

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.782/2004

- 1] Dinaji s/o Gangadhar Dhage,
age 39 yrs., occu.service,
- 2] Munjaji s/o Gangadhar Dhage,
age 35 yrs., occu.agri.,
- 3] Udhav s/o Gangadhar Dhage,
age 30 yrs., occu.agri.,
- 4] Bhagwat s/o Gangadhar Dhage,
age 20 yrs., occu.agri.,

All r/o Sharda Nagar, Basmath Road,
Parbhani. Tq. & Dist.Parbhani.

...Appellants..

(Org.petitioners)

Versus

- 1] The State of Maharashtra,
through Collector, Parbhani.
- 2] The Special Land Acquisition Officer,
M.K.V., Parbhani.

...Respondents...

.....

Shri S.V. Warad, Advocate for appellants.

Shri G.O. Wattamwar, AGP for respondent nos.1 & 2.

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CORAM: T.V. NALAWADE, J.

DATE: 23.11.2015

ORAL JUDGMENT :

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1] The appeal is filed against the judgment and award in Land Acquisition Reference No.136/1993 which was pending in the Court of Civil Judge, Senior Division, Parbhani. The reference is partly allowed by the Reference Court and so the original claimants have challenged the decision.

2] Both the sides are heard.

3] House properties which were given Nos.94, 94/1, 95, 95/1 and 92/2 situated at village Shendra, Tq. & Dist.Parbhani, are acquired by the State Government for creation of Marathoner Krishi Vidyapith, one agricultural university at Parbhani. Notification u/s 4 was issued on 22.5.1980. The final award was prepared on 16.4.1986. It is the case of the claimants that the value of their land and the construction was not less than Rs.1.65 lacs, but the Land Acquisition Officer has given the value of Rs.37,038/-. It is contended that they are entitled to atleast Rs.5,000/- more as they were required to spend for shifting their families from the houses which are acquired.

4] It is the case of the claimants that the method adopted for assessing the market value of the land and

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also of the construction was not proper and due to that, less compensation is awarded to them. It is their contention that the value of the construction was much more than the rates, which are taken from D.S.R., Government rates. It is their case that they had appointed one valuer and the valuer has made assessment of land value and also the value of the construction and they are entitled to get the compensation at the said rate. It is their contention that their village is situated at a distance of 5 Kms. from Parbhani and due to that, the market value of the land and construction was much higher than the value ascertained by the Land Acquisition Officer. In the reference, they had given the description of their houses alongwith the description of the construction and the description of material used for making construction. There were houses / structures on three properties out of the five properties and remaining properties were open spaces.

5] The State Government opposed the proceeding by filing written statement. It only denied the claim. Surprisingly a contention was made that the fertility of the land was taken into consideration when the house

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properties are acquired. Thus, the denial was vague in nature.

6] Before the Reference Court, both the sides gave evidence. The appellants examined themselves and the evidence of the claimants is as per the aforesaid contentions. They examined the valuer appointed by them to prove the report prepared by him. On the other hand, the Government examined one officer of University to give evidence on the valuation. Letter of protest given by the claimants before the Land Acquisition Officer was produced. They had contended that the market value of the land was atleast Rs.5/- per Sq.Ft.

7] The Government approved valuer Mr.Chandak examined by the appellants has given the evidence that this village is situated at a distance of 7 to 8 Kms. from Parbhani city, which is a District place. He has given the evidence that he made valuation of the construction as per DSR rates, which were fixed by the Government for the year 1983-84. In his evidence and the report, the description of the material and nature of construction is given. He has given evidence that polished tick-wood was used for wood work. The maps

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prepared by him are proved at Exhibits 25 to 27 and the report prepared by him is proved at Exhibit 28. According to him, the value of the construction and the value of the land together was atleast Rs.1,65,559/-. His evidence shows that on the basis of inquiry made by him, he ascertained the value of the land and it was Rs.4/- per Sq.Ft. He calculated the land value accordingly and his evidence shows that he did not consider any sale instance or any record regarding the valuation of the land. His evidence shows that he did not consider the depreciation in the value of the construction. He has given admission in the cross-examination that no record of village panchayat was referred by him for measuring the properties.

8] In rebuttal, there is evidence of valuer Mr.Deshmukh examined by the Government, but he is a man of the University – the acquiring body. There is only oral evidence of this witness. Though he has tried to say that he prepared the report on the basis of DSR rates, the report prepared by him is not on record. On the other hand, the award prepared by the Land Acquisition Officer shows that the report prepared by

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Building & Construction Department (B & C) was considered by him.

9] The record available and the reasoning given by the Reference Court show that there were sale instances of the year 1977-78 of the same village. In one sale instance, the value was Rs.7.81 per Sq.Mtr. and in another sale instance, the value was Rs.5.83 per Sq.Mtr. The Reference Court has calculated the average of the two values and has given finding that the market value of the land was Rs.6/- per Sq.Mtr. Thus, the market value, which was given as Rs.4/- per Sq.Mtr. by the Land Acquisition Officer is increased by the Reference Court , but the highest market value which needs to be considered is not considered and accepted by the Reference Court.

10] The reasoning given by the Reference Court shows that it discarded the evidence of the valuer examined by the claimants and it also held that the valuation of the construction done by the Government agency, B & C or PWD cannot be accepted as it is as there are no particulars. The award prepared by the Land Acquisition Officer shows that in all 229 properties from this village were acquired and the Land Acquisition Officer has given the

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total value of the land and total value of the construction of all these properties. Thus, the particulars on the basis of which the valuation of the structures was done were not available before the Reference Court.

11] The aforesaid discussion shows that there is a substantive evidence given by the claimants by examining Mr.Chandak on the valuation of the construction. The report shows that necessary quantities are mentioned in the report. Even if it is presumed that the village record was not referred by the valuer before taking the actual measurement, the fact remains that his report consists of the quantities. The rates as given in DSR are used by this valuer and he is an approved Government valuer. In view of these circumstances, this Court holds that the Reference Court ought to have accepted the evidence of this valuer and ought to have presumed that the value given of the construction by this valuer is correct. However, it can be said that the valuation of the land done by this valuer has no basis and so that valuation could not have been accepted. The report of the valuer of the claimants shows that he assessed the

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compensation at Rs.1,65,557/-, which includes the land value. If the land value of Rs.12,856/- is deducted, then it can be said that the value of the construction, according to this valuer, was Rs.1,52,701/-. It is already observed that the market value, the highest value given in the sale instance, ought to have been considered and accepted by the Reference Court, but the Reference Court took the average of the two sale instances. Thus, the market value, which is Rs.7.8 per Sq.Mtr. needs to be given. The area acquired was 321.4 Sq.Mtrs. and so the value of the land comes to Rs.2506=09. Thus, the total compensation comes to Rs.1,55,207/-. Some amount needs to be given under head of charges in respect of shifting of the residence to other place and that amount can be even Rs.5,000/- as claimed by the appellants – claimants. Thus, the total amount of Rs.1,60,207/- could have been claimed as compensation. The amount of Rs.37,038/- is already received by the claimants and so in ordinary course, the compensation could have been enhanced by Rs.1,33,169/-. In the appeal, the claim is made of Rs.1,32,960/-.

12] In view of these circumstances, this Court holds

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that the appeal needs to be allowed and the compensation needs to be enhanced by Rs.1,33,169/-. The claimants – appellants will be entitled to all the statutory benefits in respect of this amount. The appeal is allowed accordingly. The judgment and award of the Reference Court is modified and the compensation is enhanced by Rs.1,32,960/-. This amount is not inclusive of the amount already awarded by the Land Acquisition Officer. All the statutory benefits in respect of this amount are to be given. The award be prepared accordingly.

(T.V. NALAWADE, J.)