



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

FIRST APPEAL NO. 417 OF 2024

Shyamrao S/o. Vishwanath Ajabale,
(Since Deceased), Through his Legal Heirs :

- 1) Sevendra S/o. Shyamrao Ajabale,
Aged about 62 years, Occ.-Agriculturist,
R/o. Satgaon (Masala),
Tah. Hingna, District – Nagpur.
- 2) Mahendra S/o. Shyamrao Ajabale,
Aged about 60 years, Occ.-Agriculturist,
R/o. Satgaon (Masala),
Tah. Hingna, District – Nagpur.
- 3) Arun S/o. Shyamrao Ajabale,
Aged about 45 years, Occ.-Agriculturist,
R/o. Satgaon (Masala),
Tah. Hingna, District – Nagpur.
- 4) Pushpa @ Shobha W/o. Pralhad Choudhary,
Aged about 66 years, Occ.-Household,
R/o. Pilinadi, Kamptee Road, Nagpur.
- 5) Tarabai W/o. Kamlakar Khadse,
Aged about 56 years, Occ.-Household,
R/o. Hinganghat, District - Wardha.
- 6) Kalpana W/o. Vinayak Mahajan,
Aged about 46 years, Occ.-Household,
R/o. Ganeshpur, District – Wardha.
- 7) Kaushalya Wd/o. Shyamrao Ajabale,
Aged about 82 years, Occ.-Nil,
R/o. Satgaon (Masala),
Tah. Hingna, District – Nagpur.

.... **APPELLANTS**

// VERSUS //

- 1) State of Maharashtra,
Through the Collector,
Civil Lines, Nagpur.
- 2) Executive Engineer,
Pench Prakalpa,
Lower Wena Project, Wadgaon,
Tahsil and District Nagpur.

.... **RESPONDENTS**

Mrs. Rajkumari Rai, Advocate for Appellants.
Ms. Deepa Charlewar, Assistant Government Pleader for
Respondent No.1.
Mr. A. S. Bhagwat, Advocate for Respondent No.2.

CORAM : SANJAY A. DESHMUKH, J.

DATE : 05th SEPTEMBER, 2024.

ORAL JUDGMENT.

1. This appeal is preferred by the appellants against the Judgment and decree dated 16.08.2012 passed by Joint Civil Judge, Senior Division, Nagpur in Land Acquisition Case No.214 of 1997, thereby claim for enhancement of compensation amount was dismissed.

2. Brief facts of the claimant's case are as under :

(i) The land of the original claimant bearing Survey No.32/34, admeasuring 5.74 HR. and 0.50 HR., situated at Mouza Masala, Tahsil and District Nagpur was acquired by the Land

Acquisition Officer for the Wadgaon Tank Project. By the award of Land Acquisition Officer, total amount of Rs.2,84,825/- was awarded as compensation to the claimant. Being aggrieved by the award, the claimant has filed reference under Section 18 of the Land Acquisition Act, 1984 for grant of enhancement in the compensation amount as Land Acquisition Officer has not properly valued land in question and inadequate compensation was awarded.

(ii) The non-applicants/acquiring body by filing written statement vide Exhibit-16, resisted the claim of the claimant by contending that Land Acquisition Officer has taken all the relevant factors into consideration and granted fair, reasonable and adequate amount of compensation to the claimant. Therefore, they prayed to dismiss the reference.

(iii) The learned Reference Court cast the following issues vide Exhibit-17 :

- (1) Whether the reference is barred by Limitation?*
- (2) Does the applicant prove that the compensation awarded by Special Land Acquisition Officer is grossly inadequate?*
- (3) Whether the applicant is entitled to enhance compensation? If yes, at what rate?*

3. Both the parties have not led any evidence to prove their contentions. The learned Reference Court for want of evidence held that the claimant failed to prove his case and dismissed the reference. Being aggrieved, the appellants filed this appeal.

4. Heard learned Advocate Ms. Rajkumari Rai for appellant, learned Assistant Government Pleader Ms. Deepa Charlewar for respondent No.1/State and learned Advocate Mr. A. S. Bhagwat for respondent No.2.

5. Learned Advocate for the appellants submitted that the judgment and award passed by the learned Reference Court is against the dead person, it is nullity. The original claimant was died on 14.05.2012. The reference was decided on 16.08.2012. The appellants/legal representatives of the claimant were not aware about the reference that it is pending. The Advocate Voditel, who appeared on behalf of claimant in the Reference Court was also died, prior to the death of claimant Late Shyamrao. Therefore, his legal representatives were not brought on record.

6. Learned Advocate for the appellants further submitted that in ***First Appeal No. 293 of 2010 (The State of Maharashtra & Ors. Vs. Rambhau S/o Hari Dhakane with connected matters)***,

decided on 19.10.2018, this Court has awarded Rs.1,25,000/- per hector for dry crop land and Rs.2,50,000/- for irrigated land. The land of the claimant is perennial irrigated land therefore, the reference would have been decided on merit and awarded the compensation @ Rs.2,50,000/- per hectare. It is lastly prayed to allow the appeal and set aside the judgment and decree passed by reference Court by remanding the Land Acquisition Case No. 214 of 1997 to its file and allow the legal representatives of deceased claimant Shyamrao to be made a party and proceed on merit by leading evidence.

7. Learned Advocates for the respondents strongly objected the prayer of remand of reference and submitted that the reasons and findings of the learned Reference Court are legal, correct and no interference is warranted in it. It is lastly prayed to dismiss the appeal.

8. It is admitted fact that land of the original claimant Shyamrao bearing Survey No.32/34, admeasuring 5.74 HR. and 0.50 HR., situated at Mouza Masala, Tahsil and District Nagpur was acquired by the Land Acquisition Officer for the Wadgaon Tank Project. During the pendency of reference, the original claimant was

died on 14.05.2012. The fact of his death was not informed to the Reference Court or the Advocate of claimant, who was representing the claimant. It is also admitted fact that the Advocate Voditel, who appeared on behalf of claimant was also died prior to the death of claimant. Therefore, his legal representatives were not brought on record.

9. As per Rule 10A of Order XXII of the Code of Civil Procedure, the death of claimant was to be communicated to the Reference Court by his Advocates, but it was not communicated because the Advocate, who appeared on behalf of claimant, was also died prior to the death of claimant. Therefore, the legal representatives of the deceased claimant was not brought on record. The judgment and decree passed by the Reference Court is against the dead person. There cannot be any dispute, with a proposition that “a decree against a dead person is a nullity”.

10. The Hon’ble Supreme Court in case of ***Amba Bai and Others vs Gopal and Others***, reported in ***2001 (5) SCC 570*** held that, “judgment and decree passed against the dead person was a nullity and hence, it could not be executed.”

11. The land of the appellants are perennial irrigated land and this Court in case of ***First Appeal No. 293 of 2010*** (cited supra) awarded Rs.1,25,000/- per hector for dry crop land and Rs.2,50,000/- for irrigated land. Considering the set of fact and ratio laid down in the case of ***Amba Bai*** cited *supra*, the reference would have been decided on merit. Therefore, the appeal deserves to be allowed and the judgment and decree passed by the learned Reference Court is deserves to be set aside as the judgment and decree passed against a dead person is a nullity. Hence the following order :

- (i) The appeal is **allowed**.
- (ii) The judgment and decree dated 16.08.2012 passed by Joint Civil Judge, Senior Division, Nagpur in Land Acquisition Case No.214 of 1997 is hereby quashed and set aside and reference is remanded to the Reference Court.
- (iii) The learned Reference Court is directed to rehear the Land Acquisition Case No.214 of 1997 by allowing the amendment in the land reference application by permitting appellants to bring themselves as legal representatives of original claimant late Shyamlal on record as per Order XXII of the CPC and proceed with the reference for fresh decision of it on merit.

- (iv) The Land Acquisition Case No.214 of 1997 is more than 27 years old, therefore, the learned Reference Court is directed to decide it within six months by keeping its dates of hearing at least once in a week.
- (v) Inform the Reference Court accordingly by sending copy of this judgment.

(SANJAY A. DESHMUKH, J.)