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

FIRST APPEAL NO.1293 OF 2009

Ganesh Dajiba Kadu (Dead), through LR Shaligram G. Kadu, Age 55 years, Occ. Business, R/o Thalegaon, tq. Babhulgaon, Dist. Yavatmal.

... APPELLANT

VERSUS

1. State of Maharashtra, through the Collector, Yavatmal.

2. The Special Land Acquisition Officer, Minor Irrigation Works-I, Yavatmal.

3. The Executive Engineer, Bembla Project Division, Awadhootwadi, yavatmal, Tq. And Dist. Yavatmal.

... RESPONDENTS

Shri A.P. Kalmegh, Advocate for the appellant.
Shri H.D. Futane, AGP for the respondent/State.
Shri Raunak Kurani, Advocate h/f Shri A.B. Patil, Advocate for respondent no.3.

CORAM : PRAVIN S. PATIL, JJ.
CLOSED ON : 10.09.2025.
PRONOUNCED ON : 24.09.2025.

ORAL JUDGMENT :

1. Heard the learned Counsel appearing for the parties.

2. By way of present appeal, the appellant is challenging the judgment and order passed by the Civil Judge, Senior Division, Yavatmal on 30.07.2005 in Land Acquisition Case No.83/1997, for getting enhanced compensation.

3. Undisputed facts in the present matter are that the appellant own field located at Group No.104 bearing Survey No.18 having total area 13.47 Hector R. out of which 3.50 HR land has been acquired for the Bembla River Project.

4. The Notification under Section 4 of the Land Acquisition Act for acquiring the land was issued on 02.03.1996 in Land Acquisition proceedings no.LAC no.8/47/92-93 of village Mauza – Thalegaon. As per the final Award, the compensation at the rate of Rs.13,000/- per Hector was granted to the present appellant.

5. It is the submission of the appellant that the acquiring body without considering the fertility of the land and crops, which he used to taken from the field, and his income from the same was not properly considered, and therefore, he preferred the Reference to get enhancement of compensation amount at the rate of Rs.1,00,000/- per Hector along with the other statutory benefits.

6. Before the Reference Court the appellant by relying upon the method of income capitalization proved that the market value of the land was not properly considered, and therefore, he is entitled for the enhancement as claimed. Learned Reference Court by impugned judgment awarded compensation at the rate of Rs.75,000/- per Hector instead of Rs.1,00,000/- to the appellant.

7. The appellant has relied upon the judgment of this Court in First Appeal No.1111/2009 decided on 21.09.2017 for seeking enhanced compensation. It is his contention that the land involved in the said case was acquired for the purpose of Bembla Irrigation Project and the Notification was issued subsequently i.e. on 29.05.1997. This Court by considering the fertility of the land, Awarded rate of Rs.1,28,500/- per Hector with statutory benefits.

8. In addition to this, the appellant also relied upon the judgment of the Division Bench of this Court in the case of ***Digvijay Graharachana Mandal, Solapur and anr. vs. State of Maharashtra and ors. 2012(4) Mh.L.J. 201*** stating that in view of the law laid down, he is entitled escalation about 5% to 7.5% per annum of prices in the intervening years i.e. from 1993 to 1997.

9. The appellant also relied upon the judgment of the Hon’ble

Supreme Court in the case of ***Land Acquisition Officer and Revenue Divisional Officer vs. Ramanjulu and ors. (2005) 9 SCC 594***, wherein the Hon'ble Supreme Court has granted escalation for two years at the rate of 10%. Hence, on this count, the appellant is seeking enhancement in the matter.

10. Learned Counsel for the respondents did not dispute the legal position. He fairly conceded that this Court in First Appeal No.1111/2009 has granted rate of Rs.1,28,500/- per Hector of the land of same village on the basis of subsequent Notification issued by the State Government.

11. In respect of escalation of percentage, it will be relevant to consider the law laid down by the Division Bench of this Court in the case of *Digvijay Graharachana Mandal (supra)*, wherein this Court in paragraph 24 observed as under :

> *"24. That there will be some escalation of prices in the intervening years cannot be denied. The question is, how the Court will determine it when the parties do not produce any material on record. That guideline has been indicated by the Apex Court in the case of General Manager, ONGC Ltd. vs. Rameshbhai Jivanbhai Patel and another, (2008) 14 SCC 745. In Paragraphs 10, 11, 13 and 14 the Apex Court has observed as under :-*
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> > *10. We have examined the facts of the three decisions relied on by the respondents. They all*

related to acquisitions of lands in urban or semi-urban areas. Ranjit Singh related to acquisition for development of Sector 41 of Chandigarh. Ramanjulu related to acquisition of the third phase of an existing and established industrial estate in an urban area. Bipin Kumar related to an acquisition of lands adjoining Badaun-Delhi Highway in an semi-urban area where building construction activity was going on all around the acquired lands.

11. Primarily, the increase in land prices depends on four factors - situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying *a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same. (Emphasis supplied)*

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13. Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land acquired in 1992 has to be determined and if there are no sale transactions/acquisitions of 1991 or 1992 (prior to the date of preliminary notification), the statistics relating to sales/acquisitions in future, say of the years 1994-95 or 1995-96 are taken as the base price and the market value in 1992 is worked back by making deductions at the rate of 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices. Let us illustrate. Let us assume there was no development activity in a particular area. The appreciation in market price in such area would be slow and minimal. But if some lands in that area are acquired for a residential/commercial/industrial layout, there will be all round development and improvement in the infrastructure/ amenities/facilities in the next one or two years, as a result of which the surrounding lands will become more valuable. Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/commercial/ industrial layout will result in a higher rate of escalation in prices. As a result, if the annual increase in market value was around 10% per annum before the acquisition, the

> *annual increase of market value of lands in the areas neighbouring the acquired land, will become much more, say 20% to 30%, or even more on account of the development/proposed development. Therefore, if the percentage to be added with reference to previous acquisitions/sale transactions is 10% per annum, the percentage to be deducted to arrive at a market value with reference to future acquisitions/sale transactions should not be 10% per annum, but much more. The percentage of standard increase becomes unreliable. Courts should therefore avoid determination of market value with reference to subsequent/future transactions. Even if it becomes inevitable, there should be greater caution in applying the prices fetched for transactions in future. Be that as it may.*
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> *14. In this case, the acquisition was in a rural area. There was no evidence of any out-of-ordinary developments or increases in prices in the area. We are of the view that providing an escalation of 7.5% per annum over the 1987 price under Ex.15, would be sufficient and appropriate to arrive at the market value of acquired lands.*"

12. So also Hon'ble Supreme Court in the case of *Land Acquisition Officer and Revenue Divisional Officer (supra)* in paragraph 4 observed as under :

> *"4.Under Exhibit B-13, the lands were acquired for the same purpose for which the lands are acquired in these cases. The notification issued under Section 4(1) of the Act in the case covered by Exhibit B-13 was issued on 11-12-1974 and the notification in these cases was issued on 30-12-1976. The market value of the lands acquired at the rate of rupees fifty per square yard under Exhibit*

B-13 has become final. As already stated above, the amount per acre fixed at the rate of rupees fifty per square yard comes to Rs 2,44,400. If an amount of rupees forty-eight thousand is added towards escalation for two years at the rate of ten per cent, as done by the High Court in the impugned judgment, it comes to Rs 2,92,400 per acre (Rs 2,44,400 + Rs 48,000 = Rs 2,92,400). Admittedly, the lands acquired are agricultural lands. It is on record that these lands have potentialities for conversion into house sites. They are acquired for the third phase of expansion of industrial estate. In these circumstances, certain amount has to be deducted towards developmental charges. Ordinarily, one-third deduction towards developmental charges would be made, but in these cases, having regard to the facts and circumstances, particularly taking note of the fact that the lands are acquired for expansion of industrial estate, that too for the third phase, and also taking note of the fact that the lands acquired are levelled lands adjoining to developed lands for Phase I and Phase II of industrial estate, we think it is just and appropriate to deduct fifteen per cent towards developmental charges. Fifteen per cent of Rs 2,92,400 comes to Rs 43,800. If this amount is deducted, it comes to Rs 2,48,600 per acre; and we round it off to rupees two lakhs and fifty thousand per acre. Thus, under the circumstances, we determine the market value of the lands acquired at the rate of rupees two lakhs and fifty thousand per acre, making it clear that the claimants are entitled to all the statutory benefits available to them under the Amendment Act 68 of 1984 of the Act on the amount of compensation as determined above. Under these circumstances, we do not find any good ground either to enhance the amount of compensation or reduce it. Thus, the civil appeals stand disposed of in the above terms."

13. According to me, for deciding the percentage of escalation, location of the land, nature of development in the surrounding area,

availability of land for development in the area, the demand of land in the area are required to be considered. In urban or semi urban areas, development is faster than the rural area. Hence, considering all these aspects in the matter, I am of the opinion that the appellant is entitled for the escalation at the rate of 5% per annum. In the First Appeal No.1111/2009 the notification was issued in the year 1997 and in the present case the notification was issued in the year 1993 i.e. before the four years. Hence for which the following calculations were made as per the beneficial rules and deducted the escalated amount by 5% from the rate of which granted by this Court in the above said case.as under :

Year	Rate Granted (Escalation)	Base value (Estimate 5%)
1997	Rs.1,28,000/-	120%
1993	‘x’= which comes after the calculation Rs.1,07,083/- (which is rounded up to Rs.1,08,000/-)	100%

14. In view of the above, the appeal is partly allowed.

15. The judgment and order passed by the Reference Court dated 30.07.2005 is modified to the extent that the appellant is held entitled for the enhanced amount of compensation for the acquired 3.50 HR land at the rate of Rs.1,08,000/- per Hector (including the escalation amount).

16. The appellant will also be entitled for other statutory benefits on the basis of enhanced amount of compensation.

17. The amount of compensation shall be deposited within a period of three months from today either with the Registry of this Court or Reference Court with due intimation to appellant.

18. Needless to mention that amount enhanced be paid by deducting the amount of compensation which has already been paid to the appellant.

19. The same be disbursed to the appellant within a period of three months from the date of this order.

(PRAVIN S. PATIL, J.)

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