



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

FIRST APPEAL No.772 OF 2010

Vidarbha Irrigation Development Corporation,
Through Executive Engineer,
Lower Wardha Project Division, Pipri (Meghe),
Wardha.

: APPELLANT

...VERSUS...

1. Shamsundar Nathmalji Rathi,
Aged 57 years,
Occupation : Cultivator,
R/o. Arvi, District Wardha.
2. The State of Maharashtra,
Through Collector,
Wardha.
3. Special Land Acquisition Officer,
Vidarbha Patbhandhare Vikas
Mahamandal, Wardha.
4. District Resettlement Officer,
Wardha.

: RESPONDENTS

WITH

CROSS OBJECTION No.50 OF 2024

Vidarbha Irrigation Development Corporation,
Through Executive Engineer,
Lower Wardha Project Division,
Wardha.

: APPELLANT
(RESPONDENT)

...VERSUS...

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Aged about 57 years,

Occupation : Cultivator,
R/o. Arvi, District Wardha.

CROSS-OBJECTOR

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: **RESPONDENTS**

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Ms. Ashwini Athley Advocate for Appellant/VIDC.

Mr. S.O. Ahmed, Advocate for Respondent No.1 in First Appeal
No.772/2010 and for Cross-objector in Cross-Objection No.50/2024.

Ms. Deepa Charlewar, Asstt. Government Pleader for Respondent
Nos.2 to 4 in First Appeal No.772/2010 and Cross-Objection
No.50/2024.

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CORAM : **SANJAY A. DESHMUKH, J.**

DATE : **23rd SEPTEMBER, 2024.**

ORAL JUDGMENT :

1. This appeal is preferred under Section 54 of the Land Acquisition Act read with Section 96 of the Code of Civil Procedure, 1908 (for short, hereinafter referred to as, 'CPC') against the judgment and award of learned Reference Court i.e. Civil Judge, Senior Division, Wardha in Land Acquisition Case No.354/2001, dated 28.12.2010. The Reference Court partly allowed the reference and claimant-

respondent No.1 was awarded enhanced compensation of Rs.17,00,000/-.

2. Brief facts of the case are as under :

The land bearing Survey Nos.31, 154/1 and 154/2, admeasuring 2.35 HR, total area is 4.70 HR, was acquired by the appellant. The respondent No.1 claimant was awarded compensation of Rs.1,45,546/- for the said land, including cost of trees, solatium and interest etc.

3. The claimant-respondent No.1, in his case before the Reference Court, contended that the compensation amount of Rs.1,36,000/- was meager. He contended that there were sale instances of similar properties, including land sold to Annasaheb Thakre, Director of Housing Society. That Society purchased three acres of land, out of Survey No.73 of village Pachegaon, Tahsil Arvi, District Wardha, which is adjacent to the village Nandora, Tahsil Arvi for Rs.2,70,000/- at the rate of Rs.90,000/- per acre. It was further contended that the property is situated in the same zone within a radius of half a kilometer from the claimant's acquired land. The claimant argued that the compensation granted was unjust and incorrect, therefore, he prayed for enhancing the compensation of

Rs.17,00,000/-.

4. The appellant resisted claim and contended that the reference is not maintainable as the procedure was not followed within the stipulated period and therefore the reference is barred by limitation. It was lastly prayed to reject the reference application as the reasonable amount of compensation is awarded by the Land Acquisition Officer.

5. The learned Reference Court cast following issues :

<u>Sr. No.</u>	<u>Issues</u>	<u>Findings</u>
(i)	Does claimant prove that compensation awarded by the Special Land Acquisition Officer is inadequate ?	Yes
(ii)	Whether applicant is entitled to enhance compensation ?	Yes
(iii)	What order ?	As per final order.

6. The appellant acquiring authority has preferred this appeal alleging that the amount of compensation awarded by the reference Court is not legal and correct.

7. The respondent – claimant strongly opposed this appeal. In the Cross-Objection No.50/2024 it is contended that considering

the quality, potentiality and the market value of area where the property is situated, the proper amount of compensation was not awarded by Reference Court. The evidence is not properly appreciated. It is prayed to allow cross-objection and award enhanced amount of compensation @ Rs.2,50,000/- i.e. per hector (Rs.1,10,000/- per acre).

8. The learned Advocate for the appellant, during the argument, pointed out the grounds raised in the appeal that reference was not filed within limitation. No specific claim was made before the Land Acquisition Officer. The claim itself is not maintainable and the judgment of the Reference Court is illegal, perverse, and contrary to the law laid down in the case of **Ujjain Vikas Pradhikaran .vs. Tarachand and another, reported in AIR 1996 SC 2777**. It is further contended that the claimant did not record his protest while receiving compensation, and it is not supported by cogent and acceptable evidence. It is argued that the judgment in the case of **State of Maharashtra .vs. Shridhar s/o Ramchandra Mokasdar**, reported in **2005 (1) Mh.L.J. 958** impliedly repealed by the judgment of in the case of **U.P. State Industrial Development Corporation .vs. Rishabh Ispat Limited and others and other connected cases**, reported in **(2007) 2 SCC 248**, in which law is laid down as follows :

B. Land Acquisition Act, 1894 - Sections 11 and 18 – Whether compensation offered by Land Acquisition Collector accepted by claimants without protest – A question of fact to be determined on the basis of evidence on record – After the award made by the Collector, claimants promptly filed objections and sought reference under Section 18 – When claimants themselves examined on oath, no suggestions made that they had accepted the compensation offered by the Collector without protest - No evidence that the compensation was accepted without protest - Held claimants' acceptance of the compensation was subject to order of Reference Court or any other superior court.

C. Land Acquisition Act, 1894 – Section 18 Pleading before Reference Court – Plea that claimants had no right to claim compensation as the land in question was possessed by them in violation of Section 154(1) read with Sections 167(1) and (2) of U.P. Zamindari Abolition and Land Reforms Act and the same vested in State Government - No evidence to show that claimants were in illegal and unauthorised possession of land which had vested in State Government – Held, such a plea could not be raised in proceedings under Section 18 – Tenancy and Land Laws – U.P. Zamindari Abolition and Land Reforms Act, 1950(1 of 1951), Sections 154 and 167.

9. The learned Advocate for the appellant further pointed out that land in question is dry-crop land and, therefore, the land situated at Pachegaon does not have comparable potential/quality. It is also submitted that the learned Reference Court enhanced the compensation by relying upon the sale-deed dated 7.3.1998 of village Pachegaon, having a rate of Rs.90,000/- per acre without considering that, claimant has admitted property situated at Nandora, if compared

with the land at Pachegaon shows that those lands are of high and low quality and the land at Pachegaon has more facilities than that of the his acquired land. These admissions were not properly considered by the Reference Court.

10. Learned Advocate for the appellant lastly submitted that the comparison of sale instances is incorrect and improper on the part of the Reference Court in view of judgment in the case of **Chimanlal Hargovinddas Vs. Special land Acquisition Officer, Poona and another** reported in **AIR 1988 SC 1652**. The learned Advocate for the appellant further submitted that the judgment of the Reference Court is based on the surmises and conjectures. It is lastly prayed, to set aside the impugned judgment and award by allowing this appeal.

11. The learned Advocate for the respondent, by pointing out his Cross-Objection No.50/2024 submitted that for village mouza Pachegaon and mouza Nandora, there is one and the same village Grampanchayat at Nandora. The land of the claimant is adjoining to the village Pulgaon- Arvi – Talegaon-Amla Road, which is State Highway. It is also adjacent to the Nandora -Pimpalkhuta-Wardha Road which is another State Highway. The respondent No.1 acquired the land in question which directly connects to these two roads,

whereas the railway track is adjacent to the Pulgaon-Arvi Road. The land is beneficially situated in a good locality. The claimant was transporting his agricultural produce directly from his agricultural land to the market within the 5–10 minutes. The said distance is hardly 7 kilometers from the said land. The claimant was taking double crops from his land and earning up to Rs.40,000/- per acre. The market price of the said land is Rs.2,75,000/- per hectare. It is lastly payed, to allow the counter-claim and enhance the amount of compensation.

12. The learned Advocate for the respondent/cross-objector is relying upon the precedential law of **State of Maharashtra Vs. Sahadu A Sathe reported in Bombay 2009(1) ALL MR 186** in which law is laid down that land of a neighbourhood village with similar potential also can form the basis for determining the compensation payable to the claimant.

13. Learned Advocate for the respondent/cross-objector is further relying upon the precedential law of **Shri Ramchandra Ganpat Nimbalkar .vs. Smt. Hirakani Sanatkumar Dixit and others, reported in 2009 (2) ALL MR 509** held that the land of adjacent villages can be made basis for determining the fair market value of the acquired land. The learned Advocate for the respondent cross-objector has lastly

relied upon the case of **State of Haryana and another .vs. Subhash Chander and others**, reported in (2023) 5 SCC 435, Para 6 of this judgment reads as under :

*1. Shri Nikhil Goel, learned AAG, appearing on behalf of the State has vehemently submitted that while determining the compensation at Rs. 2,98,54,720/ per acre for the lands acquired vide Notification dated 13.01.2010, the High Court has materially erred in taking into consideration and/or relying upon the judgment of this Court passed in **State of Haryana .vs. Ram Chander, 2017 SCC OnLine 1869** with respect to the lands acquired vide notification issued in the month of January, 2008.*

*6.1. It is submitted that in the judgment and order passed by this Court in **State of Haryana .v. Ram Chander**, this Court has specifically observed and held that the determination of compensation vide *the said judgment* at Rs.2,38,00,000/ per acre shall not be treated as a precedent in any other case. It is submitted that therefore, while passing the impugned judgment and order, the High Court has materially erred in taking into consideration the amount awarded by this Court vide judgment and order passed in **State of Haryana .vs. Ram Chander** at Rs. 2,38,00,000/.*

6.2. It is further submitted by Shri Nikhil Goel, learned AAG, appearing on behalf of the State that in the present case the prices of the land were decreasing which was taken note of by this Court.

6.3. It is further submitted that even otherwise considering the fact that with respect to the very village, lands came to be acquired from 2008 onwards and therefore, the prices of the lands were artificially increased. It is submitted that therefore, the High Court has materially erred in giving 12% rise on Rs.2,38,00,000/ per acre which has been awarded for Notification dated 25.01.2008.

6.4. Making the above submissions and relying

upon the above decision, it is prayed to allow the present appeals.

14. Nobody will dispute the ratio laid down in the above precedential laws cited on behalf of both sides. However, facts of the case are always decisive.

15. The following points emerged for consideration, which are answered with the reasons and findings as under :

- (i) Was the Reference Court incorrect and illegal in holding that reference is maintainable and filed within limitation ?*
- (ii) Was the Reference Court incorrect and illegal in awarding enhanced compensation to the claimant by relying upon the sale-deed of the adjacent village ?*
- (iii) Was the Reference Court incorrect and illegal in not awarding proper amount of compensation as per the grounds raised in the Cross-objections ?*
- (iv) Are the impugned judgment and award illegal, incorrect and required interference ?*

16. Perused the impugned judgment and record, and proceedings of the case.

17. The claimant Shamsundar (AW 1) had adduced evidence by filing his affidavit of examination-in-chief and reiterated the

material contentions raised in the application. In his cross-examination, he admitted that in the year 1991, population of Nandora was 324 only and it is 6 kilometer away from the Arvi market. He further denied that he had not obtained valuation report from the expert/engineer of Horticulture Department regarding bunds and trees. He denied that he was taking only kharip crop. He denied that Exh.-31 a sale-deed of village Pachegaon was of non-agricultural land. The claimant examined Ravi Parankar Engineer (AW 2). He deposed that, as per the claimant's request, in the month of October 2006, he visited the land acquired from the claimant. He stated that towards the Arvi Pulgaon side, there is State Highway, and towards the other side, there is the Pachgaon Nandora Road. Ungirni agricultural land at Pachegaon is 6.75 kilometer from the land of claimant. He proved the certificate issued by him regarding that measurement (Exh.-37). In his cross-examination, he admitted that no document was handed over to him. Rough notes were taken. He denied that he issued a false certificate. He also denied that there was no syllabus of measurement of the land. The claimant also examined Shri Rathod (AW 3), who is Talathi of village Kogaon. He proved the maps of the village Nandora and Pachegaon, which are at Exhs.-49 and 50. He deposed that there were two roads and a railway line adjacent to the acquired land of the claimant. In the cross-

examination, he expressed his inability to state that the land at Survey No.73/1 of Pachegaon is of superior quality if compared to the land of the claimant. He denied that the land situated in village Pachegaon was purchased Trust/organization/ institution. He admitted that the claimant's land is of low quality and lacks such facilities like availability of road and market facility.

18. The reference Court considered the oral evidence adduced by the claimant in para No.7 of the impugned judgment that there can even be implied or oral protest which can be inferred on the basis of conduct i.e. act of the parties if the reference is made to the Civil Court. The acquiring authority must raise the objection at the earliest that the reference was bad for not protesting the award passed by the Land Acquisition Authority while withdrawing an amount of compensation by the claimant. Considering the applicant's evidence and the ratio of the rulings of the Supreme Court cited supra on behalf of applicant the learned Reference Court has rightly concluded that the compensation amount was received under protest, which cannot bar, the filing of reference. Even in many cases where the Hon'ble Supreme Court held that villagers often make applications for condonation of delay, after receiving of the compensation amount, and in such cases, the delay is generally condoned in view of the

precedential law laid down by the Supreme Court in the case of **New Okhla Industrial Development Authority Vs. Rameshwar @ Ramesh Chandra Sharma (Dead), through Legal Heir and another (2022) SCC Online SC 1599**, that delay can be condoned, subject to the condition that the original land owners/claimants/ appellants shall not be entitled to any statutory benefits, including the interest payment under the Land Acquisition Act on the enhanced amount of compensation for the delayed period.

19. The learned trial Court, on the point of maintainability of the claim in para No.7 of the impugned judgment held that the applicant, in his testimony (Exh.-24) stated that he had accepted the amount of compensation as per the award of the authority under protest. The learned Reference Court held that said fact was not denied by the respondent during the cross-examination of the claimant. The respondents have also not adduced any evidence to disclose said fact. Relying upon the judgment of Bombay High Court delivered in **State of Maharashtra Vs. Shridhar s/o Ramchandra Mokasdar, Reported in 2004 LAC 567**, in which it is held that there can be an implied or oral protest, and once the reference is made to the Civil Court, it is not permissible for the referring authority to raise the objection that reference was bad for want of an earlier protest.

Considering the ratio laid down in the above authority, the learned Reference Court rightly held that the reference is within limitation.

20. Further the issue of limitation is a mixed question of law and fact. That issue was not cast in the trial Court. It amounts to a waiver of the defence of limitation on the part of appellant. This being the social issue and with the object of Land Acquisition Act being social legislation, the findings of the learned trial Court regarding accepting the amount under protest by claimant is legal and correct.

21. As far as award of enhanced amount of compensation is concerned, while concluding the impugned judgment, the Reference Court in para Nos.13 to 17, had given acceptable reasons. It has not believed the evidence of AW 3 Shri Rathod at Exh.-48 and stated the reason that the alleged property acquired for society as per sale-deed Exh.-31 had more facilities than that of claimant's land. Furthermore, the claimant's land was of lower quality than the land in sale instance of sale deed at Exh.-31. The said sale-deed was not fully relied upon while weighing it. The Reference Court rightly concluded that Rs.70,000/- per acre rate of the land though it is adjacent to the land in sale-deed Exh.-31 is reasonable and appropriate. The authority of **Shri Ramchandra Ganpat Nimbalkar .vs. Smt. Hirakani Sanatkumar**

Dixit and others, reported in 2009 (2) ALL MR 509 is not helpful to the cross-objector/claimant and, therefore, it is not relied upon.

22. On re-appreciation of evidence and after considering the reasons and findings of the Reference Court this Court is of view that there is no scope for interference in the impugned judgment and award passed by the Reference Court. The reasons and findings given by the Reference Court are legal and correct. No illegality or perversity is found in it. There is no substance in the grounds of objections raised in the appeal and cross-objections. The arguments of both the Advocates for the appellant and Cross-objector are therefore not accepted. Therefore, Point Nos.(i) to (iv) are answered accordingly in the negative.

23. The appeal and Cross-objection being devoid of merits deserves to be dismissed.

24. The appeal and Cross-Objection are dismissed. No costs.

(SANJAY A. DESHMUKH, J.)