



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

FIRST APPEAL NO.890 OF 2018

The Executive Engineer,
Bembla Project Yavatmal,
Tahsil and District Yavatmal

APPELLANT

// VERSUS //

1. Jagnnath Keshav Ajmire,
Aged about 50 Years,
Occu. Farmer, R/o. Pahur (Dabha),
Tahsil Babhulgaon, District Yavatmal,
2. State of Maharashtra through
Collector, Yavatmal.
3. Special Land Acquisition Officer,
Minor Irrigation Works No.II,
(Bembla Project) Yavatmal,
Tahsil and District Yavatmal.

RESPONDENTS

Mr. Vinay Rathi, Advocate h/f Mr. P. B. Patil, Advocate for the
appellant.

Mr. R. D. Hajare, Advocate for respondent No.1.

Mr. K. L. Dharmadhikari, AGP for respondent Nos.2 and 3.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 24/04/2023

ORAL JUDGMENT

1. Present appeal is preferred by the Executive Engineer, Bembla Project, Yavatmal against the Judgment and Award passed in Land Acquisition Case No.67/2006 dated

30.09.2014 by which the reference Court has awarded the compensation at the rate of Rs.900/- per sq. mtr. for the open plot area 81.90 sq. mtrs. and Rs. 1,854/- per sq. mtr. for the constructed area of house admeasuring 47.27 sq. mtrs.

2. The land in question is house No.385 having total area of 81.90 sq. mtr. out of which constructed area was 47.27 sq. mtrs of village Pahur (Dabha), Taluka - Babhulgaon, District Yavatmal was owned by the respondent No.1. The said house property acquired by the non-applicants for submergence of Bembla Project in Land Acquisition Case Nos.37/47/2000-2001. The Notification under Section 4(1) of the Land Acquisition Act was issued on 11.05.2000 and the award declared by the Land Acquisition Officer on 17.10.2003. The Special Land Acquisition Officer has granted compensation at the rate of Rs.80/- per sq. mtr. for open plot and compensation of Rs.33,393/- for the construction, as per the market value fixed by the acquiring body.

3. Being aggrieved and dissatisfied with the award passed by the Land Acquisition Officer the claimant i.e. respondent No.1 accepted the compensation amount under the

protest and preferred reference before the Civil Judge Senior Division, Yavatmal on the ground that the Land Acquisition Officer had not considered prevalent market value, potential and quality of the land and awarded the meager amount towards the compensation.

4. In response to the notice, the said reference was strongly opposed by the appellant and respondent Nos. 2 and 3 by filing their respective reply. As per the contention of the respondent Nos.2 and 3 and the appellant that the Land Acquisition Officer has correctly determined the amount of compensation and no interference is called for. The Reference Court has considered the evidence adduced by the respondent No.1 and enhanced the compensation at the rate of Rs.900/- per sq. mtr. for the open plot and Rs.1,854/- per sq. mtr. for the constructed area of house admeasuring 47.27sq. Mtrs.

5. Being aggrieved and dissatisfied with the Judgment and Award passed by the Reference Court, present appeal is preferred before this Court on the ground that the Reference Court has awarded the compensation which is excessive and

exorbitant one.

6. During the pendency of the appeal, the connected appeals are decided by this Court. It is submitted by learned Advocate Mr. Vinay Rathi holding for learned Advocate Mr. P. B. Patil for the appellant and learned Advocate Mr. Hajare for the respondent No.1 that the issue involved in this appeal is already covered by the judgment of this Court in **First Appeal Stamp No.189/2018 with Cross Objection No.119/2018 (Vidarbha Irrigation Development Corporation through its Executive Engineer Bembla Project Division, Yavatmal and another Vs. Shri Vasant Nanaji Patre and others)** and **First Appeal No.424/2019 (Executive Engineer (VI.D.C.) Bembla Project Division, Yavatmal, Tal. & Dist. Yavatmal Vs. Hukumchand Uttamchand Kotecha and others)** decided on 19.12.2018 and 28.03.2019.

7. The learned Advocate for the appellant – Acquiring Body tried to submit that it is the case of reduction in the compensation awarded for the plot area on the basis of earlier judgment of this Court referred above. Whereas learned Advocate Mr. Hajare for the respondent No.1 submitted that the compensation awarded by the Reference Court deserves to be

maintained. I have perused the judgment passed by this Court in First Appeal Stamp No.189/2018 with Cross Objection No.119/2018.

8. In First Appeal Stamp No.189/2018, this Court has held that an amount of Rs.750/- per sq. mtr. for an open plot of land acquired from village Pahur, Taluka Babhulgaon, District Yavatmal would be fair compensation. The Notification under Section 4 of the Land Acquisition Act, 1894 in this appeal is dated 11.05.2000 which was the same notification in the appeal. In First Appeal Stamp No.189/2018 this Court has appreciated the document particularly construction offered in the sale deed Exh.22 in the light of evidence of valuer and the claimant recorded in Land Acquisition Case No.603/2006 (Namdeo Giri Vs. State of Maharashtra and others), which is also the subject matter of challenge in First Appeal No.938/2016. It is observed by this Court that it can inferred that in the said transaction construction was offered on higher side. In the evidence of claimant and the Valuer it has come on record that plot reflected in the sale deed Exh.22 was having commercial potential as same was put to commercial use by operating the Dispensary and

Pharmaceutical shop. It has also observed that the evidence of the claimant that he has not received any offer for use of plot for commercial purpose. It is worth to clarify that in all these appeals the enhancement granted by the Reference Court under Section 18 of the Land Acquisition Act is based on same sale transaction Exh.22 a property having commercial potential. From the evidence of the parties, it can be easily inferred that the claimants have failed to establish that their plot was having commercial potential.

9. Apart from the above, in the same Section 4 Notification this Court had an occasion to consider the value of the plot in First Appeal No.1028/2007 and this Court has observed in paragraph Nos.4, 5 and 6 of First Appeal No. 1028/2007.

“4. The learned Advocate for the respondent No.3 has pointed out that huge tracts of land have been acquired for the bembala project. It is submitted that all the lands situated in village Pahur, Tq. Babhulgaon, District Yavatmal have been acquired. It is further submitted that around 475 persons (claimants) have settled the dispute and the claimants and the acquiring body have worked out compensation receivable by the claimants for the land (plot area) at Rs.750 per square meter. It is pointed out that the settlements are arrived at before the Lok Adalat.

5. *After hearing the learned advocates for the respective parties, I find that the following points arises for consideration:-*

“Whether the amount of compensation receivable by the claimants determined by the Reference Court is just and proper?”

6. *Most important and relevant factor in the present case is that the entire land of village Pahur has been acquired for the same project and 475 claimants have settled the matter with the acquiring body before the Lok Adalat. Considering these aspects, I find that the compensation for the land has to be @ Rs.750/- per square meter along with the statutory benefits.”*

10. For the reasons recorded in the First Appeal Stamp No.189/2018 (VIDC and another Vs. Vasant Nanaji Patre and others) dated 19.12.2018, this Court held that the claimant is entitled to receive an amount of Rs.750/- per sq. mtr., in view of that the present appeal deserves to be partly allowed by passing order as follows:

- (i) The First Appeal is partly allowed.
- (ii) The Judgment of the Reference Court in Land Acquisition Case No.67/2006 dated 30.09.2014, is partly modified.
- (iii) The claimant is held entitled to receive an amount of Rs.750 per sq mtr. for house property open plot admeasuring 81.90 sq. mtr. and Rs.1,854/- per sq. mtr. for the

**Paragraph
No.10(iii)
corrected as per
Court order
dated 26.04.2024**

constructed area of house admeasuring
47.27 sq. mtrs respectively.

- (iv) Other directions in the award are confirmed.
- (v) The claimant is at liberty to withdraw the amount of compensation in terms of the Judgment along with accrued interest.
- (vi) The balance amount, if any, be refunded to the appellant with accrued interest.

11. First Appeal is partly allowed in the aforesaid terms
and disposed of with no order as to costs.

(URMILA JOSHI-PHALKE, J.)