



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

FIRST APPEAL NO. 870 OF 2024

Himmat Shamrao Gayaki (Dead)
Through his Legal Representatives :

- 1) Vipul S/o Himmatrao Gayaki,
Aged about 37 years, Occ.-Agriculturist,
- 2) Smt. Latabai Wd/o Himmatrao Gayaki,
Aged about 60 years, Occ.-Agriculturist,

Both R/o. Khumbharkinhi,
Tq. Darwaha, District – Yavatmal.
Presently R/o. Dattapur,
Tq. Darwaha, District – Yavatmal.
- 3) Sau. Prajali W/o Anil Gawande,
Aged about 35 years, Occ.-Housewife,
R/o. Chinchgaon,
Tq. Ner, District – Yavatmal.
- 4) Sau. Anjali W/o Kishor Gawande,
Aged about 32 years, Occ.-Housewife,
R/o. Kinhiwadgi,
Tq. Darwaha, District – Yavatmal.

.... **APPELLANTS**

// VERSUS //

- 1) The State of Maharashtra,
Through the Collector, Yavatmal,
Tq. & Dist. Yavatmal.
- 2) Special Land Acquisition Officer,
Kumbharkinhi Project, Darwaha,
Tq. Darwaha, Dist. Yavatmal.
- 3) Executive Engineer of
Kumbharkinhi Dam Division, Pusad,
Tq. Pusad, Dist. Yavatmal.

.... **RESPONDENTS**

Mr. S. V. Ingole, Advocate for Appellant.
Mr. P. P. Pendke, Assistant Government Pleader for Respondent Nos.1 and 2.
Mr. Mangesh A. Kadu, Advocate for Respondent No.3.

CORAM : SANJAY A. DESHMUKH, J.

DATE : 29th AUGUST, 2024.

ORAL JUDGMENT.

1. Heard. **Admit.** Heard finally by consent of the learned Advocates for the parties.

2. This appeal is preferred against the judgment and award passed by Civil Judge, Senior Division, Darwha, District Yavatmal dated 26.10.2016 in Land Acquisition Case No.2173/2004.

3. The challenge under this appeal is only about constructed area 58.13 sq. mtr., situated at village Kumbharkinhni, Taluka Darwha, District Yavatmal was acquired for public purpose under Kumbharkini project. Under the same project, other lands as well as constructed houses were acquired under the same notification and same purposes.

4. Learned Advocate for the appellants pointed out the judgment passed by this Court in ***First Appeal No.364/2016*** (*Ganesh Pundlik Deeve Vs. Executive Engineer, Kumbharkinhni Dam Division*

Pusad, Tq. Pusad Distt. Yavatmal and others) dated 22.02.2021, wherein this Court after considering parity enhanced the compensation regarding constructed structure of the same village at the rate of Rs.3200/- per sq. mtr. He, therefore, prayed to award the same rate to the appellants.

5. Perused the impugned judgment and the judgment of this Court dated 22.02.2021, passed in First Appeal No.364/2016.

6. Heard learned Advocate Mr. S. V. Ingole for appellants, learned Assistant Government Pleader Mr. P. P. Pendke for respondent Nos.1 and 2 and learned Advocate Mr. Mangesh A. Kadu for respondent No.3.

7. The admitted facts are that house No.38 of village Kumbharkinhi, Tahsil Darwaha, District Yavatmal was acquired admeasuring 58.13 sq. mtr. constructed area and 58.13 sq.mtr. open plot area by notification dated 06.11.1998 according to the award passed on 30.12.2000. By the award of Land Acquisition Officer, Rs.80/- per sq.mtr. for open plot and Rs.779/- per sq.mtr. for construction was fixed and total amount of Rs.49,961/- was granted as compensation to the appellants. Feeling aggrieved, the appellants have filed reference. The learned Reference Court enhanced the amount and awarded compensation @ Rs.240/- per sq.mtr. for open

plot area and Rs.1558/- per sq.mtr. for constructed area. However, after appreciation of the evidence of an expert, this Court in the case of *Ganesh Pundlik Deeve* (cited supra) considered Rs.3,200/- per sq. mtr. rate for constructed area of same village. Therefore, the appellants are also entitled for same rate of compensation. Considering this fact and applying the principle of parity, the appeal deserves to be partly allowed. The impugned judgment and award of the Reference Court deserves to be partly set aside and modified.

8. The appeal is **partly allowed**.

9. The appellants are entitled for compensation at the rate of **Rs.3,200/-** per sq. mtr. for the constructed area of **58.13** sq. mtr., to that extent impugned judgment and award is modified along with statutory benefits, except the period for which the delay was caused in filing the appeal and it was condoned by this Court by order dated 19.08.2024.

10. The respondent No.3 is directed to calculate the appropriate compensation as per above rate and deposit the remaining amount in this Court within six months.

11. The appellants are required to pay the deficit Court fee, if any, on the enhanced amount of compensation.

12. After depositing the amount, the appellants are entitled to withdraw the same and no any further application or order is required for directions to the registry.

13. The registry is directed accordingly to pay that amount.

14. The appeal is **disposed of** accordingly.

(SANJAY A. DESHMUKH, J.)

Kirtak