

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

FIRST APPEAL NO.862 OF 2016

Narendra Shankarrao Dagwar
Age – 48 years,
Occupation – Agriculturist,
R/o. Kolhi, Tq. Babhulgaon,
District Yavatmal.

...APPELLANT

VERSUS

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

...RESPONDENTS

Shri A.B. Nakshane, Advocate for the appellant.
Shri M.A. Kadu, Advocate for respondent No.1.
Shri K.L. Dharmadhikari, Assistant Government Pleader for
respondent Nos.2 and 3/State.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : MARCH 16, 2023.
PRONOUNCED ON : MAY 04, 2023

JUDGMENT :

Heard learned Counsel for the parties.

2. Heard Shri A.B. Nakshane, learned Counsel for the appellant. Shri M.A. Kadu, learned Counsel for respondent No.1 and Shri K.L. Dharmadhikari, Assistant Government Pleader for respondent Nos.2 and 3.

3. By this appeal, the appellant – original claimant has challenged the judgment and award of the Reference Court dated 11/04/2011 in respect of agricultural land Gat No.120 admeasuring 4 H 20 R of village Kolhi, Tq. Babhulgaon, District Yavatmal. Said land was acquired for the purpose of submergence of Bembla River Project. Notification under Section 4 of the Land Acquisition Act was issued on 05/06/2003 and the award was passed on 22/09/2005 in L.A.C. No.2/47/2002-2003. By the said award, the Special Land Acquisition Officer has granted total compensation of Rs.3,31,616/-. The appellant has withdrawn the said amount under protest on 16/01/2006. The appellant has claimed the compensation @ Rs.5,00,000/- per hectare.

4. As per the contention of the appellant, the land acquired was horticultural land having best quality of soil which was not considered by the Special Land Acquisition Officer. He has also not considered that the acquired land was having an irrigation facility and awarded the compensation of land treating it to be a dry crop land.

5. Being aggrieved with the same, the appellant has preferred the reference for enhancement of compensation. The said reference was resisted by the respondents on the ground that the Special Land Acquisition Officer had awarded the compensation amount adequately and no interference is called for. The Reference Court after appreciating the evidence, enhanced the compensation @ Rs.1,65,000/- per hectare along with Rs.80,000/- for Well.

6. Being aggrieved and dissatisfied with the judgment and award of the reference Court, present appeal is preferred.

7. Shri Nakshane, learned Counsel for the appellant submitted that the issue involved in the appeal is covered by the judgment of the learned Reference Court dated 12/05/2015 in ***L.A.C. No. 396/2007*** (*Janardhan Maroti Sahare and ors. Vs. The State of Maharashtra, through Collector, Yavatmal and ors.*), which also is in respect of land bearing Gat No.105 admeasuring 1.21 HR of village Kolhi in the same project, from the same Notification, in which the learned Reference Court, has enhanced the compensation for agricultural land @ Rs.2,68,000/- per hectare, ***First Appeal No.954/2017*** (*The Executive Engineer, Bembla Project Division, Yavatmal Vs. Janardhan Maroti Sahare and ors.*), against which, has been withdrawn, which has been

recorded in the judgment dated 12/10/2018 by this Court, in view of which, it is apparent, that the present respondent No.1 has accepted the rate of Rs.2,68,000/- per hectare as the rate for agricultural land in village Kolhi.

8. Though it is tried to be contended by Shri Kadu, learned Counsel for respondent No.1, that the land in the present case was dry crop land and that is the point of distinction why the rate of Rs.2,68,000/- per hectare ought not to be granted, however a perusal of the judgment in Land Acquisition Case No.396/2007 would indicate, that land in that case was also a dry crop land, and therefore, there is no point of distinction available on this count. There is no other material brought to my notice by Shri Kadu, learned Counsel for respondent No.1, either from the evidence or from the document on record to enable me to take a different view. As already observed that the respondent has accepted the rate of Rs.2,68,000/- per hectare for dry crop land, here the evidence on record shows that the Well was situated in the agricultural land of the claimant. The 7/12 extract also shows that the Well was situated in the agricultural land. Merely because the appellant has not cultivated bagayat crops is not sufficient to deny him the compensation by considering it as a seasonal irrigated land. Thus, the appellant is entitled to receive 1.5 times of the dry crop land.

9. In view of that, the appellant is entitled to receive the compensation of @ of Rs.4,02,000/- per hectare. The appellant is entitled to receive @ of Rs.4,02,000/- per hectare by treating the acquired land as seasonally irrigated land.

10. The respondent – acquiring body has to pay @ of Rs.4,02,000/- per hectare to the appellant. The respondent – acquiring body shall make appropriate calculations and deposit the compensation in this Court, within ten weeks from today. While making the calculations, the waiver of the interest for the period of delay i.e. 1207 days as recorded in the order dated 16/08/2016 in Civil Application No.1551/2016 shall be taken into consideration. The difference in court fee shall be paid within one month thereafter, if any. No order as to costs.

(URMILA JOSHI-PHALKE, J.)

**Divya*