



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

FIRST APPEAL NO. 420 OF 2019

- 1) Vidarbha Irrigation Development Corporation,
through its Executive Engineer,
Bembla Project Division, Yavatmal,
 - 2) The Executive Engineer,
Bembla Project Division, Yavatmal,
Tq. and District Yavatmal.
- APPELLANTS**

// VERSUS //

- 1) Janardhan Pundlik Pawar (**Dead**)
through his legal representatives :
- 1-a) Aruna Janardhan Pawar,
aged about 66 years, Occ.-Household,
R/o. Dhamangaon Railway, Khetan Nagar,
Tq. Dhamangaon Railway, Dist. Amravati.
- 1-b) Rajendra Janardhan Pawar,
aged about 44 years, Occ.-Agriculturist,
R/o. Kopra-1, Post Pimpalkhuta,
Tq. Babhulgaon, Dist. Yavatmal.
- 1-c) Priti Sanjay Yevale,
aged about 42 years, Occ.-Household,
R/o. Katol, Panchawati, Main Road,
Tq. Katol, Dist. Nagpur.
- 2) Smt. Subhadra Mahadeo Pawar (Dead),
- 3) Jitendra Janardhan Pawar,
aged about 34 years,
R/o. Pimpalkhuta,
Tq. Babhulgaon, Dist. Yavatmal.

- 4) The State of Maharashtra,
Through Collector, Yavatmal,
Tq. & District Yavatmal.
- 5) The Special Land Acquisition Officer,
Bembla Project, Yavatmal,
Tq. and District Yavatmal.

.... **RESPONDENTS**

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

Mr. A. B. Nakshane, Advocate for Respondent No.1(a) to 1(c) and respondent No.3.

Mr. M. A. Kadu, Assistant Government Pleader for Respondent Nos.4 and 5.

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 29.01.2014 in Land Acquisition Case No.243/2008.

2. The open plot area admeasuring 69.70 sq. mtr. and built up area admeasuring 167.00 sq.mtr. of house property No.157, situated at village Pimpalkhuta, Tahsil Babhulgaon, District Yavatmal of the claimants was acquired by the appellant for the submergence of Bembla River project for which Section 4 notification came to be

issued on 11.09.2003. As per the award dated 21.06.2005, the Land Acquisition Officer awarded total compensation of Rs.4,24,180/- for open plot and built up area. 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.4 and 5 by filing their written statement vide Exhibit-12 and 16 respectively resisted the claim. The following issues were framed by the learned reference Court at Exhibit 24 :

- (1) Do applicants prove that the amount of compensation paid by the LAO is inadequate and does not reflect the market price?*
- (2) Are applicants entitled to enhance compensation? If yes, at what rate?*
- (3) Is the petition filed within limitation?*

4. To prove the claim, the claimants examined Janardhan Pundlik Pawar at Exhibit-25 and he relied upon the documents i.e. notice under Section 4 at Exhibit-30, notice under Section 9 at Exhibit-31, notice under Section 12(2) at Exhibit-32, tax receipts at

Exhibit-33 and 34, electric bill at Exhibit-35, Gram-Panchayat property card at Exhibit-36, village Taluka Map at Exhibit-37, certified copy of sale deed of village Pahur at Exhibit-38, certified copy of sale deed of village Dighi at Exhibit-39, TILR map at Exhibit-40, certified copy of judgments in L.A.C. No.542/2007 at Exhibit-41, L.A.C. No.593/2007 at Exhibit-44 and also Valuation Report at Exhibit-47 issued by valuer Chandrashekhar Wankhade, who was examined at Exhibit-46, whereas, no evidence was adduced by the respondents.

5. From the evidence of claimants, it was established that open plot area admeasuring 69.70 sq. mtr. and built up area admeasuring 167.00 sq.mtr. of house property No.157 was acquired by the appellant. The claimants also examined Valuer, who inspected the acquired properties and issued Valuation certificate accordingly. The house was located at the prime location. The village is equally potential of any other village. The market value of the land is higher than other village. The acquired house was having direct approach road to Highway. The claimants have filed on record the judgment in L.A.C. No.593/2007 vide Exhibit-44, which is in respect of the same award and same village of Pimpalkhuta. As per judgment in L.A.C. No.593/2007, the reference Court has awarded compensation

@ Rs.800/- per sq.mtr. for open plot and Rs.1705/- per sq.mtr. for built up area.

6. Upon appreciating the evidence of an expert and considering all these aspects about the age and nature of construction, material used for construction and available facilities and on applying principle of parity, the learned reference Court awarded compensation @ Rs.800/- per sq.mtr. for open plot and Rs.1705/- 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.157 admeasuring total area of 236.70 out of which open plot's area admeasuring 69.70 sq. mtr. and built up area admeasuring 167.00 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-38 and 39 and the valuation report Exhibit-47 as well as age and nature 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. 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.)