

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

FIRST APPEAL NO. 830 OF 2022

Union of India Through Secretary for Railway Mantralaya and others

vs.

Jyotsna w/o Ashok Deshmukh and others

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

Court's or Judge's Orders.

Mr. V. M. Gadkari, Advocate for applicants.
Mr. Trupti Udeshi, AGP for respondent Nos.2 and 3.

CORAM : URMILA JOSHI-PHALKE J.

DATE : 03/02/2023

CIVIL APPLICATION (F) NO. 289 OF 2023

By this application, the respondent No.1 is seeking permission to submit the documents on record. As per the contention of the learned Advocate the issue is already covered by the earlier judgment of this Court and therefore, he filed necessary compilation of the documents.

2. The respondent No.1 is permitted to file the said documents. The said documents are taken on record.

3. Application is disposed of.

CIVIL APPLICATION (F) NO. 290 OF 2023

By this application, the respondent No.1 is seeking early hearing as the issue is already covered by the earlier judgment of this Court. The said application is not objected by appellant or respondent Nos.2 and 3.

4. Considering the fact that the issue is already covered by the judgment of this Court, the application is allowed.

5. Application is disposed of.

FIRST APPEAL NO. 830 OF 2022

Heard both sides.

2. By this appeal the Union of India – the Central Railway is challenging the judgment and Award passed by Land Acquisition Case No.114/2013 by which the compensation @Rs.18,90,000/- per hectare was granted. The appellant has mainly raised the ground that the reference Court has awarded the compensation, which is exorbitant and excessive one and therefore, the judgment and Award passed by the land reference Court needs to be set aside.

3. The respondent No.1 was the owner of land Gat No.239 admeasuring total area 1.42 H.R. out of which Union of India has acquired 0.26 H.R. for the project of Wardha – Nanded railway line. Accordingly, under Section 4(1) of the Land Acquisition Act, 1894, the Notification was published on 31/12/2010 and Award was published in official gazette on 07/12/2012 vide No.37/LAQ-47/2008-09. The Land Acquisition Officer has awarded compensation @ Rs.1,22,460/- per hectare.

4. Being aggrieved and dissatisfied with the said Award, the respondent No.1 preferred the land reference on the ground that the Land Acquisition Officer has not considered the potential quality and fertility of the land, as well as market price and calculated inadequate compensation. The said land reference was allowed by the Civil Judge Senior Division, Wardha observing that Hon'ble Apex Court in the case of *Bhimsingh and others vs. State of Haryana and others AIR 2003 SC 4382* that while fixing the compensation amount in land acquisition cases, the earlier decision regarding the land is the best evidence and it can be considered. Accordingly, the reference Court considered the earlier decisions of the reference Court passed in various matters bearing Nos.22/2011, 23/2011, 24/2011, 25/2011 and

26/2011. In all these references the reference Court has awarded compensation @Rs.12,60,000/- for non-irrigated land and for seasonal irrigated land @Rs.18,90,000/- was granted.

5. It is submitted by the learned Advocate for the respondent No.1 that the land of the present respondent No.1 is also acquired for the same project from village Mouja – Salod (Hirapur) and Taluka and District – Wardha and of same fertility same potential and same quality. Therefore, respondent No.1 is entitled for the same rate. He submitted that the issue involved in the present appeal is covered by this judgment.

6. He further invited my attention towards earlier judgment of this Court, wherein the appeals filed by the acquiring body are dismissed by taking into consideration the compensation awarded by the reference Court in First Appeal No.206/2021. It is held by this Court that while evaluating the potentiality of the acquired land, the reference Court was sensitive to the seasonal irrigation facility available by virtue of existence of a well. As such instead of granting 2 times enhancement, what is granted in 1.5 times as the cropping pattern was not placed on record. It is further held that once it is

held that seasonal irrigation facility was available, the enhancement granted at 1.5 times appears to be quite justified.

7. In another First Appeal No.217/2021, this Court has considered judgment and Award passed in Land Acquisition Case (LAC) No.115/2013, wherein the reference Court has considered various aspects and granted compensation and it is held that the enhancement granted at 1.5 times appears to be justified and appeal was dismissed.

8. The learned Advocate for the appellant though submitted that the amount granted by the reference Court is exorbitant and excessive one, however, after perusal of the judgment of the reference Court and observation of this Court in the First Appeal No.206/2021, as well as First Appeal No.217/2021, wherein it is held that the enhancement granted at 1.5 times is appears to be justified one.

9. I have no reason to take different view as the issue in the present appeal is covered by the earlier two judgments of this Court, as well as the compensation awarded by the reference Court, considering the seasonal irrigation facility available,

there is no merit in the appeal and it deserve to be dismissed.

Hence, the appeal is hereby dismissed as no interference is warranted.

10. The respondent No.1 is at liberty to file execution, if inadequate amount of compensation is deposited by the appellants.

CIVIL APPLICATION (F) NO. 291 OF 2023

By this application respondent No.1 is seeking withdrawal of the amount as the appeal is already disposed of. The respondent No.1 is entitled to receive the amount of compensation for which the appellant has no objection.

2. In view of that the respondent No.1 is permitted to withdraw the amount. The amount be disbursed on due identification and verification.

3. Application is disposed of.

[URMILA JOSHI-PHALKE J.]