



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

FIRST APPEAL NO. 1387 OF 2013

Vidarbha Irrigation Development Corporation,
through its Executive Engineer,
Bembla Project Division, Yavatmal,
Tq. and District Yavatmal.

.... **APPELLANT**

// VERSUS //

- 1) Madhukar Manohar Pande, (**Dead**)
through his legal representatives :
- 1-a) Milind Madhukar Pande,
aged about 40 years, Occ.-Agriculturist,
- 1-b) Sau. Vishakha Vilas Amaravatkar,
aged about 55 years, Occ.-Household,

R/o. C/o. V. L. Amravatkar, Perna Nagar,
Old Umarsara, Yavatmal,
Tq. and District Yavatmal.
- 1-c) Sau. Shaila Manoharrao Deshpande,
C/o. Manohar Vitthalrao Deshpande,
R/o. Hatotipura, Karanja Lad,
Tq. Karanja Lad, District Washim.
- 1-d) Sau. Kalpana Prakashrao Sakalkale,
C/o. Prakashrao Sakalkale,
R/o. Near Saraswati Bhavan,
Near Gurumandir, Karanja Lad,
Tq. Karanja Lad, District Washim.
- 1-e) Sau. Kanchan Gajananrao Jahagirdhar,
C/o. Gajananrao Jahagirdhar,
Near Santoshi Mata Mandir, Selu Naka,
Malegaon, Tq. Malegaon, District Washim.

- 1-f) Sau. Ranjana Vinodrao Kanjharkar,
C/o. Vinodrao Kanjharkar,
R/o. Shishak Colony, Near Shirpur Phata
Petrol Pump, Malegaon,
Tq. Malegaon, District Washim.
- 2) The State of Maharashtra,
Through The Collector, Yavatmal,
Tq. & District Yavatmal.
- 3) The Special Land Acquisition Officer,
Bembla Project, Yavatmal,
Tq. and District Yavatmal.

.... **RESPONDENTS**

Mr. J. B. Kasat, Advocate with Mr. Vinay Dahat, Advocate for Appellant.

Mr. A. B. Nakshane, Advocate for Respondent No.1(a) to 1(f).

Mr. M. A. Kadu, Assistant Government Pleader for Respondent Nos.2 and 3.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 12.07.2024.

DATE OF PRONOUNCING THE JUDGMENT : 23.08.2024.

JUDGMENT.

1. This appeal is preferred against the judgment and award passed by Joint Civil Judge, Senior Division, Yavatmal dated 10.03.2011 in Land Acquisition Case No.786/2006.

2. The open plot area admeasuring 207.90 sq. mtr. and built up area admeasuring 140.78 sq.mtr. of house property No.62,

situated at village Pimpalkhuta, Tahsil Babhulgaon, District Yavatmal of the claimants was acquired by the appellant for the submergence of Bembla project for which Section 4 notification came to be issued on 06.10.2003. As per the award dated 21.06.2005, the Land Acquisition Officer awarded compensation @ Rs.90/- per sq.mtr. for open plot and Rs.3,94,552/- for total built up area of house. The Land Acquisition Officer also awarded Rs.500/- towards costs of the Well and awarded total compensation of Rs.6,22,713/-. Feeling aggrieved by inadequate compensation, a reference seeking enhancement of compensation was moved under Section 18 of the Land Acquisition Act, 1894. According to land owner, the valuation of the acquired property and the actual damage caused was not properly appreciated and valued.

3. The present appellant and respondent Nos.2 and 3 by filing their written statement vide Exhibit-9 and 12 respectively resisted the claim. The following issues were framed by the learned reference Court at Exhibit 17 :

- (1) Whether applicant proved that insufficient compensation was granted?*
- (2) Is applicant entitled to enhance compensation?*
- (3) Whether reference petition is filed within limitation?*

4. To prove the claim, the claimants examined Milind Madhukar Pande at Exhibit-25 and produced notice under Section 12(2) at Exhibit-26, Copy of Award at Exhibit-27, application under protest at Exhibit-28, tax receipts at Exhibit-29, electric bill at Exhibit-30, certified copy of sale deed of village Pahur at Exhibit-31, certified copy of sale deed of village Dighi at Exhibit-32, certified copy of judgment in LAC No.589/2006 at Exhibit-33 and also valuation report at Exhibit-35 issued by valuer Chandrashekhar Punjabrao Wankhade, who was examined at Exhibit-34, whereas, no evidence was adduced by the respondents.

5. From the evidence of claimants, it was established that open plot area admeasuring 207.90 sq. mtr. and built up area admeasuring 140.78 sq.mtr. of house property No.62 was acquired by the appellant. The claimants also examined Valuer, who inspected the acquired properties and issued Valuation certificate accordingly. The house was constructed in bricks and cement concrete etc. The claimants have filed on record the judgment in L.A.C. No.589/2006 vide Exhibit-33, which is in respect of the same award and same village of Pimpalkhuta. As per judgment in L.A.C. No.589/2006, the reference Court has awarded compensation @ Rs.800/- per sq.mtr. for open plot and Rs.2,600/- per sq.mtr. for built up area.

6. Upon appreciating the evidence of an expert and considering all these aspects about the age of construction, nature of construction, quality of construction, material used for construction and available facilities, the learned reference Court awarded compensation @ Rs.800/- per sq.mtr. for open plot and Rs.3,800/- for built up area to the claimants. Dissatisfaction of this, the appellant/acquiring body has filed this appeal contending that an exorbitant amount of compensation is awarded to the claimants.

7. The learned Advocate for the claimants/respondent Nos.1(a) to 1(f) pointed out the Judgment passed by this Court in *First Appeal (st.) No.1266/2016 (VI.D.C. through Executive Engineer, Bembla Project Division, Yavatmal Vs. Sahebrao Pundlikrao Nagpure (Since dead) through LRs. and others)* dated 04th May, 2017, wherein this Court after considering all aspects, dismissed the appeal filed by acquiring body. He, therefore, prayed to dismiss the present appeal on the basis of principle of parity.

8. Perused the impugned judgment and the judgment of this Court dated 04th May, 2017 passed in First Appeal (St.) No.1266/2016.

9. Heard learned Advocate for both sides.

10. The admitted facts are that in the house property No.62, open plot's area admeasuring 207.90 sq. mtr. which was having built up area admeasuring 140.78 sq.mtr. of the claimants was acquired by the appellant. Though it is contended that the award of compensation is at a higher rate, the evidence of P.W.1 at Exhibit-25, sale instances Exhibits-31 and 32, the valuation report Exhibit-35, age and nature of construction, quality of construction, material used for construction and available facilities, has been rightly appreciated by the reference Court. No any perversity is noticed in the impugned judgment of the learned reference Court. However, after re-appreciation of entire evidence of the expert and others, this Court in the case of *Sahebrao Pundlikrao Nagpure* (cited supra), dismissed the appeal filed by acquiring body.

11. Considering this fact and law and applying the principle of parity, the appeal lacks merit therefore, the appeal deserves to be dismissed. Hence, the appeal stands **dismissed** with no order as to costs.

(SANJAY A. DESHMUKH, J.)