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

FIRST APPEAL NO.1296 OF 2019

1. Chunnilal Rathod (dead) through
Bandu s/o Chunnilal Rathod,
Aged 65 Years,
2. Jipibai wd/o Chunnilal Rathod,
Aged 85 Years,
3. Digamber s/o Chunnilal Rathod,
Aged 58 Years,
4. Ram s/o Chunnilal Rathod,
Aged 40 Years,
5. Arun s/o Chunnilal Rathod,
Aged 42 Years,
6. Kailas s/o Chunnilal Rathod,
Aged 44 Years,
7. Parubai Narsing Jadhao,
Aged 44 Years,
8. Jayabai Kisan Jadhav,
Aged 48 Years,
9. Rajubai Dilip Jadhav,
Aged 46 Years,
10. Vandana Arjun Ade,
Aged 44 Years,
All r/o. Ghamapur, Tah. Umarkhed,
District Yavatmal.

APPELLANTS

// VERSUS //

1. State of Maharashtra,
Through the Collector, Yavatmal,
office at Collectorate, Yavatmal,
District Yavatmal.

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2. Executive Engineer, Minor Irrigation Project,
Pusad, Tahsil Pusad, District Yavatmal.
3. Special Land Acquisition Officer,
Lower Pus Project, Pusad,
Tahsil Pusad, District Yavatmal.

RESPONDENTS

Mr. N. A. Vyawahare, Advocate for appellant.
Mr. M. A. Kadu, AGP for respondent Nos.1 and 3.
Mr. N. M. Gaidhane, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 13/02/2023
PRONOUNCED ON : 06/06/2023

JUDGMENT

1. By preferring this appeal, the appellants have challenged the Judgment and Award in Land Acquisition Case No.528/2002 passed by Civil Judge Senior Division, Pusad, District Yavatmal dated 3rd October 2013, under Section 54 of the Land Acquisition Act.

2. By this Judgment, the Reference Court has awarded the compensation at the rate of Rs.40,000/- per hectare for the acquired land. The appellants have preferred this appeal for enhancement of the compensation.

3. Brief facts which are necessary for the disposal of the appeal are as under.

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Survey No.158 admeasuring 2 hectare 40 R situated at Mouza Kurali, Tq. Umarkhed, District Yavatmal was owned by the appellants. The said land was acquired by the respondents for Amdapur Project vide Award No.25/47/97-98. The respondent Nos.1 and 3 issued the Section 4 Notification on 21.08.1997. The Land Acquisition Officer has declared the Award on 23.07.2001. By the said award, the Land Acquisition Officer has awarded the compensation at the rate of Rs.25,000/- per hectare. The appellants have received the amount of compensation under protest and preferred the reference under Section 18 for enhancement of the compensation.

4. As per contention of the appellants, the Special Land Acquisition Officer has not awarded the compensation adequately. He was cultivating the said land and was having the facility of Well water. His land was situated on the State Highway but, these all factors are not considered by the Special Land Acquisition Officer and awarded inadequate compensation.

5. The said reference was contested by the respondents on the ground that the Special Land Acquisition Officer had considered all these aspects. The appellants ought to have adduced the evidence before the Land Acquisition Officer by placing the claim statement on record which

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is not given. Thus, the Land Acquisition Officer has awarded the compensation adequately.

6. The appellants have adduced his oral evidence before the Reference Court as well as placed reliance on necessary documents i.e. Award passed by the Special Land Acquisition Officer, Notice under Section 12(2) and 7/12 extract. The respondent – Land Acquisition Officer has not adduced any evidence. On the basis of evidence adduced the Reference Court by considering earlier decisions awarded the compensation at the rate of Rs.40,000/- per hectare.

7. Being aggrieved and dissatisfied with the rate awarded by the Reference Court, present appeal is preferred by the appellants for the enhancement of the compensation.

8. Heard learned Advocate Mr. Vyawahare for the appellants and learned Advocate Mr. N. M. Gaidhane for the respondent No.2 and learned AGP, Mr. M. A. Kadu for the respondent Nos.1 and 3.

9. It is submitted by the learned Advocate Mr. Vyawahare that the issue involved in the appeal is already covered by the Judgment of this Court in First Appeal No.1412/2019 (Gobra Harlal Chavan Vs. The

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State of Maharashtra, Through Collector Yavatmal and others), First Appeal No.1330/2008 (Ashokkumar s/o Deobarao Naik Vs. The State of Maharashtra, Through Collector, Yavatmal and others) and First Appeal No.754/2017 (Kashiram Kerba paikrao (dead) through his LRs (1) Sonabai Kashiram Paikrao and others Vs. The State of Maharashtra, through its Collector, Yavatmal and others).

10. He submitted that the land involved in the First Appeal No.1412/2019 was from the same village and was acquired for the same Project. For which, this Court has awarded the compensation at the rate of Rs.83,000/- per hectare for the dry crop land. The appellant's land was irrigated land and Well water facility was available for the said land. This fact is not considered by the Reference Court and, therefore, claimants are entitled for the compensation. Learned Advocate Mr. Gaidhane for the respondent No.2 accepted the facts that this Court in First Appeal No.1412/2019 has awarded the compensation at the rate of Rs.83,000/- for the land which was acquired for the same Project and from the same village. He submitted that considering the Well is available at the most the land of the appellants can be considered as seasonal irrigated land.

11. The learned Advocate Mr. Vyawahare for the appellants

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have pointed out the Judgment of this Court in First Appeal No.1151/2008 decided on 04.07.2017 along with connected appeals decided on 04.07.2017 and the Judgment of this Court in First Appeal No.1399/2008 decided on 03.10.2019. This Court has granted compensation at the rate of Rs.83,000/- per hectare for dry crop land and for Rs.1,66,000/- per hectare for irrigated land situated at village Kurali. The land of the present appellants was situated at village Kurali. The said land acquired for Amdapur Project. In the cited Judgments, land of the claimants were situated at village Kurali acquired for Amdapur Project. Hence, in view of the cited Judgment in First Appeal No.1151/2008 along with the connected appeals, the appellants are also entitled for compensation by the same rate. The rate of Rs.83,000/- per hectare was awarded for the dry crop land. The 7/12 extract in the present case filed on record shows that Well water facility was available to the agricultural land of the appellants which was acquired for the Amdapur Project. The entries in the 7/12 extract also shows that irrigation facility by Well water was there, as electric motor pump was installed on the said Well. Considering the same, the appellants are entitled to receive the compensation by accepting the contention that it is seasonally irrigated land, merely because the appellants have not cultivated the crop like sugarcane is not sufficient to say that the land was not seasonally irrigated land. Considering the land of the appellants

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is seasonally irrigated land, the appellant is entitled to receive the compensation 1.5 % of the dry crop land. In view of that, the appellants are entitled to receive the compensation at the rate of Rs.1,24,500/- per hectare. Admittedly, the appellants have not adduced any evidence of expert regarding the construction of the Well. The Special Land Acquisition Officer has awarded the compensation at the rate of Rs.1,72,101/- for the said Well. The learned Advocate for the appellants has also not pressed regarding the compensation towards the Well.

12. In that view of the matter, the appeal is partly allowed.

13. The respondents are directed to pay compensation at the rate of Rs.1,24,500/- per hectare to the appellants – land owners for their acquired land situated at village Kurali along with all benefits under the Land Acquisition Act.

14. The respondents are directed to pay the amount of compensation before the Reference Court within a period of ten weeks.

(URMILA JOSHI-PHALKE, J.)