

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

FIRST APPEAL NO.255 OF 2013

Vidarbha Irrigation Development
Corporation, through its Executive
Engineer, Bembala Project Division,
Yavatmal.

APPELLANT

// VERSUS //

1. Narayan Anand Wahikar,
aged about 66 years,
r/o Barad, Tq. Babhulgaon,
District Yavatmal.
2. The State of Maharashtra, Through
Collector, Yavatmal,
Tq. and District Yavatmal.
3. The Special Land Acquisition Officer,
Labh Area, Yavatmal.

RESPONDENTS

WITH

CROSS OBJECTION NO.58 OF 2013

Vidarbha Irrigation Development
Corporation, through its Executive
Engineer, Bembala
Project, Division,
Ta. and Distt. Yavatmal.

APPELLANT

On R.A.

// VERSUS //

1. Narayan Anand Wahikar,
aged about 70 years,
Occ. Agriculturist, R/o Barad,
Tq. Babulgaon, Distt. Yavatmal.

Cross Objector

On R.A.

2. The State of Maharashtra, through the Collector, Yavatmal.
3. The Special Land Acquisition Officer, Benefited Zone, Yavatmal.

RESPONDENTS

Mr. Vinay Dahat, Advocate h/f Mr. J. B. Kasat, Advocate for the appellant.

Mr. S. V. Ingole, Advocate for respondent No.1.

Ms. T. Udeshi, AGP for respondent Nos.2 and 3.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 24/02/2023

ORAL JUDGMENT

1. By preferring this appeal, appellant VIDC had challenged the Judgment and Award passed by the Reference Court 2nd Joint Civil Judge Senior Division, Yavatmal in Land Acquisition Case No.162/2006 by common Judgment on 31.03.2011.

2. The original claimant has also filed the cross-objection for enhancement of the compensation. As per the contention of the original claimant, he is the owner of Gat No.139 situated at village Barad, Tq. Babhulgaon, District Yavatmal, admeasuring 2 H. 83 R. Notification under Section 4 of the said Act was issued on 24.07.2003. The Award was

declared by the Land Acquisition Officer dated 27.06.2005. The Land Acquisition Officer granted an amount of compensation at the rate of Rs.82,369/- per hectare. The claimant has received the amount of compensation under protest.

3. Being aggrieved and dissatisfied with the Award passed by the Land Acquisition Officer, claimant has filed the reference proceeding bearing No.162/2006. The Reference Court has passed the compensation amount by passing common Judgment and awarded the compensation of amount Rs.1,75,000/- per hectare.

4. Being aggrieved and dissatisfied with the Judgment passed by the Reference Court acquiring body/VIDC had preferred an appeal on the ground that, the amount of compensation awarded by the Reference Court is exorbitant and excessive one. It is further contention of the appellant that Reference Court has not considered the evidence on record and passed the award at a higher rate, and therefore it deserves to be set aside. At the same time, the original claimant had preferred the cross-objection on the ground that Reference Court has not

considered the sale instances and granted inadequate compensation amount which requires to be enhanced. As per the contention of the claimant, the Reference Court failed to consider all the grounds urged in the reference petition. There is oral as well as documentary evidence lead by the claimant which remained unchallenged and claimant is entitled to receive the compensation at the higher rates. The Reference Court has not considered that the claimant was cultivating his land and was getting income from the said land, till the acquisition of the land, the claimant was taking the crops like Cotton, Tur, Jowar, Soybean etc., and other seasonable crops. He was getting the income from the said land up to Rs.3,00,000/- per hectare but these factors are not considered by the Reference Court. The Reference Court has also not considered the fertility and potential of the land acquired and granted inadequate compensation. It is further submitted that the issue involved in the appeal is covered by the Judgment passed by this Court in First Appeal No.399/2011 and in view of the earlier Judgment the cross-objectors are entitled to receive the compensation at the rate of Rs.2,10,000/- per hectare.

5. Heard learned Advocate Mr. Vinay Dahat holding for learned Advocate Mr. J. B. Kasat, for the appellant and learned Advocate Mr. Ingole for the cross-objector. Though, learned Advocate Mr. Dahat vehemently submitted that the amount of compensation awarded by the Reference Court is excessive and exorbitant one, but he admitted that the issue is covered by the Judgment passed by this Court in First Appeal No.399/2011.

6. Per contra, learned Advocate Mr. Ingole submitted that the Reference Court has not considered the evidence on record and wrongly come to the conclusion and awarded the inadequate compensation. He further submitted that claimant has adduced the evidence by examining herself as well she relied upon the sale instances. He invited my attention towards the para No.16 of the Judgment which shows that the claimant has produced on record sale instances of village Kopra executed on 18.01.1994 which shows that the compensation amount was paid for 1 H. 21 R. is Rs.1,50,000/-. It is observed by the Reference Court that the sale instance on which the claimant relied upon is not of village Barad but it is of village Kopra, and therefore Reference Court have assessed the amount of

compensation at the rate of Rs.1,75,000/-.

7. Learned Advocate Mr. Ingole placed his reliance on the Judgment of this Court in First Appeal No.399/2011 along with 916/2013, wherein this Court has considered the sale instances which were filed at Exhs.19 and 20 and observed that the comparable distance and location from the acquired land are to be taken into consideration. It is further observed by this Court that the sale instance at Exh.19 is in respect of sale of land from village Kopra which is dated 18.01.1994. The sale instance is Exh.20 is from village Kolhi which is dated 19.04.1994. Though no material is placed on record to indicate the distance between those villages in comparison with village Barad. However, in First Appeal No.1062/2014, a similar sale instance at village Kopra has been referred to. This Court has further observed that the village Kopra, Barad and Kolhi were from the same Tahsil, that sale deed was accepted in the said appeal and the rate of Rs.1,23,000/- was approximately accepted for the year 1994. Though no map is available on record in the present proceedings, in the light of the observations made in the aforesaid decision which pertains to the acquisition of land from village Digbi, Tq. Babhulgaon, said sale instance can be taken

into consideration. In the light of the above fact that the sale deed which was relied upon by the claimant was of year 1994 and the present application for reference is filed in the year 2006. The Section 4, notification was issued on 2003 i.e. approximately after ten years of the said sale instance. The judicial note can be taken that there used to be escalation of the prices of land, and therefore the amount of compensation is to be considered according to the rise in the prices of the lands. This Court has considered the same in the First Appeal Nos. 399/2011 and 916/2013 which has granted the compensation at the rate of Rs.2,10,000/-. In the present case also, the same analogy can be applied. Hence, it is held that the claimant in the present case is also entitled for compensation of land at the rate of Rs.2,10,000/- per hectare. In the result, the appeal filed by the VIDC deserves to be dismissed and cross-objection bearing No.58 of 2013 deserves to be partly allowed. In the result, I proceed to pass the following order.

ORDER

- (i) The Judgment in Land Acquisition Case No.162/2006 dated 31.03.2011, is partly modified.
- (ii) The compensation for the land is determined at the rate of Rs.2,10,000/- per hectare.

(iii) The enhancement amount shall be paid with all statutory benefits.

(iv) The appeal filed by the VIDC is dismissed and cross-objection No.58/2013 is partly allowed.

(v) On depositing the compensation amount by the acquiring body, the claimant is entitled to withdraw the same on due identification and verification.

(URMILA JOSHI-PHALKE, J.)

Sarkate.