

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

FIRST APPEAL NO. 592 OF 2017

Dhyneshwar Vithoba Girulkar
Age 75 yrs. Occ. Agriculturist
R/o Ghuikhed, Tq. Chandur Rly.
Dist. Amravati

.. APPELLANT

Versus

1 The State of Maharashtra,
Through the Collector, Camp, Amravati

2 Special Land Acquisition Officer,
Uppar Wardha Project No.4,
Amravati Collector's Compound, Amravati,
Tq. Dist. Amravati

.. RESPONDENTS

3 The Executive Engineer,
Bembla Project, Division, Yeotmal,
Tq. Dist. Yeotmal

Mr. N.S. Bhelkar, Advocate for appellant

Ms. Mayuri Deshmukh, A.G.P. for respondent Nos.1 & 2

Mr. M.A. Kadu, Advocate for Respondent No.3

CORAM: AVINASH G. GHAROTE, J.

DATE : 28th November, 2022

ORAL JUDGMENT :

Heard Mr. N.S. Bhelkar, learned counsel for the
appellant, Ms. Mayuri Deshmukh, AGP for respondent Nos.1 and 2
and Mr. Kadu, learned counsel for the respondent No.3

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

Bembla River Project, District Yavatmal			
DATE OF NOTIFICATION U/S 4 OF THE LAC ACT			26/10/2005
Property details	Area of property	LAO granted by Award Dated 06/09/2008	Ref. Court granted by Award Dated 31/08/2015
Plot No: 238 & 239 Village: Ghuikhed Tahsil Chandur Railway District : Amravati	Plot Area : 123.30 Sq.mtr. + 167.10 Sq.mtr., total 290.40	Rs.140/- per Sq.mt	Rs.500 per Sq.mtr.
	Construction: 118.80 Sq.mtr. + 150 Sq.Mtr. total 268.80 Sq.mtr.	Rs.2965.53 per Sq. mtr.	Rs.4003.47 per Sq. mtr.

3. The appeal challenges the judgment of the Reference Court dated 31/8/2015, 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.4003.47 per sq.mtr., in respect of plot Nos.238 & 239, as detailed above.

4. In First Appeal No. 1378 of 2018 (Sharad Gangadhar Gulhane Vs. State) and First Appeal No. 389 of 2018 (Lilabai Omkarrao Giri and others Vs. State) 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. Aurnagabad - Nagpur Highway, about half KM 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 that what has been already taken by this court in First Appeal No. 1378/2018 (Sharad Gangadhar Gulhane Vs. State).

6. The evidence of Shri Chandrashekhar Wankhede, the valuer, who claims the market rate to be Rs.1000/- per sq.mtr. for open plot, a perusal whereof would demonstrate that he has not inquired about any sale instance, from the same village, or from the neighboring village, in order to arrive at the rate as been quoted in his report. He further, admits in his cross-examination that for the purpose of determining the value of the plot, the value of the neighboring properties, has to be ascertained which has not been done by him. Neither he has inquired from the Gram Pachayat, when the construction has been made, apart from which, there is nothing in his report or on record to indicate the nature of the construction, considering which, there is no reason, to accept the value of construction pegged by him or any reason whatsoever for the rate

accepted by the learned Reference court insofar as construction is concerned, to be interfered, though on the higher side as there is no appeal or cross objection by the acquiring body.

7. That being the position, in view of the rate of open plot village Ghuikhed, having already being determined by this court at Rs.575/- per sq.mtr. the appellant, would only be entitled to that benefit and nothing else.

8. In the result, 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 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.

JUDGE

MP Deshpande