

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FIRST APPEAL NO.587 OF 2015

Shri Datta Mandir Deosthan
through Sanjay Ramchandra Lokhande,
aged about 50 years, Occ. Agriculturist,
R/o. Kotha (Fattepur), Tah. Babhulgaon,
District Yavatmal

...APPELLANT

VERSUS

1. State of Maharashtra,
through Collector,
Yavatmal
2. Executive Engineer,
Bembla Project Division,
Yavatmal,
Tah. and District Yavatmal
3. Special Land Acquisition Officer,
Benefited Zone,
Yavatmal

...RESPONDENTS

Smt Vijaya Thakre, Advocate for the appellant.
Shri M.A. Kadu, AGP for respondent Nos.1 and 3.
Mrs. U.A. Patil, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : APRIL 11, 2023.

ORAL JUDGMENT :

Heard Smt. Thakre, learned Counsel for the appellant,
Shri M.A. Kadu, learned Assistant Government Pleader for respondent

Nos.1 and 3 and Mrs. U.A. Patil, learned Counsel for respondent No.2.

2. The facts which are necessary for the disposal of the appeal are as under :

A] The appellant was the owner of the land bearing Gat No.47 situated at village Barad admeasuring area 2.35 HR and the said land has been acquired by the respondent No.2 vide L.A.C. No.2/47/03-04 for the purpose of Bembla Project.

B] The Notification under Section 4(1) of the Land Acquisition Act, 1894 was published in Government Gazette on 24/07/2003 by respondent No.3. The Notification under Section 6 of the Land Acquisition Act was also published in the Government Gazette on 17/06/2004 and the award was published on 27/06/2005. By passing the award the Land Acquisition Officer awarded the rate of Rs.81,540/- per hectare which was inadequate and not as per the market value of the land.

3. Being aggrieved and dissatisfied with the same, the appellant preferred the reference bearing L.A.C. No.18/2006 for the enhancement of the compensation. As per the contention of the appellant, the Land Acquisition Officer had not considered the market value of the quality of

the land and also failed to consider the sale instances of nearby villages regarding identical land and claimed the compensation @ Rs.2,50,000/- per hectare with statutory benefits.

4. The appellants have adduced the evidence in support of the contention vide Exhibit 24. Besides his oral evidence he also placed reliance on the various documents which are at exhibit 25 to exhibit 35. On the basis of oral as well as documentary evidence, the reference Court has enhanced the compensation @ Rs.1,75,000/- per hectare.

5. Being aggrieved and dissatisfied with the said judgment and award, present appeal is preferred for the enhancement of the compensation on the ground that the learned reference Court has also not considered the beneficial of the land and market value and awarded the inadequate compensation. The appellant challenges the judgment of the reference Court and claiming an enhancement of compensation @ Rs.2,50,000/-.

6. Smt. Thakare, learned Counsel for the appellant submitted that the issue involved in the appeal is already covered by the judgment of this court in First Appeal No.399/2011 (*Ashok s/o Uttamchand Kotecha (since dead), through LRs, Vs. The State of Maharashtra and*

ors.) with connected matters decided on 07/03/2019 by considering the sale instance considered in First Appeal No.1062/2014 (Bhaskar s/o Sadashiv Pardakhe Vs. The Executive Engineer and ors.), the rate for agricultural land at village Barad, acquired under the same notification has been fixed at Rs.2,10,000/- per hectare.

7. Shri Kadu, learned Assistant Government Pleader for respondent Nos.1 and 3 as well as Mrs. Patil, learned Counsel for respondent No.2 do not dispute the this proposition and upon instructions makes a statement that the rate of Rs.2,10,000/- per hectare for dry crop land at village Barad has been accepted by respondent No.2, considering which, there is no reason why the aforesaid rate could not be made applicable to the present land, which is from the same notification and for the same purpose. In view of that the award of the learned reference Court needs modification by enhancing the rate of compensation as indicated above.

8. For the above facts, the appeal is accordingly partly allowed by enhancing the rate of compensation for dry crop agricultural land of Gat No.47 admeasuring 2.35 HR to Rs.2,10,000/- per hectare, in view of what has been held in Ashok s/o Uttamchand Kotecha (supra).

9. The appropriate calculations be made and the enhanced compensation along with accrued interest be deposited in this Court within a period of six weeks. While calculating the compensation due note shall be taken of order dated 17/04/2015 regarding the condonation of delay for which duration the claimants shall not be entitled upon the interest on the amount of compensation. The claimants are not entitled to receive the interest for the delayed period i.e. from 11/04/2014 to 17/04/2015. The claimants shall pay the deficit court fees on the enhanced amount of compensation, if any, within one week, from the date to the calculations are placed on record.

10. The appeal is disposed of with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

**Divya*