



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

FIRST APPEAL NO. 954 OF 2023

Yashodabai Namdeo Adhagale (dead)
Through LRs

... Appellants

1. Shankar Namdeo Adhagele
Aged about 61 years,
2. Pandurang Namdeo Adhagale
Aged about 64 years,
3. Bhagorao Namdeo Adhagale
Aged about 54 years,
4. Panjab Namdeo Adhagale,
Aged about 49 years,
5. Sunita Dilip Raut
Aged about 46 years,
Occupation – Agriculturist,
R/o. Kurli, Tah. Umarkhed,
Dist. Yavatmal

Versus

1. The State of Maharashtra,
Through Collector, Yavatmal,
Tah. & District - Yavatmal
2. The Executive Engineer,
Minor Irrigation Division, Pusad,
District – Yavatmal.
3. The Special Land Acquisition Officer,
Lower Pus Project, Pusad,
Tah. Pusad, District – Yavatmal.

... Respondents

Mr. V.N. Patre, Advocate for appellants.

Ms. M.R.Kavimandan, AGP for respondent Nos.1 & 3.

Ms. Mallika Babhulkar, Advocate h/f Mr. M.A. Kadu, Advocate for respondent No.2.

CORAM : MRS. VRUSHALI V. JOSHI, J.
RESERVED ON : 26.10.2023.
PRONOUNCED ON : 05.12.2023.

JUDGMENT:

Heard finally by consent of both the learned counsel
for the parties.

(2) Being partly aggrieved by the judgment and order dated 24.04.2007 passed by the Civil Judge Senior Division, Pusa, District – Yavatmal, in LAC No.347/2002. The appellants have filed this appeal.

(3) Brief facts of the appeal are as under :

(4) The appellants were the owners of the land bearing Gut Survey No.118 admeasuring area 0.60 H.R. situated at Village – Kurli, Tahsil – Umerkhed, District – Yavatmal. The said land was acquired for the purpose of submergence area of Amdapur Project, vide Land Acquisition Case No.5/47/96-97 of Village Kurli. The Notification under Section 4 was published in the Official Gazette of State of Maharashtra on 21.08.1997 and the land of the appellants was acquired. The award under Section 11 was passed on 27.11.2000

by the Land Acquisition Officer, granting the compensation @ of Rs.25,000/- per hectare. The notice under Section 12(2) of the Land Acquisition Act, was issued to the appellants and the appellants in furtherance of the said notice accepted the compensation under protest. Being aggrieved by said award, the appellants have preferred a reference under Section 18 of the Land Acquisition Act, 1894, and claimed an additional compensation of Rs.1,21,549/- with other statutory benefits. The reference Court partly allowed the claim of the appellant and granted the compensation @ of Rs.35,000/- per hectare and rejected the major claim of the appellants for the land as well as trees. Hence, being aggrieved by the same, the appellants have filed this appeal. There is a delay of 4619 days in filing this appeal which is condoned in civil application made in this behalf on waiver of interest and statutory benefit for the delayed period.

(5) Mr. Patre, learned counsel for the appellants would submit that for acquisition under the same project in the same village under the same Notification dated 21.08.1997 and the award of the same date i.e. 27.11.2000, this Court by Order dated 20.01.2020 in First Appeal No.1412/2019 has directed the respondent-Acquiring

Body to pay compensation @ of Rs.83,000/- per hectare. The learned counsel for the appellants has further submitted that as this Court has fixed the compensation in said appeal in First Appeal (Stamp) No.2525/2022, this Court has passed the following said judgment on 16.11.2022 and he has submitted that in view of settled law that similarly situated land owners should receive parity, this appeal also needs to be allowed and the appellant deserves to be granted compensation @ of Rs.83,000/- per hectare.

(6) Ms. Babhulkar, learned counsel for respondent No.2 – Acquiring Body has not disputed the factual aspects in this matter. He confirms that the decision of this Court dated 20.01.2020 in First Appeal No.1412/2019 has not been challenged and has attained finality and this Court may accordingly pass the orders.

(7) I have heard learned counsel for the parties and with their able assistance, I have perused the papers, proceedings and the decision relied upon by them.

(8) While deciding the First Appeal, this Court has relied on the judgments of Apex Court where the Hon'ble Apex Court

in the case of *Ram Chander (deceased) through his legal representatives and others Vrs. Union of India and another (2020) 15 SCC 491*, has observed that if the similarly situated land owner has received higher compensation then the benefits of such higher compensation should be allowed to the appellants provided that there is no interest payable for the delayed period to him. From the judgment dated 20.01.2020 in First Appeal No.1412/2019 and First Appeal (Stamp) No.2525/2022, preferred by the learned counsel for claimants, it is quite clear that the said judgment also refers to the same Amdapur Project for which land subject matter of this appeal has been acquired. The Notification under Section 4 (1) of the said Act, in the present case is also of 21.08.1997. The award passed by the Land Acquisition Officer is also of 27.11.2000. Learned AGP has not raised any dispute as to the type or quality of land acquired in both the cases. As such, the facts of this case and the facts in First Appeal decided by this Court are similar and the appellants in both these cases appeared to be similarly placed.

(9) In view of the above discussion, it emerges that the appellants herein would also be entitled to a compensation @ of Rs.83,000/- per hectare.

(10) The delay of 4619 days caused in filing appeal is condoned on 12.10.2023 on waiver of interest and statutory benefits for the delayed period.

(11) In view of the above well settled principles, the impugned order of Reference Court is hereby modified and the respondents are directed to pay compensation to the appellants @ of Rs.83,000/- per hectare for the land acquired under the subject notification by depositing the amount of compensation in respect of 0.60 hectare calculated as above in the Saving Bank account of the appellant within a period of six months subject to (i) waiver of interest and statutory benefit for the delayed period of 4619 days and (ii) due verification of the Registrar of this Court.

Corrected as per
Court's Order
dated 05.07.24

(12) The appeal stands allowed in the above terms.

(13) Pending applications, if any, shall stand disposed of accordingly.

[MRS. VRUSHALI V. JOSHI, J.]

Prity