

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

WRIT PETITION NO.3166/2017

Shri Ujwal s/o Parasmal Pagariya and others

...Versus...

The Joint District Registrar, Class-I (Higher Grade) & Collector of Stamps, New
Administrative Building, Civil Lines, Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri D.V. Chauhan, Advocate for petitioners
Mrs. M.A. Barabde, AGP for respondents/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 13/04/2023

1. Heard Shri D.V. Chauhan, learned counsel for the petitioners and Mrs. M.A. Barabde, learned Assistant Government Pleader for the respondents/State.

2. The petition challenges the order dated 23/03/2016 passed by the respondent no.5 (pg.48-A in appeal), on the ground that since the properties in question, i.e. Khasra Nos.28 and 42 are both underneath water, the same cannot be valued in terms of agricultural land (Jirayat) or in any other mode as there is no separate head for such valuation in the ready-reckoner prepared by the respondents in that regard.

3. It is not disputed that the land of Khasra No.28 is covered by water and in fact is a water body. The land of

Khasra no.42 is partly covered under water and partly constructed upon. The learned counsel for the petitioners makes a positive statement that no portion of Khasra nos.28 and 42, which is under water, shall be at any time filled in and used for the purpose of construction or any other use and shall remain a water body throughout. An affidavit to this effect has been placed on record vide Stamp No.03/2023, which is accepted as an undertaking given to the Court.

4. In this view of the matter, when a query was put to the learned Assistant Government Pleader as to under what head the valuation of the land underneath the water would be done, she also admits, that there was no separate head in the ready-reckoner, under which the valuation of such a water body is provided for as of the year 2016.

5. In that view of the matter, the impugned order, which merely proceeds on a presumption that in the draft development plan the land of Khasra no.42 is partly shown as industrial zone and green belt and therefore, it would be appropriate to determine its value based upon its consideration as non-agricultural land is clearly erroneous. So also, though the draft development plan indicates Khasra no.28 to be a water body, the finding by the respondent no.5 that for the purpose of valuation it should be considered as an arable land is also clearly erroneous. In view of the aforesaid undertaking, the lands which are under water cannot be compared or

equated to the arable land.

6. That being the position, the impugned order is hereby quashed and set aside and the matter is remanded back to the respondent no.5 for re-determining the valuation of the lands in question by taking into consideration the fact that the entire land of Khasra no.28 is a water body and portion of the land of Khasra no.42 is also under water and as per the undertaking shall remain under water. The entire exercise shall be done within a period of two months from today. The petitioners shall appear before the respondent no.5 on 24/04/2023 at 11:00 a.m. and there would be no necessity to issue any fresh notice to the petitioners. The petitioners are permitted to place on record all material, which they may deem appropriate to assist the respondent no.5 in determining the valuation, considering the nature of the aforesaid properties, which shall also be taken into consideration by the respondent no.5, while deciding the market value for the purpose of stamp.

7. The writ petition is allowed in the aforesaid terms. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar