

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

FIRST APPEAL NO.1012 OF 2008

Vidarbha Irrigation Development
 Corporation, Through its Executive
 Engineer, Minor Irrigation Division,
 Pusad, Yavatmal.

.... Appellant
 On R.A.

// **VERSUS** //

Smt. Sushilabai W/o Gulabrao Mankar
 Since dead through Legal Heirs,

1. Vasant Gulabrao Mankar,
 Aged 59 years, Occp. Agriculturist,
2. Pramod Gulabrao Mankar,
 Aged 52 years, Occ. Agriculturist,
3. Anil Gulabrao Mankar,
 Aged 49 years, Occ. Service,
4. Dilip Gulabrao Mankar,
 Aged 46 years, Occ. Advocate,
 All Resident of Awadhootwadi, Yavatmal.
5. The State of Maharashtra,
 Through the Collector, Yavatmal.
6. The Special Land Acquisition Officer,
 Minor Irrigation works No.2, Yavatmal.

.... Respondents
 On R.A.

Shri A.B. Patil, Advocate for Appellant/V.I.D.C.
 Shri K.S. Narwade, Advocate for Respondent No.3
 Shri N.R. Patil, AGP for the Respondent Nos.5 and 6/State.

WITH
CROSS OBJECTION No.7 of 2011

Sushilabai Gulabrao Mankar
 Since **(dead)** through Legal Heirs,

1. Vasant Gulabrao Mankar,
 Aged 65 years, Occ. Agriculturist
2. Pramod Gulabrao Mankar,
 Aged about 58 years, Occ. Agriculturist
3. Anil Gulabrao Mankar, **(Dead)**
 Aged 56 years, Occu. Agriculturist

- 3(a) Smt. Chhaya Wd/o Anil Mankar,
Aged about 57 years, Occ. Housewife,
----- wife.
- 3(b) Rahul S/o Anil Mankar,
Aged about 31 years, Occ. Service
..... Son.
- 3(c) Nikhil S/o Anil Mankar,
Aged about 28 years, Occ. Professional,
..... Son,
- 3(d) Anurag S/o Anil Mankar,
Aged about 24 years, Occ. Student,
..... Son.
All Resident of 193, Darda Nagar,
Yavatmal, Tah. and Distt. Yavatmal.
4. Dilip Gulabrao Mankar,
Aged 51 years, Occ. Advocate,
All R/o Awadhootwadi, Yavatmal.Cross Objectors.

//VERSUS//

1. The State of Maharashtra,
Through Collector, Yavatmal.
2. Special Land Acquisition Officer,
Minor Irrigation Works No.2, Yavatmal.
3. Vidarbha Irrigation Development
Corporation, Through its Executive
Engineer, Minor Irrigation Division,
Pusad, Tq. Pusad, Dist. Yavatmal.

Shri K.S. Narwade, Advocate for Cross Objector Nos.3(a) to 3(d)
Shri N.R. Patil, AGP for the Respondent Nos.1 and 2/State.
Shri A.B. Patil, Advocate for V.I.D.C.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 6th JANUARY, 2022.

ORAL JUDGMENT :

The Appellant and the Cross Objectors/Original Claimants have challenged the judgment dated 26.04.2007 passed by the Civil judge Senior

Division, Pandharkawada (Kelapur) in Land Acquisition Case No.369 of 2002.

2. The brief facts necessary to decide the appeal and the Cross Objection, are as under:

The Cross Objectors, (hereinafter referred to as the Claimants) are the owners of the property under survey No.24 of village Wai, Tq. Kelapur, Dist. Yavatmal. A portion, admeasuring 2.04 hectares of the said land was acquired for the Irrigation Project i.e. construction of 'Chandika Dharan'. Notification under Section 4 of the Land Acquisition Act (for short 'the Act') was published on 12.11.1987 and the award was declared on 06.12.2090. The Land Acquisition Officer awarded compensation at the rate of Rs.8,000/- per hectare and Rs. 8,100/- in respect of the trees situated in the acquired land. Being dissatisfied with the quantum of compensations, the Claimants filed a reference under Section 18 of the Act.

3. By the impugned judgment, the Reference Court has enhanced the compensation to Rs.86,000/- per hectare in respect of the land and Rs.1,25,262/- in respect of the trees. Being aggrieved by the impugned judgment and the Award, the Acquiring Body has filed the appeal under Section 54 of the Act. Whereas, the Claimants have filed the Cross-Objection, under Order 41 Rule 22 of the Code of Civil Procedure, challenging the quantum of compensation awarded by the Reference Court in respect of the acquired land.

4. Heard Shri Patil, learned counsel for the Appellant/Acquiring Body and Shri Narwade, learned counsel for the Claimants. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. It is not in dispute that the acquired land under Survey No.24 is a seasonally irrigated land. A portion of the said land was earlier acquired for the same purpose. Notification under Section 4 of the Act in respect of the previous acquired land, was issued on 15.10.1987 and the Land Acquisition Officer had awarded compensation at the rate of Rs.8,000/- per hectare. The Claimants had filed Reference under Section 18 of the Act, being Land Acquisition Case No.97 of 1990, in which the Reference Court had enhanced the compensation to Rs.50,000/- in respect of dry crop land and Rs.75,000/- for irrigated land. By judgment dated 13.03.2018 in First Appeal No.918 of 1991 with the Cross Objection No.94 of 2017, this Court had enhanced the market rate of the dry crop land to Rs.60,500/- per hectare and Rs. 90,750/- per hectare in respect of the irrigated land.

6. By judgment dated 13.03.2018, this Court has valued irrigated land from the same Survey number at Rs.90,750/- per hectare. This judgment pertains to the previously acquired land from the same Survey number. This being the case, the said judgment can be safely relied upon to determine the market rate of the subject land which is also an irrigated land. Hence, on the basis of the judgment dated 13.03.2018 in First Appeal No.918 of 1991 and for the reasons recorded therein, the Claimants are

entitled for compensation in respect of the acquired land at the rate of Rs.90,750/- per hectare.

7. The Acquiring Body had also challenged the compensation awarded by the Reference Court in respect of the trees in the acquired land. A perusal of the impugned judgment indicates that there were 10 teak wood trees and 149 Adjat trees in the acquired land. The Special Land Acquisition Officer had already valued the trees at Rs.1,25,262/- but had awarded compensation at Rs.8,100/-. As rightly held by the learned Judge, there was no reason for the Land Acquisition Officer to award compensation of Rs.8,100/- when he had valued the trees at Rs.1,25,262/-. Hence, there is no reason to interfere with the valuation in respect of the trees acquired from the acquired land.

8. Under the circumstances, the appeal filed by the Acquiring Body is dismissed. The Cross-Objection is partly allowed. The market rate of the acquired land, admeasuring 2.04 hectare from survey No.24 of village Wai, District Yavatmal, is determined at Rs. 90,750/- per hectare. The Claimants are entitled for statutory benefits of the enhanced compensation. The impugned judgment and Award is modified to that extent. No order as to costs.

[SMT. ANUJA PRABHUDESSAI, J.]

Digitally signed by NIRANJAN
DOMAJI THAWRE
Signing Date: 12.01.2022
19:11