



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

REVIEW APPLICATION NO.145 OF 2025
IN
FIRST APPEAL NO.2467 OF 2021

Vishwanath Motiram Chaoudhari (Died)
Through his L.Rs.

1. Smt. Godabai Vishwanath Chaoudhari
Age: 70 yrs, Occu: Agril.,
2. Bhagwant Vishwanath Chaoudhari
Age: 50 yrs, Occu: Agril.,
3. Dattaraya Vishwanath Chaoudhari
Age: 46 yrs, Occu: Agril.,
4. Sulochana Ramesh Mahajan
Age: 52 years, Occ.: Household,

All R/o Higane (Bk.),
Tq. Jamner, Dist. Jalgaon.

...Applicants
(Ori. Appellants in FA)

Versus

1. The Special Land Acquisition Officer
Upper Tapi Project, Hatnur -1, Jalgaon.
2. The Executive Engineer
Waghur Project Division,
Jalgaon, Dist. Jalgaon.

... Respondents
(Orig. Respondents)

.....

Shri. Vijay Y. Patil, Advocate for the Applicants
Shri. A. A. A. Khan, AGP for Respondent No.1
Shri. Shivraj B. Kadu, Advocate for Respondent No.2

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CORAM : NEERAJ P. DHOTE, J.
RESERVED ON : 14.07.2025
PRONOUNCED ON : 22.07.2025

FINAL ORDER (PER NEERAJ P. DHOTE, J.) :

. Heard learned Advocate for the Applicants, learned AGP for the Respondent No.1 - State and learned Advocate for the Respondent No.2.

2. According to learned Advocate for the Applicants, the First Appeal was finally heard and disposed off on 07.05.2025. He submitted that, the learned Reference Court did not consider the *Bagayati* crop shown in the 7/12 extract of the said Gat Nos.67, 76/2 and 135 and considered the said land as *Jirayat*. The Applicants were having one Well in Gat No.124/1 and they used to utilize the water from the said Well for the crop / trees in the other three (3) gat numbers which are referred above. According to him, this aspect was not considered, when the Appeal was disposed off. He submitted that, in the Appeal Memo Ground No. IV was raised, which reads as under and this Application be allowed:

“IV. It ought to have been consider that the Gut no. 67, 76/2, 135 are not jirayat land but bagayati land because the crops like Banana, Wheat and there is a pipe line in this field. The reference court wrongly consider these Gut no. as jirayat land. In 7/12 extracts and other evidence like shikshan tax is paid on this land. Therefore the bagayati rate should have been awarded by the reference court.”

3. It is submitted by the learned AGP for the Respondent No.1 / State that, as there was no evidence in respect of the source of land in the above referred three (3) gat numbers, the learned Trial Court considered the said land as *Jirayat*. He submits that, it is the oral

contention of the learned Advocate for the Applicants that the water from the Well situated in Gat No.124/1 was used to water the crop / trees in the above referred three gat numbers. He submits that, appropriate orders be passed.

4. It is submitted by learned Advocate for Respondent No.2 that he adopts the contention of learned AGP

5. This Application for Review is governed by the provision of the Order-XLVII, Rule-1 of the Code of Civil Procedure, 1908 (for short, 'CPC'). The said provision reads as under:

“1. Application for review of judgment. (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.”

6. The Appeal was filed by the Legal Heirs of the Deceased – Orig. Claimant named Vishwanath Motiram Chaoudhari. The order dated 07.05.2025 shows that on the submissions made by learned Advocate for the Applicants, learned AGP for Respondent No.1 / State and learned Advocate for Respondent No.2 / Acquiring Body, the Appeal was disposed off by consent in terms of the earlier orders in the Appeals arising out of the same land acquisition proceedings where, the Acquiring Body accepted the rate of Rs.2,00,000/- (Rs. Two Lakh) per Hectare for *Jirayat* land and rate of Rs.4,00,000/- (Rs. Four Lakh) per Hectare for *Bagayat* land. True, it is that, there were several grounds mentioned in the Appeal Memo. However, the parties were on one page that, Appeal be disposed off in terms of earlier orders, wherein the rate for the *Bagayat* and *Jirayat* land was agreed between the parties. The contingencies referred in the above provision of Order-XLVII, Rule-1 of the CPC is not made out. Thus, the Application is liable to be rejected. Hence, the following order:-

ORDER

- (i) The Application is rejected.

(NEERAJ P. DHOTE, J.)