

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

FIRST APPEAL NO.1092/2015

APPELLANT : Smt. Pramilabai wd/o Madhukar Kadukar,
(Original Aged 60 years, Occ. : Household
Petitioner) R/o Post Ghuikhed, Tq. Chandur Railway,
On R.A. Dist. Amravati. The P.O.A. Holder
Chandrashekhar Madhukar Kadukar.

...VERSUS...

RESPONDENTS : 1) State of Maharashtra,
(Ori. Respondents through the Collector, Amravati.
On R.A.

2) Special Land Acquisition Officer,
Upper Wardha Project No.4 Amravati.

3) Executive Engineer,
Bembla Project Division,
Yavatmal, Dist. Yavatmal.

Shri A.P. Kalmegh, Advocate for appellant
Mrs. M.H. Deshmukh, AGP for respondent nos.1 and 2
Shri M.A. Kadu, Advocate for respondent no.3

CORAM : AVINASH G. GHAROTE, J.

DATE : 29/11/2022

ORAL JUDGMENT

1. Heard Shri A.P. Kalmegh, learned counsel for the
appellant, Mrs. M.H. Deshmukh, learned Assistant Government

Pleader for the respondent nos.1 and 2 and Shri M.A. Kadu, learned counsel for the respondent no.3.

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

Bembla River Project, District Yavatmal			
Date of Notification under Section 4 of the Land Acquisition Act.			26/10/2005
Property details	Area of property	LAO Award Dated 06/09/2008	Ref. Court Award Dated 29/04/2015
Plot No: 642/1 Village: Ghuikhed Tahsil Chandur Railway District : Amravati	Plot Area : 65.50 Sq.mtr.	Rs.140/- per Sq.mt	Rs.500 per Sq.mtr.
	Construction: 59.10 Sq.mtr.	Rs.4569/- per Sq. mtr.	Rs.6168.50 per Sq. mtr.

3. The appeal challenges the judgment of the Reference Court dated 29/04/2015, whereby the learned Reference Court has enhanced the compensation for the open plot to Rs.500/-per sq.mtr. and has granted compensation for the constructed area at the rate of Rs.6168.50 per sq.mtr., in respect of plot No. 624/1, as detailed above.

4. In *First Appeal No.1378/2018 (Sharad Gangadhar Gulhane Vs. The State of Maharashtra through the Collector, Camp, Amravati and others)* and *First Appeal No.389/2018 (Lilabai Omkarrao Giri and others Vs. The State of Maharashtra through the Collector, Camp, Amravati and others)* decided on 06/09/2021, this Court, while considering the claim for enhancement of compensation in respect of plots at village Ghuikhed had decided the compensation to Rs.575/- per sq.mtr. The fixing of the said rate of open plot, was based upon the fact that the said village is located on the border of the State Highway i.e. Aurangabad - Nagpur Highway, about half kilometer from the highway from there is an approach road to the village and considering the sale deed dated 30/03/1995 of the same village, the compensation was enhanced considering the escalation/increase per year for a period of 10½ years and the aforesaid rate of Rs.575/- per sq.mtr. for open plot has been fixed.

5. In the instant matter, no material has been brought to my notice existing on record, for me to take a different view than what has been already taken by this court in *First Appeal No. 1378/2018 (Sharad Gangadhar Gulhane Vs. The State of*

Maharashtra through the Collector, Camp, Amravati and others).

6. The evidence of Shri Chandrashekhar Wankhede at Exh.42 the valuer, who claims the market rate to be Rs.2000/- per sq.mtr. for open plot, a perusal whereof would demonstrate that he has not enquired about any sale instance, from the same village, or from the neighboring village, in order to arrive at the rate as being quoted in his report, except for the sale-deed of Shri Sawwalakhe, which is admittedly, as per Shri Kalmegh, learned counsel for the claimant, not placed on record, which is also depicted from the fact that in the evidence of PW 2 - Chandrashekhar Wankhede the same has not been exhibited at all. That apart, though the valuation report at Exh.43 makes a mention of the sale-deed of Shri Sawwalakhe from village Ghuikhed, in his cross-examination (pg.84 of the paper-book) he claims ignorance regarding any details of the transaction of Shri Sawwalakhe. He further, admits in his cross-examination that for the purpose of determining the value of the plot, the value of the neighbouring properties, has to be ascertained which has not been done by him. Neither he has enquired from the Gram Pachayat, when the construction was made, apart from which, there is nothing

in his report or on record to indicate the nature of the construction, considering which, though the rate of construction, granted by the Land Acquisition Officer, as well as the Reference Court is much on the higher side, however, since there is no appeal by the acquiring body in respect of the same, it cannot be interfered with.

7. That being the position, in view of the rate of open plot in village Ghuikhed, having already been determined by this Court at Rs.575/- per sq.mtr. the appellant, would only be entitled to that benefit and nothing else. Though the rate for construction awarded by the learned Reference Court is considerably higher, however, as there is no appeal or cross-objection by the acquiring body, the same cannot be gone into in this appeal which is by the claimant.

8. In the result, the first appeal is partly allowed and the impugned judgment under reference is modified by enhancing the rate of open land as granted by the learned Reference Court at Rs.500/- per sq.mtr. to Rs.575/- per sq.mtr, as held in ***Sharad Gangadhar Gulhane*** (supra). Rest of the judgment of the learned Reference Court is maintained.

9. The difference in the amount of compensation, and all ancillary benefits arising therefrom as per the provisions of the Land Acquisition Act, as applicable thereto be calculated and deposited in the Reference Court within a period of eight weeks from today. The difference in court fee be deposited in this Court. All pending civil applications, if any, shall stand disposed of. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar