

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

FIRST APPEAL NO. 580 OF 2010

Vidarbha Irrigation Development : **APPELLANT**
 Corporation, Through its Executive
 Engineer, Bembla Project Division No.5,
 Taq. & Dist. Yavatmal

VERSUS

- 1 Wamanrao Nathuji Mahajan (Dead) :
through his L.R.s
- 1A Smt. Sarswatabai wd/o Wamanrao Mahajan
aged about 70 years, R/o Adarshnagar,
Yavatmal
- 2 Ramdas Wamanrao Mahajan
Aged 42 years,
- 3 Anil Wamanrao Mahajan
Aged about 32 years,
No.1 & 2 R/o Thalegaon, Tq. Babhulgaon,
Distt. Yavatmal
- 4 The State of Maharashtra,
Through the Collector, Yavatmal
- 5 The Special Land Acquisition Officer,
Bembla Project, Yavatmal

RESPONDENTS

Mr. A.B. Patil, Advocate for appellant
 Mr. A.B. Nakshane, Advocate for Respondent Nos.1-A to 3
 Mr. M.A. Kadu, A.G.P. for Respondent Nos.4 and 5

CORAM : AVINASH G. GHAROTE, J.

DATE : 21st NOVEMBER 2022

ORAL JUDGMENT

Heard Mr. Patil, learned counsel for the appellants, Mr.
 Naxane, learned counsel for respondent No. 1-A to 3 and Mr. Kadu,

learned Assistant Government Pleader for respondent Nos. 4 and 5.

2. The present appeal questions the Award dated 17/3/2009 passed by the learned Civil Judge (Sr. Dn.), Yavatmal in a reference under Section 18 of the Land Acquisition Act, 1894, whereby the compensation, which was originally awarded by the Land Acquisition Officer for the open plot bearing plot No.71 having area 263.80 sq.mtrs. situated at Village Thalegaon, Tah. Babulgaon District Yavatmal, which came to be acquired on account of its submergence in the Bembla project has been enhanced, to the tune of Rs.650/- per sq.mtr., on the ground, that the rate granted, is without any basis whatsoever.

3. Mr. Patil, learned counsel for the appellants submits that before the Reference Court, what was relied upon was the Report of the PW 2 Chandrashekhar, the so called expert for determining the market value of the open plot and though the learned Reference Court, has held that the assessment of PW 2 was not based upon actual figures, but, on imagination, still without there being any other material on record, except three judgments of the Reference Court, two of which were in respect of village Dighi and one of which was in respect of village Pahur, the rate of Rs.650/- per sq.mtr. has been granted. It is contended, that village Dighi, is beyond the river

Bembla, from village Thalegaon and that apart, village Dighi is a larger village than village Thalegaon. So also, the village Pahur, is beyond village Dighi to the east side and is the largest village in the locality with all facilities and therefore, the rate of village Pahur, cannot be taken into consideration, for the purpose of determining the market rate of the open plot at village Thalegaon. He further submits, that in various judgments, the rate of open plot, for village Dighi, has been determined by this Court as Rs.500/- per sq.mtr., considering which the rate for village Thalegaon, would obviously be less than that for village Dighi. It is thus submitted, that the rate for village Pahur or village Dighi cannot be considered to be the benchmark, for determining the rate of an open plot for village Thalegaon and therefore, the impugned Award under reference, is required to be quashed and set aside and the rate granted be less than Rs.500/- per sq.mtr. He places reliance upon the judgments of this Court in a batch of **First Appeals beginning with FA No. 487/2006 (VIDC Vs. Nitin Pralhadrao Pardakhe and others)** decided on 12 and 13th October 2010 by this Court, which are in respect of open plots and constructed areas in village Dighi, which fixes the rate at Rs.500/- per sq.mtr. and so also the judgment of this Court in **First Appeal No. 836/2010, (VIDC Vs. Manoj Dnyaneshwar Pardakhe and others)** decided on 23/7/2021 as well as the judgment of this Court in **First Appeal No.**

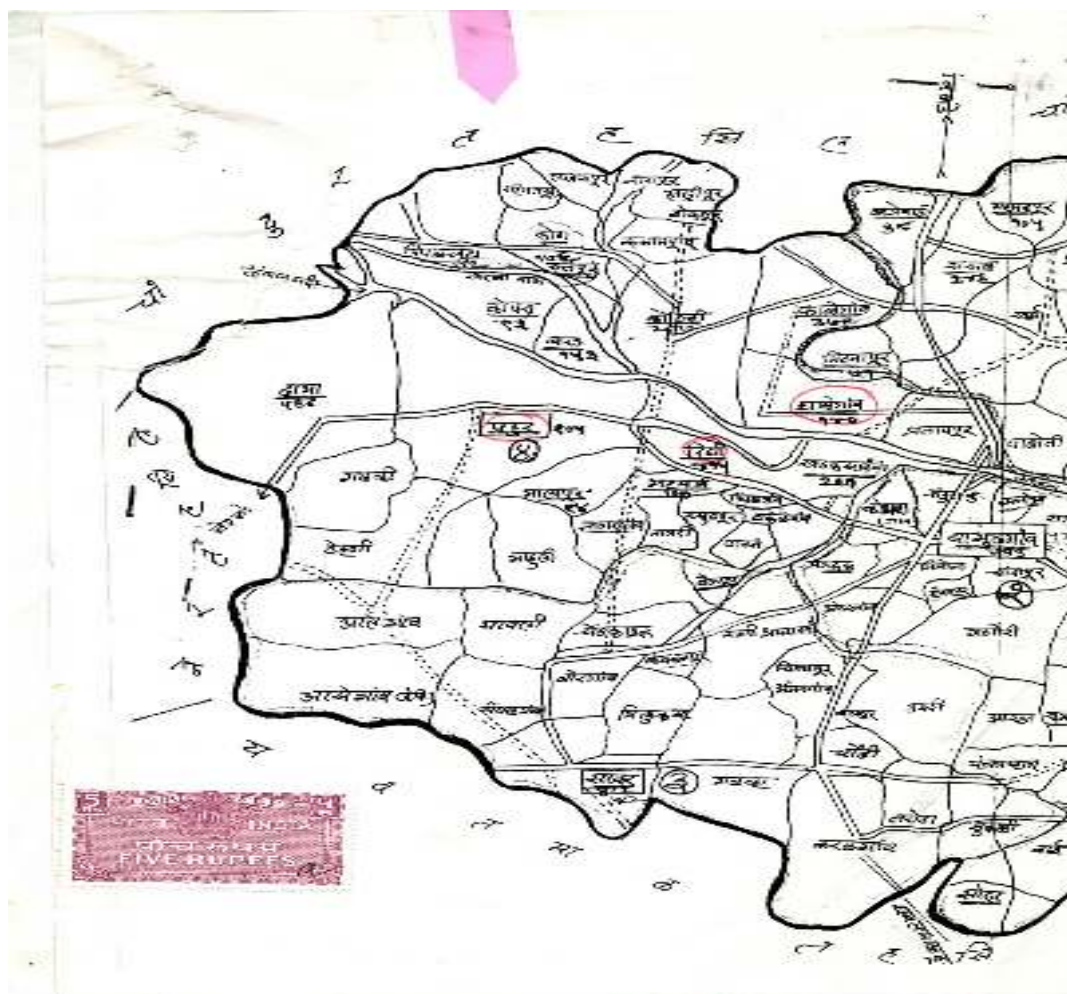
1018/2013, decided on 16/1/2019, both of village Dighi, which also fix the rate of open plot as Rs.500/- per sq.mtr.

4. Mr. Kadu, learned Assistant Government Pleader for respondent Nos. 2 and 3 supports the contention of Mr. Patil, learned counsel for the appellants.

5. Mr. Naxane, learned counsel for the respondent No.1, opposes the submissions and supports the impugned Award, contending, that the situation of village Thalegaon, is much more better placed than that of village Dighi, due to which the market rate at village Thalegaon, of an open plot is actually much more than Rs.500/- per sq.mtr. He invites my attention, to Exh.32, the judgment in LAC No.408/2003 dated 24/08/2006, which was in respect of House No. 243, admeasuring 107 sq.mtr. out of which open area was 59 sq.mtr. situated at village Dighi, in which the compensation has been granted for the open plot @ Rs.70/- per sq.ft. He also relies upon the judgment in LAC No. 403/2003, decided on 23/06/2006 in which the rate for open plot at village Dighi, has been granted at Rs.70/- per sq.ft. Reliance is also placed upon judgment in LAC No.5/2005, decided on 02/11/2006, for village Pahur in which the rate of open plot is granted at Rs.85/- per sq.ft. He also relies upon judgment of this Court in F.A. No.102/2008 (Narendra s/o Marotrao

Chaudhari Vs. The State and others) decided on 16/06/2017, whereby rate of Rs.753/- for open plot has been granted for village Dighi and so also, the judgment in First Appeal No.131/2016, decided on 21/2/2019, which grants the rate of Rs.750/- per sq.mtr. for open land at village Pahur.

6. The record and proceedings has been received. The comparative locations of the villages of Thalegaon, Dighi and Pahur are reflected, from the map at Exh.30 on record, the relevant portion of which is reflected as under :-



7. A perusal of the aforesaid map would indicate, that the Bembla river flows in between the villages Thalegaon and Dighi. It further discloses that the village Pahur, is beyond the village Dighi, to the east side thereof. It also discloses, that village Pahur, is a bigger village, than Dighi or Thalegaon. The fact that village Dighi, as well as village Pahur, are larger villages than village Thalegaon, is evident from the evidence of PW 2 Chandrashekhar, who has been examined as the expert witness having prepared the valuation report in respect of the open plot. The evidence of Chandrashekhar Panjabrao Wankhede of PW2 at Exh.35, in his cross-examination indicates admission of the fact that village Pahur is bigger village having all facilities. He further admits that though Dighi and Pahur are situated on Babulgaon road, Thalegaon is not on that road and there is a different road from Babulgaon to approach Thalegaon. He further admits, that villages Midnapur and Pratappur are adjacent villages to Thalegaon. He further admits, that he has not considered any sale deed of any plot situated in village Thalegaon, for the purpose of determining the market value. Insofar as the sale deeds upon which he has placed reliance for his Report, he admits, that insofar as sale deed for the village Pahur is concerned, there is a clinic and medical shop constructed on the said land and insofar as sale deed in respect of village Dighi is concerned, it was purchased by the adjacent owner,

on account of which there is a possibility of he paying the higher price. Though he admits, that the requirement of the valuation of the plots from village Thalegaon based upon the sale deeds for the determination thereof, is necessary, he has not obtained or seen sale deeds in respect of the said village. It is therefore, apparent, that the learned Reference Court, was quite correct in having discarded the evidence of PW 2 Chandreshakhar and so also his Report at Exh.36 in which he has stated the rate of open plot for the village Thalegaon to be around 807 per sq.mtr. (75 per sq.ft.).

8. Having so done, the only material left with the learned Reference Court, were the judgments, in LAC No.408/2003 and LAC No.403/2003, both of village Dighi and the judgment in LAC No.5/2005 of village Pahur, which appear to have been relied upon by him for the purpose of enhancing the compensation from Rs.70/- per sq.mtr., as awarded by the Land Acquisition Officer, to Rs.650/- per sq.mtr.

9. As is already been pointed out, the village Pahur is at a considerable distance, from village Thalegaon, and that too beyond the Bembla river, on a different road from village Babulgaon, and is also, a village which is bigger in size with all facilities available, considering which, the reliance upon the judgment in LAC No.5/2005

for village Pahur, is clearly misplaced.

10. The next two judgments are for the open plots at village Dighi which has granted rate of Rs.70/- per sq.ft. What is however, material to reiterate, is the position, that even Dighi, is a bigger village than Thalegaon, and is also beyond the river Bembla from Thalegaon. That apart, this Court, in the batch of petitions, bearing First Appeal No.487/2006 (VIDC Vs. Nitin Pardakhe) decided on 12th and 13th October 2010, First Appeal No.1018 of 2013 (VIDC Vs. Ramesh Govinda Meshram), decided on 16/1/2019 and First Appeal No.836/2010 (VIDC Vs. Manoj Dhyaneshwar Parlakhe) decided on 23/07/2021, has already fixed the rate of open plot for village Dighi, at Rs.500/- per sq.mtr. Considering, that village Dighi and village Thalegaon are situated on the opposite banks of river Bembla, opposite to each other, the rate of Rs.500/- fixed for village Dighi can be considered to be a reasonable rate for the open plot at the village Thalegaon too.

11. In **First Appeal No. 02/2008 (Narendra Marotrao Chaudhary Vs. State)**, decided on 16/6/2017, the judgment which is also in respect of open plot at village Dighi, which is the admitted position as per the statement of learned counsel for respective parties, though the compensation has been granted @Rs.753/-, it appears that

the judgment of this Court in **VIDC Vs. Nitin Pralhadrao Pardakhe** (supra) was not brought to the notice of the learned Court. That apart, it is merely based upon, judgments, in LAC Nos.403/2003 & 98/2003 and no other material whatsoever. I therefore, do not consider it appropriate to rely upon the same considering the factuality of the present matter as discussed above regarding the comparative locations of village Thalegaon in comparison to villages Dighi and Pahur and the fact that they are bigger and better equipped villages, than Thalegaon.

12. Thus, taking into consideration, that there is no other evidence or material placed on record by Mr. Naxane, learned counsel for respondent No.1 to indicate, anything about the rates of open land / plot, prevailing in village Thalegaon at the relevant time, and no sale deed or any other document indicating, the rates have also been placed on record, and in view of the comparative position of village Thalegaon with that of village Dighi, in my considered opinion the rate granted for village Dighi could be taken as the basis for compensation of open plots in village Thalegaon also.

13. In view of this position, the Award dated 17/3/2009, passed by the learned Civil Judge (Sr. Dn.) Yavatmal in LAC No. 304/2006 (page 6) is hereby modified and since there is no dispute

about the area of the open plot which is 263.80 sq.mtr., it is directed that the respondents No. 1A to 3 shall be entitled to enhanced compensation @Rs.500/- per sq.mtr. Rest of the Award remains the same. The appeal is therefore, partly allowed in the above terms. No costs.

JUDGE

MP Deshpande