



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

MISC. CIVIL APPLICATION NO. 45 OF 2022
IN
FIRST APPEAL NO. 466 OF 2008 (D)

Suryakant s/o Damodhar Padgilwar (dead)
Through Legal Representatives

1.A Smt. Jyotsna S. Padgilwar
Aged about 77 years,
R/o. Tapadia Nagar, Akola

1.B Mr. Shrikant S. Padgilwar
Aged about 60 years,
R/o. Tapadia Nagar, Akola.

1.C Mr. Jayant S. Padgilwar
Aged about 58 years,
R/o. Tapadia Nagar, Akola

1.D Mrs. Arti Pramod Amidwar
Aged about 56 years,
R/o. Khare Town, Laxminagar, Nagpur

1.E Mrs. Anjali Abhay Mamidwar
Aged about 49 years,
R/o. Karama, Dubai.



... Appellants

Versus

1. State of Maharashtra,
Through The Collector,
Yeotmal

2. The Special land Acquisition Officer,
Darwha, Benefitted Zone,
Yeotmal

3. The Executive Engineer,
Arunavati Project, Digras,
Tahsil Digras, District – Yeotmal



...Respondents

Mr. Irfan M. Ghongade, Advocate for appellants.

Mr. M.A. Kadu, AGP for respondent Nos.1 & 2/State.

Ms. Mallika Babhulkar, Advocate h/f Mr. M.A. Kadu, Advocate for respondent No.3.

CORAM : ROHIT W. JOSHI, J.
DATE : 14.02.2025.

ORAL JUDGMENT:

Heard finally with consent of learned counsel for the parties.

(2) The land of the applicant bearing Survey No.101 situated at village Chincholi, Tah. Digras, District – Yavatmal, admeasuring 2.56 HR out of total area of 3.96 HR was acquired under Arunavati Project. Section 4 Notification was issued on 06.02.1986. The Land Acquisition Officer passed award under Section 11 of the Act granting compensation @ Rs.7,500/- per hectare. Dissatisfied with the amount of compensation awarded, the applicant had made a reference as provided under Section 18 of the Land Acquisition Act. The reference was registered at Land Acquisition Case No.126/2004 (Old LAC No.414/1992). The learned reference Court enhanced the compensation vide judgment and award dated 30.07.2007 granting

compensation @ Rs.35,000/- per hectare. The applicant, thereafter, preferred First Appeal No.466/2008 seeking further enhancement of compensation. The said appeal came to be decided vide judgment dated 16.09.2019 wherein the compensation was enhanced @ Rs.50,000/- per hectare. This compensation was awarded by accepting the arguments made by the learned counsel for the applicant that it should be awarded @Rs.50,000/- per hectare, as was awarded in other connected matters arising out of the same land acquisition case. However, subsequently the applicant preferred MCA (Review Application) No.45/2022 raising a contention that his land was irrigated land and not dry crop land and as such, compensation ought to have been awarded @ Rs.1,00,000/- per hectare as against @ Rs.50,000/- per hectare, which was awarded in the first appeal. The application for review was rejected vide judgment and order dated 03.02.2022, against which the applicant preferred appeal being SLP (Civil) No.5247-5248/2022 before the Hon'ble Supreme Court. The said appeal was partly allowed vide judgment and order dated 21.11.2024. The Hon'ble Supreme Court has observed that there were certain issues in the matter which were required to be revisited and accordingly, the matter was remitted back to this Court for deciding

the matter afresh.

(3) In this backdrop, the present review application has come up for hearing before this Court again. Mr. Ghongade, the learned counsel for the applicant has drawn my attention to the 7/12 extract of the acquired land at Exhibit 19. The 7/12 extract pertains to the year 1986-87 to 1989-90, there is entry of Well with a electric motor pump in the 7/12 extract. On the basis of this entry in the 7/12 extract, the learned counsel contends that the land is an irrigated land for which the compensation @ Rs.1,00,000/- ought to have been awarded. In support of his contention, he places reliance upon following cases :

1. *The State of Maharashtra and anr. Vs. Sau. Sundrabai w/of Bhawarlal Joshi (dead) Through Lrs in First Appeal No.515/1995 decided on 03.05.2018.*
2. *State of Maharashtra and Ors. Vs. Jagdish s/o Bhavwarilal Joshi in First Appeal No.776/2008 decided on 12.09.2018.*
3. *Suryakant s/o Damodhar Padgilwar (Dead) Through Lrs. Vs. State of Maharashtra and Ors., in First Appeal No.466/2008 decided on 16.09.2019.*
4. *Shri Sudhir s/o Amrutrao Deshmukh Vs. State of Maharashtra and Ors., in First Appeal No.204/1999 decided on 31.10.2014.*

(4) The judgments of this Court arising out of the same land acquisition case. In all these four cases, the compensation for irrigated land has been awarded @ Rs.1,00,000/- per hectare. The learned counsel contends that applying the principle of parity, compensation in the present case should also be awarded @ Rs.1,00,000/- per hectare which is the rate at which compensation is awarded for other irrigated lands in the same village and acquired under the same Notification.

(5) *Per contra*, Ms. Babulkar, learned counsel for respondent No.3 strongly opposes the application. She contends that the arguments advanced by the learned counsel are beyond the scope of Order 47 and Section 114 of the CPC. She has raised a strong objection to referring the 7/12 extract and other documents on record, for the first time while exercising review jurisdiction. She contends that the order passed by the Hon'ble Supreme Court cannot be interpreted to mean that the narrow parameters of Section 114 and Order 47 of the CPC should be breached. She argues that since compensation is claimed @ Rs.50,000/- per hectare, the appellant cannot see compensation over and above what is claimed by them. As

regards the merits of the matter, reliance is placed on the judgment of Division Bench of this Court delivered on 15.12.2009 in First Appeal No.700/1993 and other connected appeals which deal with lands acquired in village Chincholi under the same Notification. She contends that in the said case compensation for dry crop land is awarded @ Rs.30,000/- per hectare and for the irrigated land compensation is awarded @ Rs.45,000/- per hectare.

(6) I have heard the rival submissions as aforesaid and perused the record of the case with the able assistance of both the learned counsel. Having heard the respective submissions, following point arises for my consideration :

(i) Whether the compensation awarded for the acquired land is required to be enhanced in the light of judgments relied upon by the appellant which are pertaining to other land in the same village acquired pursuant to the same Section 4 Notification ?

(7) The matter before the Hon'ble Supreme Court was taken against an order passed by this Court rejecting the review application. The application for review was rejected on the ground

that the same did not fall within the parameters of the Section 114 and Order 47 of the Code of Civil Procedure. Nonetheless, the Hon'ble Supreme Court has deemed it appropriate to direct this Court to revisit the matter. In the light of the reasons recorded and directions issued by the Hon'ble Supreme Court, I deem it appropriate to reject the technical arguments advanced on behalf of the learned counsel for the respondent.

(8) The learned counsel for respondent also contends that since the appellant have restricted to claim in appeal to Rs.50,000/-, he cannot see further enhancement in compensation awarded since, this Court while deciding the first appeal has awarded compensation which was sought by the appellant. I am afraid that such technical pleas cannot be accepted in awarding appropriate compensation in land acquisition matter where the land was acquired by the State in exercise of its eminent domain. The argument is hyper technical nature and therefore, rejected.

(9) As regards the merits of the matter, a perusal of the 7/12 extract and on which, reliance is placed by the learned counsel for the applicant, it is apparent that out of total 3.96 HR land, 3.16 HR

land is recorded as irrigated land.

(10) The remaining portion is recorded as land is not under cultivation being covered by boundary (dhura), road and uncultivable land. I have perused the examination-in-chief of the applicant recorded by the learned reference Court at Exhibit 22 and the cross-examination. The applicant has stated that the land had a Well with electric pump and it was accordingly, an irrigated land. He states that he was taking crops like cotton to jawar etc. in the acquired land. He also states that he was taking both Kharif and Rabi crops from the said land. Perusal of the cross-examination indicates that all these statements in the examination-in-chief have not been challenged in the cross-examination. However, perusal of the 7/12 extract, on which, reliance is placed during the course of examination-in-chief will demonstrate that only 3.16 HR land was under cultivation. The 7/12 extract, further demonstrates that the applicant was taking only one crop during kharif season. There is no entry in the 7/12 extract with respect to cultivation of land in Rabi season. The entry with respect to 3.16 HR land is in Column No.11 under the head of 'unirrigated land'. However, simultaneously, there is an entry with respect to 'Well' along

with 'electric motor pump'. It also appears that entry under the head of 'irrigated land' is recorded as blank. There appears to be a clerical mistake in recording the 7/12 extract inasmuch as both the entries i.e. existence of Well with electric motor pump and the entire cultivatable land being dry crop land cannot be reconciled. The statement in the examination-in-chief that the land was irrigated land is also not challenged during the course of cross-examination. Nonetheless, the fact remains that the applicant was taking only one crop in the acquired land. Thus it appears that although there is a Well in the acquired land, the land owner was taking only one crop in a year in Kharif season.

(11) The foundation of the claim for enhancement is based on judgments delivered by this Court with respect to lands acquired in the same village for the same project pursuant to the same Section 4 Notification. In the cases relied upon by the review petitioner compensation for land acquired under the same notification from the same village is awarded @ Rs. 50,000/- per hectare for dry crop land and @ 1,00,000/- per hectare for irrigated land. The review petitioners seeks enhancement of compensation @ Rs.1,00,000/- per

hectare, placing reliance on aforesaid judgments wherein compensation is awarded @ Rs.50,000/- per hectare for dry crop lands and @ Rs.1,00,000/- per hectare for the irrigated lands.

(12) As against this, the learned counsel for respondent No.3 has drawn my attention to the Division Bench judgment dated 15.12.2009 delivered in First Appeal No.700/1993 and other connected appeals. The said appeals deal with lands acquired for the same project under the same Section 4 Notification from villages Deurwadi and village Chincholi. It will be pertinent to mention here that in the Division Bench judgment Section 4 Notification is mentioned as 06.03.1986. It should, in fact, be 06.02.1986.

(13) I have perused all the judgments relied upon by the review petitioners. While all the judgments delivered by the learned Single Judges, it seems that attention of the Court was not drawn to the earlier judgment dated 15.12.2009 delivered with respect to the same acquisition proceedings with respect to lands in the same village.

(14) The only argument canvassed by the learned counsel for the review petitioners is that compensation should be

enhanced applying principle of parity. Apart from the judgments referred to above, the review petitioners do not rely upon any other evidence in order to seek further enhancement of compensation. The judgments relied upon by the learned counsel for the appellants delivered by the learned Single Judges. The Division Bench judgment pertaining to same Section 4 Notification and also dealing with lands in the same village was not cited before this Court, while the cases relied upon by the learned counsel for the appellants were decided.

(15) Although the learned counsel for respondent No.3 has argued that rate of dry crop land in village Chincholi was fixed @ Rs.30,000/- per hectare and that for irrigated land was fixed @ Rs.45,000/- per hectare, a perusal of the judgment indicates that in fact for dry crop lands the rate was determined that Rs.45,000/- per hectare and for perennially irrigated lands, the rate was computed @ Rs.90,000/- per hectare. The learned counsel for respondent No.3 has drawn my attention to Page Nos.25 and 100 of the judgment and contended that in First Appeal No.313/1995, which is relating to village Chincholi, the land owner was held to be entitled for compensation @ Rs.30,000/- per hectare for dry crop land and

Rs.45,000/- for irrigated land. A perusal of the judgment will indicate that the Division Bench has fixed rate of Rs.90,000/- for perennially irrigated lands and Rs.45,000/- for dry crop land. However, the learned Division Bench has restricted claims of all parties to the extent of prayers made in the reference proceedings. Since the prayer in First Appeal No.313/1995 was to grant compensation @ Rs.30,000/- per hectare for dry crop land and Rs.45,000/- for irrigated land, compensation was awarded at the said rate, although it is held that appropriate rate of dry crop land was Rs.45,000/- per hectare and that of perennially irrigated land was Rs.90,000/- per hectare. It will be pertinent to mention here that the learned Division Bench has held that the land owner cannot be allowed to enhance the claim by amending prayer clause of reference application beyond the prescribed period of limitation. It is in this backdrop that although the market value was determined @ Rs.45,000/- for dry crop land and Rs.90,000/- for perennially irrigated land, the compensation was restricted @ Rs.30,000/- for dry crop land and Rs.45,000/- for irrigated land.

(16)

It is now well settled that by several judgments of

the Hon'ble Supreme Court that in a reference under Section 18, the land owner need not quantify the amount of compensation. He is only required to raise grievance about the compensation awarded being inadequate. It is the duty of the reference Court to award appropriate compensation which is just and fair and also commensurate with the prevailing market value. The Courts are duty bound to award appropriate compensation even if it is more than what is prayed for by the landowner, as has been held by the Hon'ble Supreme Court in the cases of *Ashok Kumar Vs. State of Haryana, (2016) SCC 544*, *Bhimasha Vs. LAO, (2008) 10 SCC 797* and several other cases.

(17) Having regard to the above judgments, the market value for dry crop land will have to be fixed @ Rs.45,000/- per hectare and accordingly, the value of the suit land is required to be determined. The learned counsel for the review petitioner contends that the market value of irrigated land should be double than that of dry crop land.

(18) Having regard to the 7/12 extract which is relied upon by the review petitioner, it is apparent that although there is a 'Well', which provides irrigation facilities to the field, the review

petitioners were taking only one crop in a year. There are no entries with respect to cultivation of the suit field in 'Rabi season'. The landowner has not stated in the examination-in-chief that more than one crop was being taken. Electricity bills are also not filed to demonstrate usage of well water. The land, therefore, cannot be considered to be perennially irrigated land. There are several considerations which are required to be weighed while computing value of irrigated land on the basis of exemplars of dry crop land. The appreciation for irrigated land over dry crop land varies from 1.25 times to two times. *In the matter of VIDC Vs. Anjali, (2013) Vol. 2, MHLJ 456*, 1.25 times rate is granted for seasonally irrigated land over and above the rate for dry crop land. In *State of Maharashtra Vs. Baliram Girdhar Patil, (2006), MHLJ-82*, it is held that in the absence of any other evidence, irrigated land must be awarded twice the amount of compensation than dry crop land. The Hon'ble Supreme Court has in the matter of *Kantaben Manibhai Amin Vs. SLAO* held that several factors are required to be considered for determining rate of irrigated lands on the basis of rates fixed for dry crop lands, in that case price of irrigated land was fixed at 1.25 times the price of dry crop land. This judgment of the Hon'ble Supreme Court is noted in a

full bench judgment of this Court in the matter of *State of Maharashtra Vs. Prashram Jagannath Aute (2007) (5) MHLJ-403*, wherein, it is held that a straight jacket formula cannot be prescribed for determination of market value of irrigated lands based on sale instances of dry crop lands. The Full Bench judgment contemplates that there are several factors which are required to be considered while determining rate of irrigated land in comparison to rate of dry crop land. Having regard to the fact that the only one crop was being taken as per 7/12 extract coupled with the fact that even in the examination-in-chief the review petitioner has not stated that he was taking two crops, the appreciation at around 1.5 times will be appropriate. Since, for perennially irrigated lands, double rate is granted as compared to dry crop lands, in the present case, I am inclined to grant 1.5 times appreciation for the acquired land over and above the rate fixed for dry crop land since it is not a perennially irrigated land, but a seasonally irrigated land. The value of dry crop land in village Chincholi with respect to same Section 4 Notification is determined @ Rs.45,000/- per hectare. In view of above, the value of the suit property should be fixed @ Rs.67,500/- per hectare.

(19) In view of the above, the review petition is partly

allowed in the following terms :-

(20) The respondents are directed to pay compensation for 2.56 HR land in Survey no.101 of village Chincholi, Tahsil – Digras, District – Yavatmal @ Rs.67,500/- per hectare along with all statutory benefits and interest as per Land Acquisition Act, 1894, as per enhanced amount.

[ROHIT W. JOSHI, J.]

Prity