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

FIRST APPEAL NO.1678 OF 2019

Laxmikant s/o Yashwant Nilawar,
Aged about 62 years, occupation
agriculturist, r/o Arni, taluka Arni, district
Yavatmal. **Appellant.**

:: VERSUS ::

1. The State of Maharashtra, through
the Collector, Yavatmal.

2. The Special Land Acquisition
Officer, Benefited Zone, Yavatmal,
District Yavatmal.

3. The Executive Engineer, Navratilova
Project Division, Digras, taluka Digras,
District Yavatmal.

4. Vidarbha Irrigation Development
Corporation, through the Executive
Engineer, Arunavati Project Division,
Digras, taluka Digras, district Yavatmal. **Respondents.**

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Shri Gunjan Kothari, Counsel for the Appellant.
Ms Mallika Babhulkar, Advocate h/f Shri M.A.Kadu, Counsel for
Respondent Nos.3 and 4.
Ms T.H.Udeshi, Assistant Government Pleader for Respondent
Nos.1 and 2.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 08/02/2023

PRONOUNCED ON : 06/04/2023

JUDGMENT

1. The present appeal is filed by the claimant under
Section 54 of the Land Acquisition Act, 1894 (for short, the

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said Act) for enhancement of compensation against judgment and award dated 16.4.2019 passed by learned Civil Judge Senior Division, Darwha in Land Acquisition Reference No.884/2004.

2. By the said impugned judgment and award, the reference court awarded compensation at the rate of Rs.1,99,650/- per hectare.

3. Brief facts necessary for disposal of the appeal, are as under:

The appellant (claimant) was the owner of survey No.70/1 admeasuring 9H 62R of mouza Arni, district Yavatmal. The respondent No.1 acquired 26R of land out of the said survey for construction of Minor Canal Nos.1 to 4 of Arunawati Project at Arni. Accordingly, Notice under Section 4 was issued on 8.9.1994. The Land Acquisition Officer has declared the award on 4.5.1996 vide LAC No.7/47/1992-93 by which compensation at the rate of Rs.36,000/- per hectare was granted. The claimant has filed his claim statement claiming that the acquired land is having non-agricultural potentiality as the acquired land is situated at a distance of

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500 feet from Arni-Yavatmal State Highway. However, it was not considered by the Land Acquisition Officer and awarded the inadequate compensation.

4. Being aggrieved and dissatisfied with the award of the Special Land Acquisition Officer, the claimant has preferred the reference on the ground that the acquired property is within the boundary of Arni Gram Panchayat and is situated at a distance of one kilometer from main locality. All necessary facilities like Gram Panchayat, Schools, and Market Place are available in the town. It is further contention of the claimant that the acquired land is situated at a distance of 200 meters from the land of one Uttamchand Fulchand Jain. The land of said Uttamchand was declared as non-agricultural land. The land of said Uttamchand was also acquired. The land of the claimant is also having non-agricultural potentiality and, therefore, the claimant is entitled to receive the compensation at the rate of Rs.250/- per square feet.

5. The said reference petition is strongly opposed by respondent No.3 – the Executive Engineer, Arunavati Project Division, Digras, taluka Digras, district Yavatmal by filing a

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written statement vide Exhibit-17 and denied the contentions of the claimant. It is submitted that the compensation is awarded on the basis of the market value which is reasonable and no interference is called for.

6. The respondent Nos.1 and 2/State also denied the contentions of the claimant.

7. To substantiate the contentions, the claimant has adduced his evidence and reiterated the contentions vide Exhibit-50. Besides his oral evidence, he placed reliance on Exhibit-52 Notice under Section 4 of the said Act; Notice, under Section 6 of the said Act, Exhibit-53; Notice under Section 12(2) Exhibit-54; the award Exhibit-55, certified copy of the judgment passed in LAC No.782/2004 Exhibit-58, sale instance Exhibit-59, certified copy of the judgment passed in LAC No.1033/2004 Exhibit-93, and LAC No.1024/2004.

8. The respondents, acquired body, have not adduced any evidence. The reference court, after appreciating the evidence on record, observed that 26R land of survey No.70/1 was acquired. It is seen that 7/12 extract Exhibit-61 shows that total area of land of survey No.70/1 is 9H 62R. There is

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no evidence about availability of water in the well shown in the 7/12 extract. It is further held that the claimant relied upon N.A.Orders Exhibits-60 and 63 and map Exhibit-78, vide Exhibit-60 permission for non-agricultural use was granted in respect of field survey No.71 of village Arni vide order dated 18.11.1988. However, there is no evidence that the land of the claimant is also having non-agricultural potentiality and the reference court awarded the compensation at the rate of Rs.1,99,650/- per hectare.

9. Being aggrieved and dissatisfied with the judgment, the present appeal is preferred by the claimant on the ground that learned reference court ignored the fact that the land of the claimant is having non-agricultural potentiality as adjoining lands are already converted into non-agricultural use and, therefore, the claimant is also entitled for the compensation by holding that the land is having the non-agricultural potentiality.

10. Heard learned counsel Shri Gunjan Kothari for the appellant/claimant, Advocate Ms Mallika Babhulkar h/f learned counsel Shri M.A.Kadu for respondent Nos.3 and 4, and

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learned Assistant Government Pleader Ms T.H.Udeshi for respondent Nos.1 and 2/State.

11. Learned counsel Shri Gunjan Kothari for the claimant submitted that the issue involved in the appeal is already covered by the judgment of this Court in First Appeal No.1106/2012 wherein the land of claimant Shri Uttamchand Fulchand Jain bearing gat Nos.118/A and 118C was acquired by the Government by the same Notification. The reference court in that case awarded the compensation at the rate of Rs.123/- per square feet which was maintained by this Court in First Appeal No.1106/2012 and the special leave petition filed by the claimant for enhancement of compensation is dismissed by the Honourable Apex Court. Thus, the rate granted by the reference court has attained the finality. He submitted that the land of the claimant was at a distance of 200 meters from the land which was involved in LAC No.782/2004. The evidence of the claimant that survey Nos.71/2A, 71/2B, 71/2, and 72/3 are at a distance of 100 meters from his land and the said survey numbers are converted into non-agricultural. His land having non-agricultural potentiality is also not challenged during the

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cross-examination. The rate granted in LAC No.782/2004, wherein the reference court awarded the compensation at the rate of Rs.123/- per square feet, was challenged by the V.I.D.C. in Appeal No.1106/2012. The said appeal was dismissed and it was maintained upto the Honourable Apex Court. Thus, the claimant is also entitled to receive the compensation by the same rate. He further submitted that the claimant has placed on record the sale instance Exhibit-59 dated 10.12.1990 wherein plot No.22 admeasuring 533.33 square meters was sold out for consideration of Rs.37,000/-. Therefore, on the ground of parity, the claimant is also entitled to receive compensation at rate of Rs.123/- per square feet.

12. In support of his contention, learned counsel Shri Gunjan Kothari for the claimant placed reliance on the decisions of the Honourable Apex Court in the case of Ali Mohammad Beigh and others vs. State of J&K, reported in MANU/SC/0278/2017 wherein it has been held that the reference court erred in not granting the compensation as per rate when it had granted enhanced compensation for the land

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situated in the same village where acquired land of the appellant was not situated.

13. *Per contra*, Advocate Ms Mallika Babhulkar h/f learned counsel Shri M.A.Kadu for respondent Nos.3 and 4 submitted that the land of the claimant was not converted into non-agricultural land and on the basis of the evidence brought on record, the reference court rightly awarded the compensation considering it as a non-irrigated land. The ground of parity is not available to the claimant. Hence, no interference is called for.

14. In support of her contention, Advocate Ms Mallika Babhulkar for respondent Nos.3 and 4 placed reliance on the decision of the Honourable Apex Court in the case of Union of India vs. Premlata, reported in 2022 (3) ALL MR 281 wherein it has been held that exemplar relied upon by the land owners especially pertains to the very small plots distinguishing features noticed in the land in sale deeds is not present in the acquired land - considering the aforesaid facts and circumstances, relevant factors 40% deduction is ordered to be made towards development charges.

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15. I have perused the record with able assistance of learned counsel for both sides and considered the submissions. There is no dispute that the land involved in First Appeal No.1106/2012 owned by Uttamchand Jain bearing land gat No.118/A and 118/K and the land of the present claimant bearing survey No.70/1 were acquired by the Government by the same Notification. The claimant has adduced the evidence vide Exhibit-50 and testified that his land was situated at a distance of one kilometer away from Yavatmal-Arni State Highway. He was cultivating the land by growing crops like wheat, jawar, cotton, and soyabean. His land was having non-agricultural potentiality. The town Arni is having facilities like primary school, higher secondary school, primary health centre, gram panchayat, offices of Irrigation Department, and MSEB Power Station etc.. survey Nos.71/2A, 71/2B, 71/2, and 72/3, which are converted into non-agricultural land, are at a distance of 100 meters from his land. Survey No.86/ 2 which is at a distance of 500 meters is also converted into non-agricultural land. The land involved in LAC No.782/2004 having gat Nos.118/A and 118C is also situated at a distance of 200 meters. Thus, his land is

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situated between the lands which are having non-agricultural potentiality. His land is also having non-agricultural potentiality. The claimant is cross-examined by respondent Nos.1 and 2 as well as for respondent No.3. The only admission brought on record is that the land of the claimant is not adjoining to the National Highway. The rest of the contention that his land is having non-agricultural potentiality is not denied by the acquiring body during the cross-examination. In fact, the contention of the claimant that the lands, which are converted into non-agricultural that is survey Nos.71/2A, 71/2B, 71/2, and 72/3, are at a distance of 100 meters from the land of the claimant is not denied. The respondent Nos.1 to 3 further not denied that the land involved in the LAC No.782/2004, for which rate Rs.123/- per square feet was granted, at a distance of 200 meters. The contention of the claimant that the village Arni is a developed village is also supported by the award wherein in column No.6 it is mentioned that facilities like market place, primary health centre, primary and higher secondary schools are available in the village.

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16. Having heard learned counsel for both parties, point arises for my consideration is:

Whether the reference court was justified to fix the compensation for the land acquired at the rate of Rs.1,99,650/- per hectare?

17. I have carefully perused the evidence on record as well as the deposition of AW1 i.e. the claimant who has also produced the award passed by the Special Land Acquisition Officer. I have also perused the judgment passed by learned Civil Judge Senior Division, Darwaha dated 16.4.2019 wherein the reference court has fixed the compensation for the land acquired at the rate of Rs.1,99,650/-. It is also not in dispute that by the same Notification the land gat Nos.118/A and 118C was acquired by the respondents. The said land was considered to be having non-agricultural potentiality and awarded the compensation at the rate of Rs.123/- per square feet. The award of the reference court passed in LAC No.782/2004 was the subject matter of the appeal in FA No.1106/2012. This Court, while maintaining the said rate awarded by the reference court, dismissed the appeal. The judgment of this Court was maintained by the Honourable

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Apex Court by dismissing Special Leave Petition No.15002/2022. The evidence of the claimant is that the land involved in LAC No.782/2004 is at a distance of 200 meters from his land, which was acquired by the Government. Moreover, the land gat Nos.118/A and 118C was acquired by the same Notification for the same project. Both the lands are from the same village. The lands, survey Nos.71/2A, 71/2B, 71/2, and 72/3, which are converted non-agricultural, are at a distance of 100 meters. The said evidence is not challenged by the acquiring body during the cross-examination. The evidence of the claimant, that his land is situated in Arni village, which is a developed town, is also corroborated by the award of the Special Land Acquisition Officer. The respondents failed to establish any dissimilarity in the acquired land and the land involved in previous LAC No.782/2004. Considering the land in LAC No.782/2004 is just 200 meters away from the land in the present case and the lands in survey No.71/2A 71/2B 71/2 and 72/3 which are converted into non-agricultural purposes are situated at a distance of 100 meters from the land of the claimant, the claimant is also entitled to receive the compensation by the

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same rate which was awarded by this Court to the land which was acquired by the same Notification and for the same project which is situated in the same village.

18. Considering the material on record and the evidence adduced by the claimant, I find that the land of the claimant is surrounded by the non-agricultural and his land is also having the same potentiality. While awarding the compensation at the rate of Rs.123/- per square feet in First Appeal No.1106/2012, this Court has considered the aspect of deductions towards the development and observed that the land is acquired for the purpose of erection of Minor Canal of Arunawati Project. In this view of the matter, the basic infrastructure has already been erected as the land is abutting the public road i.e. Borgaon Road. It has come in the evidence that residential colonies by name Arunawati Colony are already existing there. So, there is no need to grant deduction. Thus, the issue of deduction has already been considered and the compensation was awarded at the rate of Rs.123/- square feet without any deduction. In view of that, the claimant is also entitled to receive the compensation on

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the ground of parity in view of the judgment of this Court in First Appeal No.1106/2012 decided on 10.3.2021.

19. In view of the above, I find that the reference court has not considered these aspects and awarded the compensation inadequately. The claimant is entitled to receive the compensation at the rate of Rs.123/- per square feet in view the judgment of this Court in First Appeal No.1106/2012 decided on 10.3.2021 and I answer the point accordingly. Hence, I proceed to pass following order:

ORDER

(1) The First Appeal is **allowed**.

(2) The respondent Nos.3 and 4 are directed to deposit compensation amount at the rate of Rs.123/- per square feet, along with statutory benefits and interest accrued thereon, for the area of land admeasuring 26R before the concerned reference court within a period of six months from the date of order of this Court.

Judgment

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(3) The reference court is directed to recover the deficit court fees, if any.

(4) The parties to bear their own costs.

The First Appeal is **allowed** and **disposed** of accordingly.

(URMILA JOSHI-PHALKE, J.)

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