



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

**CROSS OBJECTION NO. 30 OF 2016
IN
FIRST APPEAL NO. 474 OF 2009 (D)**

Vidarbha Irrigation Development
Corporation, through its
Executive Engineer,
Minor Irrigation Division, Pusad,
Tq. and Dist. Buldhana.

.... **APPELLANT**
(RESPONDENT)

// VERSUS //

1) Ganpat s/o Ramji Malkapure,
Aged about 66 years,
Occupation – Cultivator,
R/o. Durgada, A/P. Wai,
Tq. Maregaon, Dist. Yavatmal.

.... **CROSS-OBJECTOR**
APPLICANT

2) The State of Maharashtra,
Through the Collector, Yavatmal.

3) The Special Land Acquisition Officer,
Minor Irrigation Works No.II,
Yavatmal.

.... **RESPONDENTS**

Mr. K. S. Narwade, Advocate for Cross-objector.

Mr. A. B. Patil, Advocate for Appellant/Respondent (VIDC).

Mr. S. C. Joshi, Assistant Government Pleader for
Respondent Nos.2 and 3.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 28.11.2024.

DATE OF PRONOUNCING THE JUDGMENT : 03.12.2024.

JUDGMENT.

1. The Cross-objection is preferred against the judgment and award passed by Civil Judge, Senior Division, Pandharkawada (Kelapur), District Yavatmal in Land Acquisition Case No.573/2002, dated 08.08.2006 thereby learned Reference Court enhanced amount of compensation @ Rs.70,000/- per hectare for acquired land.

2. The Cross-objection is filed in First Appeal No.474/2009, the said first appeal was already dismissed for non compliance of order of this Court.

3. The land of the claimant/cross-objector bearing Survey No.7, admeasuring 3.70 HR., situated at village Durgada, Tahsil Maregaon, District Yavatmal was acquired by the Land Acquisition Officer for the purpose of construction of "Wai Irrigation Project". The Notification under Section 4 was issued on 05.12.1996 and Award was passed on 23.06.1999 in L.A.C. No.9/47/95-96. The Land Acquisition Officer awarded compensation @ Rs.21,000/- per hectare to the claimant. It also awarded compensation of Rs.54,080/- for trees and Rs.62,040/- for a Well.

4. Being aggrieved, the claimant has filed a reference under Section 18 of the Land Acquisition Act, 1894 for enhancing

compensation amount. The learned Reference Court, enhanced the amount of compensation @ Rs.70,000/- per hectare for the acquired land to the claimant.

5. Being dissatisfied by the decision of the learned Reference Court, the claimant/cross-objector has filed this cross-objection for enhancement of amount of compensation.

6. Heard learned Advocates for both sides.

7. Learned Advocate for the cross-objector submitted that there was a Well situated in the acquired land therefore, cross-objector is entitled for the compensation, at the rate, which is payable to the irrigated lands. He further submitted that agriculturist are not expected to maintain account book about the nature of work done by them. Therefore, evidence led by the claimant/cross-objector as well as documents filed by him ought to have been considered for grant of compensation. He further submitted that neither the acquiring body nor other respondents could lead any evidence in rebuttal of evidence led by the cross-objector. He submitted that the learned Reference Court failed to appreciate the evidence led by cross-objector. Therefore, the cross-objector is entitled for enhanced amount of compensation as awarded in irrigated land.

8. Learned Advocate for the cross-objector is relying upon the precedential law of ***Chindha Fakira Patil (Dead) through LRs. Vs. Special Land Acquisition Officer, Jalgaon***, reported in ***(2011) 10 SCC 787***, in which, it is held that if the Well is situated in the acquired land and mere fact that the claimant had not cultivated sugarcane or wheat, cannot lead to an inference that the land was not irrigated. He lastly prayed to allow the cross-objection by setting aside the impugned judgment.

9. Learned Advocate for the acquiring body submitted that learned Reference Court enhanced the amount of compensation properly after appreciating the evidence produced on record therefore, there is no scope for interference in the judgment. It is lastly prayed to dismiss the cross-objection.

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

11. It is admitted fact that land of the cross-objector/claimant bearing Survey No.7, admeasuring 3.70 HR., situated at village Durgada, Tahsil Maregaon, District Yavatmal was acquired by the Land Acquisition Officer for the purpose of construction of "Wai Irrigation Project". It is also admitted fact that

the Land Acquisition Officer awarded compensation of Rs.62,040/- for a water Well, which was situated in the acquired land. As per the law laid down in the case of ***Chindha Fakira Patil*** cited *supra*, if there is a water Well in the acquired land, which land was irrigated land. It is also admitted fact that agriculturist are not expected to maintain account book about the nature of work done by them. Therefore, the learned Reference Court failed to consider that the said acquired land was irrigated land and enhanced the amount of compensation as per dry crop land. The learned Reference Court discarded the evidence adduced by claimant/cross objector by applying the rule of strict proof. The learned Reference Court erred in deciding the rate of compensation.

12. Considering all above facts, the judgment and award passed by learned Reference Court deserves to be modified and Cross-objection deserves to be partly allowed. The cross-objector is entitled compensation @ Rs.1,40,000/- per hectare as it is settled principle that amount awarded for dry crop land should double for the irrigated land. Hence the following order :

- (i) The appeal is **partly allowed**.
- (ii) The Cross-objector is entitled for compensation at the rate of **Rs.1,40,000/-** (Rs. One Lakh Forty Thousand only) **Per Hectare** for the acquired land bearing Survey

No.7, admeasuring 3.70 HR., situated at village Durgada, Tahsil Maregaon, District Yavatmal along with other statutory benefits, except the period for which the delay was caused in filing the cross-objection and it was condoned by this Court by order dated 21.07.2016.

- (iii) The 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 cross-objector is required to pay the deficit Court fee, if any, on the enhanced amount of compensation.
- (v) After depositing the amount, the cross-objector is entitled to withdraw the same and no any further application and order on it is required for directions to the Registry to pay that amount to the cross-objector. The Registry is directed accordingly to pay that amount.

13. The Cross-objection is **disposed of** accordingly.

14. In view of disposal of Cross objection, pending application/s, if any, is/are disposed of.

(SANJAY A. DESHMUKH, J.)