

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

FIRST APPEAL NO.687/2012

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

... Appellant.

-Versus-

1. Anil Wasudeorao Tone,
Aged Major, Occ. Agriculturist,
2. Dilip Wasudeorao Tone,
Aged Major Occ.-Agriculturist,
Both R/o.-Nagargaon, Tq. Babhlgaon, Distt- Yavatmal.
3. The State of Maharashtra,
through the Collector, Yavatmal,
4. The Special Land Acquisition Officer, (On RA)
Bembla Project, Yavatmal. Respondents.

Mr. A.B. Patil, Advocate for appellant.
Mr. K.S. Narwade, Advocate for respondent nos.1 and 2.
Mrs. Mayuri Deshmukh, AGP for respondents no.3 and 4.

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

ORAL JUDGMENT

. Heard Mr. Patil, learned Counsel for the appellant,
Mr. Narwade, learned Counsel for respondent nos.1 and 2 and

Mrs. Mayuri Deshmukh, learned AGP for respondent nos.3 and 4.

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

Date of Notification under Section 4 of the Land Acquisition Act			13/08/1998
Property details	Area of property	LAO Award dated 21/03/2002	Ref. Court Award Dated 15/10/2009
Plot No.-93 Village- Nagargaon Tahsil -Babhulgaon Dist- Yavatmal.	Plot Area -264 Sq.Mtr.	Rs.70/-per sq.mtr.	Rs.650/- per sq.mtr.
	Constructed area- 150 Sq.Mtr.	Rs.2222/- per sq.mtr.	Rs.3000/-per sq.mtr.

3. The appeal challenges the judgment of the Reference Court dated 15-10-2009, 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.3000/- per sq.mtr., in respect of Plot No. 93, as detailed above.

4. Insofar as the rate for the plot is concerned, the evidence of Chandrashekhar Wankhede whose report has been relied upon, does not inspire confidence as admittedly he has made no enquiry to verify any sale instances of village Nagargaon or the adjacent villages. He admits that village Nagargaon is a smaller village than Dighi and Pahur, which have larger population, facility and connectivity. The rate for village Dighi has already been fixed on Rs. 500/- per sq.mtr. for plot and no material has been pointed out as to why, Nagargaon which is a smaller village should be granted a larger rate.

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 *Nivrutti Toney* (supra). However, according to Mr. Patil, learned Counsel for the appellant, the policy of the the appellant permits acceptance of an increase of 30% over and above the rate granted by the L.A.O., which comes to Rs.2890/- per sq.mtr. and therefore he submits, that as a concession, based upon the aforesaid policy the respondent no.1 can be granted rate of Rs.2890/- per sq.mtr in the present matter, considering the rate which has been awarded by the LAO.

7. Though Mr. Narwade, learned Counsel for respondent nos. 1 and 2 vehemently objects and submits, that the rate of Rs. 3000/- per sq.mtr. is correct, however, perusal of the material on record, does not indicate any factors to arrive at a conclusion of the rate of Rs. 3000/- per sq.mtr in view of which, the same needs to be modified to Rs. 2300/- per sq.mtr., however, considering the concession above granted by Mr. Patil, learned Counsel for the

appellant, in view of the policy of the appellant, the rate for construction is granted at Rs. 2890/- per sq.mtr., in view of the concession alone.

8. 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. and reducing the rate for construction from Rs. 3000/- per sq.mtr to Rs. 2890/- per sq.mtr. Rest of the judgment is maintained.

JUDGE

Deshmukh