

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

FIRST APPEAL NO.450/2010

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

... Appellant.

-Versus-

On RA

1. Chudaman s/o Shrawan Madare,
Aged 45 years, Occ.-Cultivator,
2. ~~Smt. Kanupatra wd/o Shrawan Madare,~~ (Deleted)
~~Aged 60 years, Occ. Nil,~~
~~Both R/o. Pahur, Tq. Babhulgaon, Distt. Yavatmal.~~
3. The State of Maharashtra,
through the Collector, Yavatmal,
4. The Special Land Acquisition Officer,
Bembla Project Division, Yavatmal. ... Respondents.

Mr. A.B. Patil, Advocate for appellant.

Mr. D.A. Sonwane, Advocate for respondent no.1.

Mrs. Mayuri Deshmukh, AGP for respondents nos. 3 and 4.

CORAM : AVINASH G GHAROTE, J.

DATE : 23-11-2022

ORAL JUDGMENT

. Heard Mr. Patil, learned Counsel for the appellant,
 Mr. Sonwane, learned Counsel for respondent no.1 and

Mrs. Mayuri Deshmukh, learned AGP for respondent nos.3 and 4.
The respondent no.2 already stands deleted.

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

Plot No.-70			L.A.O.	Reference Court
Village- Malapur				dated 17-03-2008
Tahsil -Babhulgaon	Plot Area	-45.30	Rs.70/-per	Rs.250/- per
Dist- Yavatmal.	Sq.Mtr.		sq.mtr.	sq.mtr.
	Constructed	area-	Rs.962/- per	Rs.2500/-per
	38.35 Sq.Mtr.		sq.mtr.	sq.mtr.

3. Though the respondent no.2 has passed away and is deleted, the respondent no.1 being her only legal heir as per the noting in the Farad-Sheet dated 12-08-2014 which is on the basis of a Pursis filed by the Counsel for the applicant and therefore the matter can be decided on merits.

4. The appeal challenges the judgment of the Reference Court dated 17-03-2008, whereby the learned Reference Court has enhanced the compensation for the open plot to Rs. 250/-per sq.mtr. and has granted compensation for the constructed area at the rate of Rs.2500/- per sq.mtr., in respect of Plot No. 70, as detailed above.

5. The evidence of Chandrashekhar Wankhede (PW-2) who has been examined by the claimant as an expert for the purpose of valuation of the land and construction (pg. 45) does not inspire

confidence, as from his evidence, it is apparent that he has not made any enquiry regarding sale transactions of the village Malapur nor has obtained any certificate from the Town Planning Authority, regarding the valuation either of the open plot or construction. He has only relied upon the transactions, in respect of village Dighi and Pahur, which are larger villages with more facilities and therefore cannot be taken into consideration for the purpose of valuing the land and construction at village Malapur. He has also not seen the Gram Panchayat permission for construction as is reflected from his cross examination, considering which his evidence has rightly not been relied upon by the learned reference Court. That apart the only other evidence is of the respondent no.1-claimant which is also without any substantiating material apart from being of self severing nature.

6. In First Appeal No. 580/2010 (VIDC Vs. Waman Mahajan and others) decided on 21-11-2022, the rate of open land for the village Thalegaon, 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. It is an admitted position, by the learned Counsel for the appellant, that the rate granted for the open plot for the village Pahur, which is adjacent, to the village of Malapur is Rs.750/- per sq.mtr. The village of Malapur, as per the map placed on record, is to the South-East of village Pahur and both the villages have a common boundary. The village of Dighi is to the North-East of village

Malapur and to the East of village Pahur and also have a common boundary in part. In the impugned reference judgment, the Reference Court has considered the Sale Deeds at Exhibits-30 and 31 to arrive at a rate of Rs. 250/- per sq.mtr. for the open plot. The learned Reference Court has also considered that the village of Malapur, is situated at 2 Kms. inside the main road whereas, village Pahur is situated on the main road itself. It is also considered that the population of village Pahur is more than that of village Malapur for the purpose of arriving at the aforesaid rate. In my considered opinion, the rate for the open plot of village Malapur which has been fixed at Rs.250/- per sq.mtr. by the learned Reference Court, is appeared on the lower side considering that it has boundaries adjacent to village Pahur and village Dighi. However, since there is no cross objection on behalf of respondent no.1, I do not see any reason or cause to go into these aspects except to hold, that the rate of open plot granted by the learned Reference Court, cannot be interfered with.

7. 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 Deheni, which has common boundary with Malapur on the South-West side has been fixed at Rs.2700/- per sq.mtr. In First Appeal No.740/2010 (VIDC Vs Pramila Pandurangji Jadhav) decided on 21-11-2022, the rate of construction for village Thalegaon which is also within the said project has been fixed at Rs. 2379/- per sq.mtr. and in First Appeal

No. 525/2016 (VIDC thr Executive Engineer Vs. Bhujangrao Dhopate and others), the rate of Rs.2500/- per sq.mtr. for the constructed area granted by the Reference Court, appears to be reasonable and does not call for any interference.

8. I, therefore, do not see any reason to interfere in the judgment dated 17-03-2008 of the learned Reference Court. The appeal is accordingly dismissed. No costs.

JUDGE