

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

FIRST APPEAL NO.75/2014

APPELLANT : Jageshwar S/o Laxmanrao Mehare
(On R.A.) Aged about Adult,
Occ. Agriculturist, R/o Bhatmarg,
Tq. Babhulgaon, District Yavatmal.

...VERSUS...

RESPONDENTS : 1. The State of Maharashtra
Through Collector, Yavatmal,
Tq. & Distt. Yavatmal.

2. The Special Land Acquisition Officer,
Bembla Project, Yavatmal,
Tq. & Distt. Yavatmal.

3. Vidarbha Irrigation Development Corporation,
Through its Executive Engineer, Bembla
Project Division, Tq. And Distt. Yavatmal.

Shri S.V. Ingole, 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 : 20/12/2022

ORAL JUDGMENT

1. Heard Shri Ingole, 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 first appeal is as under :-

Bembla Project			
Village Rasulpur, Tah. Babhulgaon, Distt. Yavatmal			
DATE OF NOTIFICATION U/S 4 OF THE LAND ACQUISITION ACT			29/05/1997
Details	Details of property	LAO Award Dated 15/12/2000	Ref. Court Award Dated 30/08/2006
Village: Rasulpur Tahsil Babhulgaon District : Yavatmal	Gat No.62 admeasuring 5.43 HR	Rs.58,987/- per Hectare	Rs.70,000/- per hectare

3. The appeal challenges the judgment of the learned Reference Court dated 30/08/2006, whereby the learned Reference Court has enhanced the compensation for the agricultural land to Rs.70,000/-per hectare, being dissatisfied with the same.

4. Shri Ingole, learned counsel for the appellant/claimant, contends that the proper compensation would be Rs.1,25,000/- per hectare, for which, he places reliance upon the judgment of the

Reference Court, in *Deorao S/o Parasram Wanjari Vs. State of Maharashtra, Through District Collector, Yavatmal (L.A.C. No.719/2006)*, decided on 31/01/2009, copy of which has been tendered across the bar.

5. It is further submitted that First Appeal No.842/2010 by the V.I.D.C. against the aforesaid judgment has been withdrawn, as a result of which, the aforesaid rate of Rs.1,25,000/- per hectare for dry crop agriculture land at village Rasulpur stands confirmed. Shri Kadu, learned counsel for the respondent no.3/acquiring body does not dispute the aforesaid position.

6. In *Deorao Parasram Wanjari* (supra) the land involved was Survey No.53 admeasuring 2.02 HR situated at Mouza Rasulpur Tq. Babulgaon and the date of notification was 15/12/1997 as against Section 4 notification in the present case which is dated 29/05/1997. The learned Reference Court found that there was a sale-deed dated 21/03/1995 from the adjacent village Panas (Exh.18) which was in respect of sale of land admeasuring 0.99 HR for the total consideration of Rs.1,00,000/- and considering the fact that the notification in that case was 2 years prior hence, by granting escalation at 10% per annum rate of Rs.1,20,000/- per hectare was

arrived at and considering that Rasulpur was nearer to Babhulgaon Taluka then village Panas the rate of Rs.1,25,000/- per hectare was awarded on the ground that the proximity to village Babhulgaon would entitle the claimant to a higher rate of Rs.1,25,000/- per hectare. The appeal against the said judgment has already been withdrawn by order dated 26/02/2014 (Shri S.B. Shukre, J.), a copy of which has been tendered across the bar.

7. Village Panas, is located towards the south-east side of village Rasulpur and both have common boundary for a considerable distance and therefore the sale instance of village Panas could be taken into consideration for determining the rate of agriculture land of village Rasulpur since there is no sale instance reported from village Rasulpur as per Shri Ingole, learned counsel for the appellant.

8. The village Bhatmarg, is on the north-east side of village Rasulpur and also has common boundary to some extent with the village Rasulpur. In *First Appeal No.173/2015 (Gunwantrao Rajaram Mehetre Vs. The State of Maharashtra, Through Collector, Yavatmal and others)*, rate of Rs.1,20,000/- per hectare has been awarded for dry crop land for village Bhatmarg, a copy of which

judgement has been tendered across the bar. The notification, in the case of village Bhatmarg, is dated 17/12/1998 and is later than the notification for village Rasulpur which is dated 29/05/1997. Reliance is also placed on the judgement in *First Appeal No.890/2016 with Cross-Objection (XOB) No.44/2017, Executive Engineer, (VI.D.C.) Bembla Project Division, Yavatmal Tq. & Dist. Yavtmal Vs. Hansraj Sakharam Pise and others*, decided on **11/01/2018** (Shri Manish Pitale, J.), in which upon taking note of the earlier reported judgment in First Appeal No.632/2013 and connected matters under the notification dated 17/12/1998, the rate of Rs.1,20,000/- for dry crop and Rs.1,80,000/- per hectare for irrigated land has been noted to have been fixed.

9. It is thus apparent that approximate rate of Rs.1,20,000/- per hectare has been awarded for the lands on both the sides of village Rasulpur, though, it is necessary to bear in mind, that the notifications for village Bhatmarg and Panas, in both the above matters, were later in point of time.

10. It is generally accepted view that 10% escalation, on the rate per year, is normally awarded, in case there are sale instances, earlier in point of time to the date of notification. In the instant case

since the notification in *Deorao S/o Parasram Wanjari* (supra) is dated 15/12/1997 and in *Gunwantrao Rajaram Mehetre* (supra) and *Hansraj Pise* (supra) is dated 17/12/1998, while considering these, for determining the rate at Rasulpur there has to be reduction in the rate of 10% per year, since the notification for village Rasulpur is dated 29/05/1997, considering which, rate of Rs.1,10,000/- per hectare for village Rasulpur, could be worked out, for the notification dated 29/05/1997.

11. In view of the above discussion, the judgment of the learned Reference Court is hereby modified and the rate granted by the learned Reference Court of Rs.70,000/- per hectare is enhanced to Rs.1,10,000/- per hectare, for the land of Gat No.62, admeasuring 5.43 HR, which is dry crop land, with all other ancillary benefits as permissible in law.

12. The appellant/acquiring body shall calculate the enhanced compensation and deposit the same in this Court within six weeks from today. Upon the same being done, the respondent no.1/claimant shall pay the appropriate court fees upon the enhanced claim, and shall deposit the same within one week thereof, in case the same found payable after which the claimants shall be

entitled to withdraw the amount so deposited. The first appeal is accordingly allowed in above terms. No order as to costs.

(AVINASH G. GHAROTE, J.)

Deshmukh