submits that an irrigated land under Survey No.93/4 which was acquired by the same Notification, has been valued at Rs.70,000/- per hectare. The said valuation is based on the judgment dated 05.08.2009 in First Appeal No.428 of 1993. He therefore contends that the appellants are not entitled for enhanced compensation at Rs.6,50,000/-

8. I have perused the record and considered the submissions advanced by learned Advocates for the respective parties.

9. The claim for enhanced compensation is based mainly on judgment dated 20.02.2019 in First Appeal No.426 of 1996 and the decision of the Hon'ble Supreme Court in Civil Appeal No.5146-5147 of 2011. The judgment dated 20.02.2009

in First Appeal No.426 of 1996 relates to an agricultural land under Survey No.93/4 of village Mokh, which was also acquired by the same Notification. In a Reference under Section 18, being LAC 193/1992 filed by Dattaram Tatyaji Paul, the owner of the said land, the Reference Court by judgment dated 15.09.1995 enhanced the compensation to Rs.90,000/- per hectare. The said judgment was challenged by the State in First Appeal No.87 of 1996 and by the owner of the land-Dattaram in First Appeal No.426 of 1996. The records indicate that the First Appeal No.426 of 1996 was dismissed for non-prosecution on 04.02.2009. The First Appeal No.87 of 1996, filed by the State was decided by judgment dated 17.09.2010, wherein this Court partly allowed the appeal and reduced the compensation from Rs.90,000/- to Rs.70,000/- per hectare. It is not in dispute that subsequent to this judgment i.e. on 10.08.2018 this Court restored the First Appeal No.426 of 1996 and relying upon the judgment dated 17.10.2018 in First Appeal No.348 of 2003 and judgment of the Hon'ble Supreme Court in Civil Appeal No.5146-5147 of 2011, enhanced the compensation of the said land under Survey No.93/4 to Rs.6,50,000/- per hectare.

10. It is pertinent to note that the decision in First Appeal No.87 of 1996, wherein this Court had determined the compensation of the acquired land under Survey No.93/4 of village Mokh at the rate of Rs.70,000/- per sq. Hectare, had attained finality. The appellants in First Appeal No.426 of 1996 obtained the order of enhancement in respect of the very same land by suppressing the fact that by judgment dated 17.09.2010 in First Appeal No.87 of 1996, the compensation was already determined at the rate of Rs.70,000/- per hectare.

11. It is well settled that if some relief is granted inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Reliance is placed on the decision of the Apex Court in the case of *Basawaraj and anr. Vs. The Special Land Acquisition Officer* reported in *(2013) 14 SCC 81*. This being the case, the petitioner is not entitled to claim enhanced compensation based on the decision in First Appeal No.426 of 1996 which was obtained by suppressing the previous decision in First Appeal No.87 of 1996.

12. Learned counsel for the appellants contends that the appellants are entitled for enhanced compensation independently on the basis of the decision of the Hon'ble Supreme Court in Civil Appeal No.5146-5147 of 2011. The judgment of the Apex Court relates to the land under Survey No.126/1-B of village Mokh, which was acquired by separate notification for establishment of new gaathan of Mokh village. The Land Acquisition Officer had awarded compensation in respect of the said land at the rate of Rs.9,000/- per hectare. In a reference under Section 18 of the Land Acquisition Act, the Reference Court enhanced the compensation at the rate of Rs.6,50,000/- per hectare. The said judgment was challenged by the State in First Appeal No.379 of 1995 and by the owner in First Appeal No.120 of 1996. The Division Bench of this Court, by judgment dated 22.08.2007 allowed the appeal filed by the State and set aside the order of the Reference Court and accordingly, held that the claimant/owner was entitled for compensation as fixed by the Land Acquisition Officer. In an appeal, the Hon'ble Supreme Court held that the compensation in respect of the similar land in another village was determined at Rs.6,50,000/- per hectare. The Hon'ble Supreme Court therefore set aside the order of this Court

and restored the order of the Reference Court and accordingly, confirmed the rate of compensation at Rs.6,50,000/- per hectare.

13. The appellants have placed on record a copy of the Village Map of village Mokh, Taluka Digras. A perusal of the said Map shows that there are several properties in between Survey No. 19/2 and the property under Survey No.126. Furthermore, the land under Survey No.126 is abutting a road and it was acquired for establishment of new gaathan. There is no evidence on record to prove that the nature of the said land was similar to that of the acquired land. In the absence of any evidence to prove the similarity as regards locality, potentiality or the nature of the said land vis-a-vis the subject land, the decision of the Hon'ble Supreme Court cannot be relied upon to determine the market rate of the acquired land.

14. As noted above by judgment dated 17.09.2010 in First Appeal No.87 of 1996 an irrigated land under Survey No.93/4 of village Mokh, acquired by the same notification has been valued at Rs.70,000/- per hectare. A perusal of the Village Map shows that the said land is situated in close vicinity of the

acquired land. Considering these factors, the market rate of the acquired land can be determined on the basis of previous judgment in First Appeal No.87 of 1996. Accordingly, the appellants are entitled for compensation at the rate of Rs.70,000/- per hectare. The record reveals that the appellants had assailed the impugned judgment dated 25.01.2012 in an appeal filed in the year 2016 along with a delay condonation application. By order dated 20.11.2017, the delay was condoned and the appeal was admitted. Considering the fact that the appellants had preferred the appeal after considerable delay, in my considered view, it would not be just and proper to saddle the State with interest for the delayed period. Hence, the appellants shall be entitled for interest from the date of admission of the appeal till final realization.

15. Under the circumstance, the appeal is partly allowed. The compensation in respect of the land admeasuring 6H 7R from Survey No.19/2 of village Mokh is enhanced from Rs.50,000/- per hectare to Rs.70,000/- per hectare, with interest from the date of admission of appeal till final realization. The respondent/Acquiring Body to deposit the enhanced compensation with interest as stated

above within a period of four months.

JUDGE

TAMBE

ASHISH
ASHOKRAO
TAMBE

Digitally signed
by ASHISH
ASHOKRAO
TAMBE
Date: 2022.02.01
17:24:24 +0530