



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

FIRST APPEAL NO. 101 OF 2024

- 1) Sau. Pushpa Babanrao Gokhare,
Aged about 55 years, Occ.-Agriculturist,
- 2) Yogesh Babanrao Gokhare,
Aged about 35 years, Occ.-Agriculturist,
- 3) Ashish Babanrao Gokhare,
Aged about 33 years, Occ.-Agriculturist,
All No.1 to 3 R/o. Kumbha,
Tah. Maregaon, Dist. Yavatmal.
Appearing through P.O.A.
Baban Champatrao Gokhare.

.... APPELLANTS

// VERSUS //

- 1) The State of Maharashtra,
Through Collector, Yavatmal.
- 2) Special Land Acquisition Officer,
Minor Irrigation Works No.II,
Yavatmal, Dist. Yavatmal.
- 3) The Executive Engineer,
Bembla Canel Division,
Yavatmal.

.... RESPONDENTS

Mr. A. B. Nakshane, Advocate Appellants.
Mr. S. S. Hulke, Assistant Government Pleader for
Respondent Nos.1 and 2.
Mr. K. R. Lule, Advocate for Respondent No.3.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 06.12.2024.

DATE OF PRONOUNCING THE JUDGMENT : 10.12.2024.

JUDGMENT.

1. The First Appeal is preferred against the judgment and award passed by Civil Judge, Senior Division Kelapur, District Yavatmal in Land Acquisition Case No.8/2011, dated 29.01.2019 thereby learned Reference Court enhanced amount of compensation @ Rs.3,43,750/- per hectare for acquired land.

2. The land of the claimants/appellants bearing Survey No.22/2, 22/2A and 22/2B, admeasuring 1.97 HR., situated at village Kumbha, Tahsil Maregaon, District Yavatmal was acquired by the Land Acquisition Officer for the purpose of “Bembla Canal Project”. The Notification under Section 4 was issued on 09.08.2007 and Award was passed on 24.10.2008 in L.A.C. No.12/47/2006-07. The Land Acquisition Officer awarded compensation @ Rs.85,000/- per hectare and total compensation of Rs.2,41,128/- was awarded to the claimants.

3. Being aggrieved, the claimants have filed a reference under Section 18 of the Land Acquisition Act, 1894 for enhancing amount of compensation. The learned Reference Court, enhanced the amount of compensation @ Rs.3,43,750/- per hectare for the acquired land to the claimants.

4. Being dissatisfied by the decision of the learned Reference Court, the claimants/appellants have filed this appeal for enhancement the amount of compensation.

5. Heard learned Advocates for both sides.

6. Learned Advocate for the appellants submitted that the sale instances value of dry crop land at the adjoining villages comes to more than Rs.2,50,000/- per hectare. The land of the claimants is irrigated land and value of the irrigated land is always double than the dry crop land i.e. Rs.5,00,000/- per hectare. He submitted that to prove the nature of land, the appellants have adduced evidence but, the learned Reference Court granted meagre amount of compensation of Rs.3,43,750/- per hectare. The evidence led by the appellants as well as documents filed by them ought to have been considered for grant of compensation as per awarded to the seasonally irrigated land as the stream (Nala) was passing through the land of claimants. He further submitted that neither the acquiring body nor other respondents could lead any evidence in rebuttal of evidence led by the appellants. He submitted that the learned Reference Court failed to appreciate the evidence led by appellants in its proper perspective. He further submitted that learned Reference Court erred in considering the nature of the best quality, fertile and

high yielding irrigated land and location near gaathan of the acquired land. Therefore, the impugned judgment and award deserves to be set aside.

7. Learned Advocate for the claimants/appellants is relying upon the judgments passed by this Court in ***First Appeal No. 862/2016*** (*Narendra Shankarrao Dagwar Vs. The Executive Engineer, Bembla Project Division, Yavatmal and others*) decided on **04.05.2023** and ***First Appeal No.929/2011*** (*Hemant Manikrao Baradkar and others Vs. State of Maharashtra and others*) decided on **19.07.2019** and submitted that in both the appeals, the lands are seasonally irrigated land and this Court enhanced amount of compensation 1.5 times of the dry crop lands. Therefore, the appellants are also entitled for the same rate. It is lastly prayed to allow the appeal by setting aside the impugned judgment.

8. Learned Advocate for the acquiring body submitted that learned Reference Court enhanced the amount of compensation properly after appreciating the evidence produced on record. He further submitted that there is no substance in the grounds of objection of this appeal and therefore, there is no scope for interference in the impugned judgment. It is lastly prayed to dismiss the appeal.

9. Perused the record and proceeding and impugned judgment and award passed by the learned Reference Court.

10. It is admitted fact that land of the appellants bearing Survey No.22/2, 22/2A and 22/2B, admeasuring 1.97 HR., situated at village Kumbha, Tahsil Maregaon, District Yavatmal was acquired by the Land Acquisition Officer for the purpose of “Bembla Canal Project”. It is also admitted fact that a stream (Nala) was passing through the acquired land and appellants were using lift irrigation for watering its crop. It is undisputed fact that the stream (Nala) was in existence in acquired land which is also evident from the Certificate issued by SDO Pandharkawada, District Yavatmal dated 07.02.1997 at Exhibit-47. In view of that, the inference can be drawn as the acquired land was seasonally irrigated land. The learned Reference Court failed to consider that the said acquired land was seasonally irrigated land. It is also admitted fact that agriculturist of land are not expected to maintain account book about the nature of work done by them. The evidence adduced by appellant is not disproved by the respondent acquiring body.

11. The learned Reference Court had fixed compensation @ of Rs.2,75,000/- per hectare for dry crop land and enhanced amount of compensation 1.25 times and awarded compensation

@ Rs.3,43,750/- per hectare to the claimants. Considering above reasons, the land of claimants is seasonally irrigated land. Therefore, on applying principle of parity, the claimants/appellants are entitled to receive 1.5 times for dry crop land as per the judgments passed by this Court in *First Appeal No. 862/2016* and *First Appeal No.929/2011* cited *supra*. In view of that, the claimants/appellants are entitled to receive compensation @ of Rs.4,12,500/- per hectare by treating the acquired land as seasonally irrigated land.

12. Considering all above facts, the judgment and award passed by learned Reference Court deserves to be modified and appeal deserves to be partly allowed. The appellant is entitled compensation @ Rs.4,12,500/- per hectare. Hence the following order :

- (i) The appeal is **partly allowed**.
- (ii) The appellants are entitled for compensation at the rate of **Rs.4,12,500/-** (Rs. Four Lakh Twelve Thousand Five Hundred only) **Per Hectare** for the acquired land bearing Survey No.22/2, 22/2A and 22/2B, admeasuring 1.97 HR., situated at village Kumbha, Tahsil Maregaon, District Yavatmal along with other statutory benefits, except the period for which the delay was caused for filing this appeal and it was condoned by this Court by order dated 05.01.2024.

- (iii) The respondent No.3 - acquiring body is directed to calculate the appropriate compensation as per above rate and deposit the remaining amount in this Court within six months.
 - (iv) The appellants are required to pay the deficit Court fee, if any, on the enhanced amount of compensation.
 - (v) After depositing the amount, the appellants' Power of Attorney Holder Baban Champatrao Gokhare is entitled to withdraw the same, for that no any application and special order on it is required for directions to the Registry to pay that amount. The Registry is directed accordingly to pay that amount to the Power of Attorney holder - **Baban Champatrao Gokhare**.
13. The appeal is **disposed of** accordingly.

(SANJAY A. DESHMUKH, J.)