



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

FIRST APPEAL NO. 357 OF 2018

APPELLANT :
(On R.A.)

Executive Engineer, Arunavati Irrigation
Division, Arunavati Irrigation Division,
Tq. Digras, Dist. Yavatmal.

..... Original Defendant No.1.

V E R S U S

RESPONDENTS :
(On R.A.)

1. Nagorao s/o Ramaji Rathod,
Aged about 50 years, Occ. Agriculturist,
r/o Mokha, Tq. Digras, Dist. Yavatmal.

..... Original Claimant (contesting)

2. The State of Maharashtra,
Through Collector, Yavatmal,
Tq. and District Yavatmal.

..... Original Defendant No.1 & 2

3. Special Land Acquisition Officer,
Benefited Zone, Yavatmal,
Tq. & Dist. Yavatmal.

..... Original Defendant No.4.

**WITH
CROSS-OBJECTION (XOB) NO.102 OF 2019
IN
FIRST APPEAL NO. 357 OF 2018**

APPELLANT :

The Executive Engineer, Arunavati Irrigation
Division, Digras, Dist. Yavatmal.

V E R S U S

RESPONDENTS :
(OBJECTOR)

1. Nagorao S/o Ramji Rathod,
Aged about 35, Occu : Cultivator,
R/o Mokh, Tah. Digras, Dist. Yavatmal.

2. The State of Maharashtra,
Through Collector, Yavatmal,
Tq. & Dist. Yavatmal.

3. The Special Land Acquisition Officer,
Benefited Zone, Yavatmal,
Tq. & Dist. Yavatmal.

Shri J. B. Kasat, Advocate for appellant.

Shri K. S. Narwade, Advocate for respondent No.1.

Ms. H. S. Dhande, AGP for respondent Nos.2 and 3.

CORAM: ROHIT W. JOSHI, J.

DATED : 10/02/2025.

ORAL JUDGMENT :

1. Heard finally with the consent of learned counsel appearing for the parties.

2. The land of the cross-objector bearing Survey No.37/1B admeasuring 0.50 HR situated in Village Mokh, Tah. Digras, Dist. Yavatmal came to be acquired for the purpose of drainage for the extended Gauthan for Rehabilitation. Notification under Section 4 of the Land Acquisition Act, 1894 was issued on 16/05/1996. The Land Acquisition Officer has passed the award on 05/11/1997 awarding compensation @ Rs.15,250/- per hectare.

3. Aggrieved by the amount of compensation awarded by the Land Acquisition Officer, the cross-objector made application seeking reference under Section 18 of the Land Acquisition Act pursuant to which the LAC No.1265/2004 came to be registered in which the learned Reference Court was pleased to award compensation at the rate of Rs.3,75,000/- per hectare. This Judgment and award passed by the learned Reference Court is challenged by the Acquiring Body / VIDC in the First Appeal. The land owner has preferred cross-objection seeking

further enhancement in the compensation awarded by the learned Reference Court.

4. Shri Narwade, learned counsel appearing for the cross-objector has submitted that the land from the same village was acquired for the same project in the year 1986 in which compensation is awarded @ Rs.6,50,000/- per hectare. He has placed on record the Judgment of the Hon'ble Supreme Court in Civil Appeal No.5146-5147/2011 dated 11/04/2018, Judgments of this Court in First Appeal No.348/2003 dated 17/10/2018 and First Appeal No.379/1998 dated 05/01/2024. All these judgments are pertaining to the acquisition in the same village. In the Judgment delivered by the Hon'ble Supreme Court, Section 4 Notification was issued on 25/09/1986. In the matter of First Appeal No.348/2003, Section 4 Notification is dated 13/02/1986. Likewise, in First Appeal No.379/1998, Notification under Section 4 was issued on 13/02/1986. Shri Narwade, learned counsel placing reliance on these Judgments states that Section 4 Notification in the present case is after a period of 10 years from earlier three cases. He states that principle of parity should be applied and rate of Rs.6,50,000/- should be treated as appropriate rate for the acquired land in the year 1986 and therefrom, addition of 10% per annum should be made as is normally done by appreciating the sale exemplars in all land acquisition cases. He, therefore, submits that the compensation to be awarded in the present matter should be at least Rs.13,00,000/- per hectare.

5. Per contra, Shri Kasat, learned counsel for the appellant submits that the purpose for acquisition in both cases is different and further states that there is no evidence on record to justify enhancement of 10% per year over and above the compensation awarded in three Judgments referred above. He further points out that in the award passed by the Land Acquisition Officer, there is reference of several sale transactions according to which, the market value of the property would be much less, than what has been awarded by the learned Reference Court. Mr. Kasat also contends that it will not be proper to determine market value of the acquired land on the basis of the aforesaid three Judgments since there is a gap of ten years between Section 4 Notification in the said cases and the Section 4 Notification in the present case. Learned counsel however, does not dispute these three Judgments relied upon by Shri Narwade pertain to acquisition in the same village in which Section 4 Notification was issued a decade ago.

6. In the light of the above contentions, following point arises for my consideration in the present appeal and the cross-objection :-

i] What should be the appropriate market value for the acquired lands as on 16/05/1996 i.e. the date on which Section 4 Notification was issued ?

7. I have heard the respective counsel as above and have perused the record with their able assistance. I have also perused three Authorities cited by learned counsel Shri Narwade. I find considerable

force in the submissions of learned counsel Shri Narwade to the extent that the said three Judgments will be relevant for determination of market value of the acquired land in the case at hand inasmuch as the acquisitions pertain to the lands in the same village wherein also, large stretches of land were acquired. Shri Narwade, learned counsel points out that the comparable sale instances in the Judgments before the Hon'ble Supreme Court were pertaining to smaller pieces of land and therefore, although going by the said sale transactions, the market value of the acquired land could be fixed at Rs.9,00,000/- per hectare, the Hon'ble Supreme Court approved Judgment of the learned Reference Court awarding compensation @ Rs.6,50,000/- per hectare. It is, therefore, obvious that the Hon'ble Supreme Court has taken into consideration the deductions to be made while computing the market value. Similar is the case of the above two Judgments delivered by this Court.

8. In view of aforesaid three Judgments, there can hardly be any quarrel with the contention that Rs.6,50,000/- will be appropriate market value for the acquired land in the year 1986.

9. Having held that appropriate market value of the acquired land was Rs.6,50,000/- per hectare, the other point which falls for consideration is what should be the further enhancement to be awarded in the present case, since Section 4 Notification in the present case is 10 years subsequent to Section 4 Notification in the said three cases.

Normally, appreciation at the rate of 10 % is granted by the Courts while ascertaining the market value based on exemplars of past years. However, this rule is not inflexible and is subject to exceptions.

10. The acquisition in the said three cases was for extension of Gaothan. In the present case, the land is acquired for the purpose of providing drainage for the extended Gauthan.

11. First aspect that needs to be noted that there is gap of 10 years between Section 4 Notification in three Judgments relied upon by learned counsel Shri Narwade and the Section 4 Notification in the present case. The Hon'ble Supreme Court as in the matter of **State of Maharashtra and another Vrs. Chandrakant Mangilal Samdadia and another** held that the sale transactions of past years can be a relevant guide for ascertaining the market value of immovable property, however, there should be proximity between the sale exemplars and the date with reference to which the market value of the acquired land is to be determined. It is further held that if the sale exemplar is far too old, it may not be very safe to rely upon such sale exemplar. It is further held by the Hon'ble Supreme Court that in urban areas, appreciation of around 10% can be taken into consideration, however, for rural areas, the appreciation is generally around 5 to 7.5 %. It is further held that there may be cases where the land rates may stagnate for a considerable period of time.

12. In the case at hand, the land acquired is admittedly in a rural area. It is acquired for providing drainage facility to the extended Gaothan of village. The appellant has not brought any evidence on record to demonstrate escalation of rates. As noted above, three Judgments are pertaining to Section 4 Notification, which are 10 years prior to Section 4 Notification in the present case. Some guess work is required to be done in the backdrop of the aforesaid facts and legal position which is laid down by the Hon'ble Supreme Court. In my considered opinion, although there is no direct evidence with respect to escalation of rates, the acquired land is adjoining the extended Gaothan. The Supreme Court has held that escalation over past sale transactions should be considered cumulatively. In my considered opinion, in the facts of the present case, it will be reasonable to consider appreciation of rate at 5% to 6 % over and above the rate determined in the year 1986, without cumulative effect. If the appreciation is computed @ 5% for 10 years, the market value comes to Rs,9,75,000/- per hectare. Likewise, if the appreciation is calculated @ 6% per annum, the market value will be Rs.10,40,000/- per hectare. In view of the aforesaid, it will be just and proper to fix the market value of the acquired land at the rate of Rs.10,00,000/- per hectare. This figure is arrived by resorting to guess work as aforesaid.

13. Shri Kasat, learned counsel had made submission that the award of the Land Acquisition Officer makes a reference of other sale transactions wherein the market value of the property is very less and if

the market value of the acquired land is determined in the light of the said sale transactions, the compensation awarded by the Land Acquisition Officer will have to be accepted as just and proper. The contention needs to be rejected since the sale transactions referred above by the Land Acquisition Officer have not been proved and exhibited during the adjudication of the reference. In this regard, reference can profitably be made to the Judgment of Hon'ble Supreme Court in the matter of **Major Pakhar Singh Atwal and others Vrs. State of Punjab and others**, reported in **1995 Supp (2) SCC 401**, wherein it is held that although award passed by the Land Acquisition Officer is a material piece of evidence, sale transactions referred in the award cannot be relied upon in Section 18 reference proceedings without proper proof of the same. In fact, the appellant – VIDC did not examine any witness. Therefore, the contention cannot be accepted.

14. Shri Kasat, learned counsel also vociferously opposed the cross-objection stating that enhancement claimed by the cross-objector was to the extent of Rs.6,50,000/- per hectare and therefore, no amount should be granted over and above the amount claimed by the cross-objector. I am afraid that this contention also cannot be accepted. The law does not impose any obligation from the land owner to make a specific claim. When the land owner makes a reference, it is the duty of the Court to grant appropriate compensation for the acquired land irrespective of the claim made by the land owner. The said duty is also imposed upon the Appellate Court while adjudication of appeal filed by

the land owner seeking enhancement of compensation. In that view of the matter, the objection raised by learned counsel Shri Kasat is rejected.

15. In view of the aforesaid finding, I am of the considered opinion that the cross-objector – land owner is entitled to receive compensation of acquired land @ Rs.10,00,000/- per hectare along with all statutory benefits.

16. In view of the aforesaid, I pass the following order :-

- i] First Appeal No.357/2018 is dismissed.
- ii] Cross-Objection (XOB) No.102/2019 is partly allowed by holding that the cross-objector / land owner is entitled to receive compensation for the acquired land @ Rs.10,00,000/- per hectare along with all statutory benefits.
- iii] The cross-objector – land owner is entitled to receive the said amount along with accrued interest.
- iv] The appellant – VIDC is directed to deposit the amount of enhanced compensation with this Court within a period of six months from today.
- v] Office is directed to obtain appropriate Court Fees on cross-objection in view of enhancement awarded.
- vi] The cross-objector is directed to deposit court fees within a period of eight weeks from today.
- vii] Parties to bear their own costs.

[ROHIT W. JOSHI, J.]