



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.426 OF 1996

Dattaram s/o Tatyaji Paul, (Dead)
Aged about 55 years,
Occupation-Agriculturist,
R/o. Mokh, Tah. Digras,
District-Yavatmal (On R.A.)

L.Rs.

- 1A) Shantabai wd/o Dattaram Paul,
Aged 70 years.
- 1B) Pandurang s/o Dattaram Paul,
Aged 52 years.
- 1C) Dnyaneshwar s/o Dattaram Paul,
Aged 48 years.
- 1D) Santosh s/o Dattaram Paul,
Aged 46 years.
- 1E) Manohar s/o Dattaram Paul,
Aged 44 years.

All R/o. At Mokh, Tq. Digras,
District-Yavatmal.

.. Appellants

..Versus..

- (1) The State of Maharashtra,
through Collector, Yavatmal.
- (2) The Collector, Yavatmal.

- (3) The Special Land Acquisition Officer,
Benefited Zone, Yavatmal
(Arunawati Project, Digras
Yavatmal).
- (4) Vidarbha Industrial Development
Corporation, through Executive Engineer,
Arunawati Project, Digras,
Tah. Digras, District-Yavatmal. .. Respondents

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Shri Rahul J. Shinde, Advocate with Shri Pawan Surise, Shri Vikky Gokhale, Shri M.L. Jadhav, Advocates for Appellants.

Mrs. M.R. Kavimandan, A.G.P. for Respondent Nos.1 to 3.

Shri M.A. Kadu, Advocate with Ms. M.V. Babhulkar, Advocate for Respondent No.4.

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CORAM : PRAVIN S. PATIL, J.
DATED : 09.10.2025.

JUDGMENT

1. This appeal is filed by the appellant under Section 54 of the Land Acquisition Act read with Section 96 of the Code of Civil Procedure challenging the judgment and award dated 15.9.1995 passed by the Civil Judge, Senior Division, Pusad in Land Acquisition Case No.193/1992.

2. It is the case of the appellant that the respondents have acquired his land for the submergence of the Arunavati Project. The award was passed on 3.8.1988 and the market value of the acquired land bearing Survey No.93/4 ad-measuring 2.2 HR was determined at the rate of Rs.13,500/- per hectare. Against the said award, he has preferred the reference proceeding before the Land Acquisition Officer bearing No.193/1992. The same was decided on 15.9.1995 and the amount has been enhanced from Rs.13,500/- to Rs.19,000/- per hectare.

3. The appellant, being not satisfied with the enhanced amount, filed the present appeal before this court stating that the learned reference court has awarded inadequate compensation to his land considering its quality, potentiality and market value.

4. Against the judgment and award of Reference Court, present appeal is preferred by appellant to seek enhancement. The appeal was admitted by this Court by order dated 10.9.1997. Thereafter, same was listed for final disposal, but due to non appearance of the appellant, same was dismissed in

default by order dated 4.2.2009. As such the present appeal was having a status of dismissal till the date of its restoration. The record shows that the present appeal was restored by order of this court on 10.8.2018.

5. It is pertinent to note that against the judgment of Reference Court, State also filed First Appeal No.87/1996 before this court. After issuing notices to parties, the same was decided by the judgment dated 17.9.2010. This court, while deciding the appeal filed by the State, by considering the submissions made therein by the learned Assistant Government Pleader and the judgments relied upon therein, has held that the order passed by the reference court in Land Acquisition Case No.193/1992 requires modification. Accordingly, this court modified the order passed in the reference court and reduced the compensation from Rs.90,000/- per hectare to Rs.70,000/- per hectare. The said order has attained the finality and till date is in existence.

6. It is pertinent to note that after restoration of the present appeal on 10.8.2018, the present appeal was taken up for final disposal. And this court by the judgment dated

20.2.2019 has enhanced the compensation of Rs.6,50,000/- per hectare for the land acquired. This court, while enhancing the compensation amount, has relied upon the judgment of Hon'ble Supreme Court of India dated 11.4.2018 in Civil Appeal No.5146-5147/2011.

7. The acquiring body then came to know about the fact that there are two contrary judgment arising of same judgment of the Reference Court, therefore, moved review application in the present appeal. This court by order dated 9.5.2024 allowed the review application filed by the State Government and recalled and reviewed the judgment and order dated 20.2.2019 passed in the present appeal. Accordingly, the present appeal is now restored to its earlier position in the matter. In the background of above said factual position, this matter came up for final hearing before me.

8. At the outset, the learned counsel for respondent no.4 raised the objection that in view of order of this court in First Appeal No.87/1996 decided on 17.9.2010, the judgment and order of the reference court is already modified in the matter. The said modification is done by this court itself. As a

result, the order of the reference court is now merged in the order dated 17.9.2010 passed in First Appeal No.87/1996. Hence, applying the law of merger, the present appeal now cannot be decided by this court. The only remedy is now available to the appellant to approach before the Hon'ble Supreme Court of India in the facts and circumstances of the matter.

9. In support of submission, respondent no.4 has relied upon the judgment of Hon'ble Supreme Court of India in the case of *Balbir Singh and another .vs. Baldev Singh (Dead) through his legal heirs and others, reported in (2025) 3 SCC 543*, particularly para 27 and 28 reads as under :

27. The doctrine of merger is founded on the rationale that there cannot be more than one operative decree at a given point of time. The doctrine of merger applies irrespective of whether the appellate court has affirmed, modified or reversed the decree of the trial court. The doctrine has been discussed and explained succinctly by this Court in Surinder Pal Soni v. Sohan Lal.

28. In Kunhayammed v. State of Kerala, while explaining the doctrine of merger, this Court held thus: (SCC p. 370, para 12)

“12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or

order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."

10. Relying on this judgment, it is the submission of the respondent no.4 that applying the doctrine of merger, the order of reference court is now not in existence and only the order which was modified by this court dated 17.9.2010 in First Appeal No.87/1996 is requires consideration. Any adjudication at the hands of this court will directly amount to interference in the judgment of this court in First Appeal No.87/1996.

11. Per contra, the learned counsel for the appellant states that considering the provisions of the Land Acquisition Act as beneficial legislation and further appeal filed by him is already pending before decision rendered by this court in First

Appeal No.87/1996, this appeal can be decided independently. The order which passed by this court dated 17.9.2010 will not come in the way in view of the fact that arising out of the same acquisition proceeding, the Hon'ble Supreme Court of India has already enhanced the compensation amount up to Rs.6,50,000/-, therefore, taking into consideration the judgment of Hon'ble Supreme Court of India, this matter can be decided on its own merits.

12. The learned counsel for the appellant, in support of his submission, has relied upon the various case laws, but particularly he has relied upon the judgment of Hon'ble Supreme Court of India in the case of ***Hari Shankar Rastogi .vs. Sham Manohar and others, reported in (2005) 3 SCC 761.*** In this judgment, the Hon'ble Supreme Court has held that even when the appeal is withdrawn, the cross-objection is maintainable. Therefore, according to him, applying the same view in the present matter, the present appeal can be decided. According to my opinion, this judgment does not cover the controversy which arises in the present appeal. Here, the appeal itself is modified by the order of this court and,

therefore, same cannot be challenged in another first appeal as like in present case. It is not the case that the reference proceedings are dismissed by this court or the same has been withdrawn by the State Government. On the contrary, the same has been decided on its own merit by this court. The same is till today holding the field. Appellant did not challenge the same before any court of law.

13. It is further submission of appellant, as per settled position of law, if higher court granted enhancement to the land arising out of same land acquisition proceeding, then irrespective of the decision in appeal filed by respondent no.4, he is entitled to the compensation equal to that of other person awarded by higher court. Hence, according to him, applying this principle, the case can be considered and compensation be awarded particularly as per the judgment of Hon'ble Supreme Court of India. For this proposition, he has relied upon the judgment of Hon'ble Supreme Court of India in the case of *Bhim Singh and others .vs. State of Haryana and another*, reported in 2003 AIR SCW 5188.

14. After considering the submissions and the case laws which are pointed out by both the parties in the matter, I am of the opinion that in the present appeal the reference proceedings which are under challenge are modified by this court by order dated 17.9.2010 while deciding the First Appeal No.87/1996. Therefore, once this court has modified the judgment of the reference court, this court cannot entertain the appeal against the modified order.

15. I am of the opinion that entertaining the present appeal is barred by principles of res-judicata. Here between the same parties, the judgment impugned is already decided/modified. Therefore, same is not permissible to re-open on merits.

16. In my considered opinion the present appeal cannot be entertained by this court on its own merits. The appellant is having a liberty to challenge the same before the appropriate court.

17. Hence, for the reasons stated above, the appeal stands **dismissed**.

18. All pending civil application (s) stand disposed of.
There shall be no order as to costs.

(Pravin S. Patil, J.)

Gulande