

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

FIRST APPEAL NO. 420 OF 2014

APPELLANTS:

[On R.A.]

Maroti s/o Doma Khavas (died)
Aged about 73 years, Occu: Agriculturist,
R/o Dabha, Tah. Babhulgaon,
Dist. Yavatmal.

Amended as per order dated
21/12/2022

Sd/-

Counsel for the appellant
Adv. Swati Paunikar
Adv. Sangita Kule
13/1/23

- 1) Maroti s/o Doma Khavas (died on
21.12.2012)
THROUGH THE LEGAL HEIRS
- 1-a. Sau. Alka Haribhau Sarve (d/o deceased)
Aged about 50 years, Occu: Housewife.
R/o Dhanora (Mali) Dist. Amravati.
- 1-b Sau. Suprita Ramesh Bhagat,
(d/o deceased)
Aged about 48 years, Occu: Housewife.
R/o Waghoda (Sultanpur) Dist. Amravati.
- 1-c Sau. Vimal Sudhakar Burade,
(d/o deceased)
Aged about 45 years, Occu: Housewife.
R/o Hingangaon , Dist. Amravati.
- 1-d Shri Vishnu Marotrao Khavas,
(s/o deceased), Aged about 42 years,
Occu: Private, R/o Chandur Railway,
Dist. Amravati.
- 1-e. Sau. Vanita Gajanan Selokar(d/o deceased)
Aged about 41 years, Occu: Housewife,
R/o Dhanodi, Dist. Amravati.
- 1-f. Sau. Savita Shankar Bante (d/o deceased)
Aged about 39 years, Occu: Housewife,
R/o Dhanodi, Dist. Amravati.

...V E R S U S...

- RESPONDENTS**
- 1] The State of Maharashtra,
represented by the Collector, Yavatmal,
Tah. And Dist. Yavatmal.
 - 2] The Special Land Acquisition Officer,
Yavatmal.
 - 3] The Executive Engineer,
Bembla Project, Yavatmal.

Ms Sarita Kamble, Advocate h/f Ms Swati Paunikar, Advocate for
the Appellants.

Mr K.L. Dharmadhikari, AGP for the respondent Nos. 1 and 2.

Mr M.A. Kadu, Advocate for the Respondent No. 3.

CORAM : URMILA JOSHI-PHALKE, J. .

DATE : 06/03/2023

ORAL JUDGMENT :

1. The present appeal is preferred by the appellants/
original claimant against the judgment and award passed by the
Adhoc District Judge-2, Yavatmal in Land Acquisition Case No.
241/2005, by which the learned reference Court has awarded the
compensation @ Rs. 70,000/- P.H. along with interest and others
statutory benefits. This appeal is for enhancement of the
compensation.

2. As per the contention of the appellant, appellants are the

owner of Gut No. 156/3 ad-measuring 3H 24 R situated at village Dabha, Tah. Babhulgaon, Dist. Yavatmal for the Bembla Project, by initiating Land Acquisition Case No. 29/47-1997-98. The notification under Section 4 of the Land Acquisition Act was published on 02/03/2000. The notification under Section 6 of the Land Acquisition Act was published on 29/6/2000. As per the Award dated 18/5/2002, the Land Acquisition Officer has awarded the compensation @ Rs. 35,944/- per hector to the claimants.

3. Being aggrieved and dissatisfied with the amount awarded by the Land Acquisition Officer, the appellant accepted the amount of compensation under protest and filed reference for enhancement of the compensation @ Rs. 2,00,000/- per hectare. On the ground that, the Land Acquisition Officer has not considered the market price of the land at Dabha and adjacent to the village. The Land Acquisition Officer had also not considered the potential, fertility of the acquired land and determined the price of the acquired land, on the basis of the revenue which was fixed before 100 years.

4. In the reference, the claimant has adduced the evidence by examining himself and also produced on record 7/12 extract, copies of the sale-deed exhibit No28 to 30. The respondents have not adduced any evidence. On the basis of the evidence, the reference Court has awarded the compensation @ 70,000/- per hectare.

5. Being aggrieved and dissatisfied with the judgment, the award passed by the learned reference Court, present appeal is

preferred by the original claimant on the ground that, the learned reference Court has also not considered the market value, potential and fertility of the land.

6. The learned reference Court ought to have considered, that as per the sale deed produced dated 18/1/1994 at Exhibit No.29. The land thereby was fetching Rs. 1,50,000/- for 1H 21 Area, and as per sale instance, Exhibit No.30 of 1994, the 1 H 55 R land was sold for the consideration of Rs. 1,90,000/-. Thus, the learned reference Court ought to have considered that prices rise and therefore, ought to have allowed the 10% rise every year and ought to have grant compensation accordingly.

7. Heard learned advocate Ms Sarita Kamble, h/f Mrs Swati Paunikar. She submitted that the issue is covered by the judgment of this Court in First Appeal No. 557/2007 along with the connected appeals. Wherein the lands were acquired under the same notification and for the same project. Thus, in view of the judgment of this Court, appellants are also entitled for the compensation at the same rate, and accordingly prayed for enhancement of the compensation.

8. On the other hand, Mr M.A. Kadu, learned advocate also submitted that admittedly, the land involved in the present appeal is also acquired by the same award, land is from the same village. However, there is no evidence to show that the land is of same fertility and same potential. Therefore, the compensation granted by the learned reference Court is legal and proper one, and no interference is called for.

9. Heard both the sides. Perused the documents.

10. On perusal of the documents, following points arise my consideration :-

a) Whether the learned reference Court is justified in granting the compensation @ Rs. 70,000/- per sq.ft. ?

b) Whether the claimant has made out the case of enhancement of the compensation ?

11. For implementing Bembla Medium Irrigation Project and particularly, for submergence the huge lands ad-measuring about 10100 hectares of villages Dabha, Yerad, Kopra, Kolhi etc. were acquired. In the present appeal also, gut No. 156/3 admeasuring 3 H 24 R land of village Dabha, Dist. Yavatmal is involved.

12. The Government in Water Conservation Department took a policy decision on 2nd of June 2010 that the compensation for the lands acquired for the Bembla Project should be paid at the rate of Rs.1,25,000/-per hectare. Accordingly, instructions were issued to the concerned for settling the matters amicably and withdrawing the appeals in which compensation less than Rs.1,25,000/ has been granted. Learned advocate, Mr. M.A. Kadu, fairly admitted that the issue involved in the present appeal is covered by the judgment of this Court. He further admitted that the policy decision dated 2nd of June 2010 about 30 matters were settled in this Court in Lok-Adalat, wherein the Acquiring Body/State has agreed to pay compensation of Rs.1,25,000/- per hectare with statutory benefits.

13. In view of the acquiring body/State of Maharashtra agreed to pay compensation @ Rs. 1,25,000/- per hectare with statutory benefits to the land owners, whose lands were acquired for Bembla Project, the present appellants are also entitled to receive the compensation at the same rate.

14. The present appeal is preferred by the appellants for enhancement of the compensation. It is thus obvious that, the Special Land Acquisition Officer described the lands as black loamy soil of superior quality. The other relevant factors that the lands were adjacent to the Gavthan, village as primary and medical school, the distance between the village Dabha and taluka headquarters 15 kms. The crop pattern can be ascertained from the 7/12 extract, the lands are used for growing crops like cotton purchase etc. The claimant has adduced the evidence by examining himself vide Exhibit 25 and also placed on record 7/12 extract and relied upon comparable sale instance.

15. The acquired land is situated at Dabha, the quality of the lands is similar to the other lands acquired. The sale instances which are placed on record are the comparable sale instances. It is settled principle of law that there cannot be a straitjacket formula for determination of the market price of the acquired land. However, the compensation can be granted on the basis of comparable sale instances. The applicant has produced on record two sale instances, in one sale instance, the land sold for consideration of Rs. 1,50,000/- per hectare in the year 1994 and in another sale instance of Rs. 150,000/- price was fetched for 1 H 21 R. the sale

instance at Exhibit 30 is of 1994, wherein Rs.1,90,000/- land was sold for consideration of Rs. 1,90,000/-. Here in the present case, Section 4 notification was issued on 2.03.2000 and award was notified on 18/05/2003. Thus after considering the 10% price every escalation year then the claimant is entitled for the compensation which is awarded by this Court in First Appeal No. 557/2007.

16. The land owners deposed to the effect that the lands acquired were fertile and of best quality capable of growing cotton, soyabean, pulses and he was getting good income from the same land. It is further stated that the village Dabha is near to the taluka place. Though the claimant is cross-examination at length, nothing incriminating is elicited from the cross-examination. The learned Reference Court while dealing with these sale instances came to an erroneous conclusion that no satisfactory evidence has been adduced by the land owners to prove that the sale instances relied upon by him is comparable and proximate from time angle and situation angle. In the case of *G. Narayan Rao V/s. Land Acquisition Officer reported in 1996 (II) Land Acquisition Laws – 528*, the learned Reference Court held that for want of evidence of vendor or vendee to prove passing of consideration the sale instances cannot be considered. However, the ratio laid down in *Cement Corporation of India V/s. Purya and others reported in (2004) Supreme Court Cases 270* was not noticed by the learned Reference Court. In *Cement Corporation of India V/s. Purya and others (supra)* disproving the view taken in *Special Dy. Collector V/s. Kurra Sambasiva Rao's case reported in (1997) 6 SCC 41* and

approving the view taken in *Land Acquisition Officer & Mandal Revenue Officer V/s. Narasaiah's case reported in (2001) 3 S.C.C.530* it was held that :

“The reasoning in Narsaiah case, (2001) 3 SCC 530 that Section 51A enables the party producing the certified copy of a sale transaction to rely on the contents of the document without having to examine the vendee or the vendor of that document, is the correct position of law.”

17. Considering the oral evidence adduced by the appellants and the sale instances which are relied upon by the claimant shows that, in the year 1994, 1.55 H.R. area fetched Rs.1,90,000/-. That means each hectare fetched Rs.1,22,580/-. This transaction is about six years prior to the date of notification. Even if 10% increase per year is considered then the price would come to Rs.1,96,128/- per hectare. Exhibit Nos.29 and 30 are sale instances of the year 1994. Since this is also six years prior to the date of notification in question, considering 10 % increase per year, the price would come to Rs.1,98,347/- per hectare. If 10% increased is considered, the price comes to Rs. 1,38,842/- Amongst the sale instances relied upon by the land owners, the most comparable sale instances are taken into consideration by this Court, while deciding the appeal No. 557/2007, wherein the sale instance was of May 1999 for the land situated at Dabha, area 29 R. The consideration amount is Rs.50,000/-. The sale instance is just 10 months prior to the date of notification, therefore, no increase would be permissible. However,

it being of a very small piece of land while determining the value of large tract of land acquired, some deductions, taking in view the other attendant circumstances particularly, considering the sale transactions of the adjoining villages, will have to be made.

18. On the basis of above sale instances, this Court in First Appeal No 557/2007, come to the conclusion that from the sale instance of village Dabha, the price comes to Rs.1,72,413/ per hectare. By deducting 20% amount it comes to Rs.1,37,931/. Hence, the land owners would be entitled to receive compensation of Rs.1,37,000/ per hectare with all other statutory benefits which is just and fair. Same ratio is applicable in the present case also, considering the land gut No.156/3 is also from the same village, claimant also relied upon same sale instances for the aforesaid reasons, the appeal filed by the appellant land owner is partly allowed. Therefore, I pass the following order:-

- a) The First Appeal is **partly allowed**.
- b) The appellant/land owner is also entitled to receive the compensation of Rs. 1,37,000/- per hectare with all statutory benefits. However, in view of the order of this Court, delay was condoned, subject to the waiver of the interest for the period i.e. date of the judgment of the reference Court, till the date of the order of condonation of delay i.e. 15/4/2014.
- c) Thus, appellant is not entitled to receive the

interest from 13/4/2007 to 15/4/2014. The appeal is disposed of.

JUDGE

RKN