

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

911 FIRST APPEAL NO. 2832 OF 2015
 WITH CIVIL APPLICATION NO.14408/2011 IN FIRST APPEAL
 NO.2832/2015 WITH FIRST APPEAL NO.2833/2015 WITH CIVIL
 APPLICATION NO.14402/2011 IN FIRST APPEAL NO.2833/2015
 WITH FIRST APPEAL NO.2834/2015 WITH CIVIL APPLICATION
 NO.14361/2011 IN FIRST APPEAL NO.2834/2015 WITH FIRST
 APPEAL NO.2835/2015 WITH CIVIL APPLICATION
 NO.14410/2011 IN FIRST APPEAL NO.2835/2015 WITH FIRST
 APPEAL NO.2836/2015 WITH CIVIL APPLICATION
 NO.14406/2011 IN FIRST APPEAL NO.2836/2015 WITH FIRST
 APPEAL NO.2837/2015 WITH CIVIL APPLICATION
 NO.14439/2011 IN FIRST APPEAL NO.2837/2015 WITH FIRST
 APPEAL NO.2838/2015 WITH CIVIL APPLICATION
 NO.14373/2011 IN FIRST APPEAL NO.2838/2015 WITH FIRST
 APPEAL NO.2839/2015 WITH CIVIL APPLICATION
 NO.14392/2011 IN FIRST APPEAL NO.2839/2015 WITH FIRST
 APPEAL NO.2840/2015 WITH CIVIL APPLICATION
 NO.14398/2011 IN FIRST APPEAL NO.2840/2015 WITH FIRST
 APPEAL NO.2841/2015 WITH CIVIL APPLICATION
 NO.14445/2011 IN FIRST APPEAL NO.2841/2015 WITH FIRST
 APPEAL NO.2842/2015 WITH CIVIL APPLICATION
 NO.14371/2011 IN FIRST APPEAL NO.2842/2015 WITH FIRST
 APPEAL NO.2843/2015 WITH CIVIL APPLICATION
 NO.14396/2011 IN FIRST APPEAL NO.2843/2015 WITH FIRST
 APPEAL NO.2844/2015 WITH CIVIL APPLICATION
 NO.14384/2011 IN FIRST APPEAL NO.2844/2015 WITH FIRST
 APPEAL NO.2845/2015 WITH CIVIL APPLICATION
 NO.14431/2011 IN FIRST APPEAL NO.2845/2015 WITH FIRST
 APPEAL NO.2846/2015 WITH CIVIL APPLICATION
 NO.14435/2011 IN FIRST APPEAL NO.2846/2015 WITH FIRST
 APPEAL NO.2847/2015 WITH CIVIL APPLICATION
 NO.14433/2011 IN FIRST APPEAL NO.2847/2015 WITH FIRST
 APPEAL NO.2848/2015 WITH CIVIL APPLICATION
 NO.14386/2011 IN FIRST APPEAL NO.2848/2015 WITH FIRST
 APPEAL NO.2849/2015 WITH CIVIL APPLICATION
 NO.14441/2011 IN FIRST APPEAL NO.2849/2015 WITH FIRST
 APPEAL NO.2850/2015 WITH CIVIL APPLICATION
 NO.14394/2011 IN FIRST APPEAL NO.2850/2015 WITH FIRST
 APPEAL NO.2851/2015 WITH CIVIL APPLICATION
 NO.14404/2011 IN FIRST APPEAL NO.2851/2015 WITH FIRST
 APPEAL NO.2852/2015 WITH CIVIL APPLICATION
 NO.14390/2011 IN FIRST APPEAL NO.2852/2015 WITH FIRST
 APPEAL NO.2853/2015 WITH CIVIL APPLICATION

NO.14400/2011 IN FIRST APPEAL NO.2853/2015 WITH FIRST
 APPEAL NO.2854/2015 WITH CIVIL APPLICATION
 NO.14412/2011 IN FIRST APPEAL NO.2854/2015 WITH FIRST
 APPEAL NO.2855/2015 WITH CIVIL APPLICATION
 NO.14437/2011 IN FIRST APPEAL NO.2855/2015 WITH FIRST
 APPEAL NO.2856/2015 WITH CIVIL APPLICATION
 NO.14388/2011 IN FIRST APPEAL NO.2856/2015 WITH FIRST
 APPEAL NO.2857/2015 WITH CIVIL APPLICATION
 NO.14414/2011 IN FIRST APPEAL NO.2857/2015 WITH FIRST
 APPEAL NO.2858/2015 WITH CIVIL APPLICATION
 NO.14363/2011 IN FIRST APPEAL NO.2858/2015 WITH FIRST
 APPEAL NO.2859/2015 WITH CIVIL APPLICATION
 NO.14427/2011 IN FIRST APPEAL NO.2859/2015 WITH FIRST
 APPEAL NO.2860/2015 WITH CIVIL APPLICATION
 NO.14366/2011 IN FIRST APPEAL NO.2860/2015 WITH FIRST
 APPEAL NO.2861/2015 WITH CIVIL APPLICATION
 NO.14368/2011 IN FIRST APPEAL NO.2861/2015 WITH FIRST
 APPEAL NO.2862/2015 WITH CIVIL APPLICATION
 NO.14420/2011 IN FIRST APPEAL NO.2862/2015 WITH FIRST
 APPEAL NO.2863/2015 WITH CIVIL APPLICATION
 NO.14429/2011 IN FIRST APPEAL NO.2863/2015 WITH FIRST
 APPEAL NO.2864/2015 WITH CIVIL APPLICATION
 NO.14418/2011 IN FIRST APPEAL NO.2864/2015 WITH FIRST
 APPEAL NO.2865/2015 WITH CIVIL APPLICATION
 NO.14425/2011 IN FIRST APPEAL NO.2865/2015 WITH FIRST
 APPEAL NO.2866/2015 WITH CIVIL APPLICATION
 NO.14416/2011 IN FIRST APPEAL NO.2866/2015 WITH FIRST
 APPEAL NO.2867/2015 WITH CIVIL APPLICATION
 NO.14443/2011 IN FIRST APPEAL NO.2867/2015 WITH FIRST
 APPEAL NO.2868/2015 WITH CIVIL APPLICATION
 NO.14423/2011 IN FIRST APPEAL NO.2868/2015

THE EXECUTIVE ENGINEER, MEDIUM PROJECT DIV. OBAD
 VERSUS

DINKAR NARAYAN SHELKE AND ANR

...

Advocate for Appellant :Mr. Thombre S. S.

AGP for Respondents: Mr. D. V. Tele

Advocate for Respondents :Mr. Natu Sharad V.

...

CORAM : S. V. GANGAPURWALA, J.

DATE : 27th October, 2015

PER COURT :

1. The present respondents filed References under

section 18 of the Land Acquisition Act, being dissatisfied with the compensation amount awarded by the Special Land Acquisition Officer. The said references are partly allowed. The acquiring body has assailed the said judgment and award in the present appeals.

2. In all these appeals, lands are acquired vide the same notification, for the same project so also from the same village. The reference court has also decided all the references by common judgment. As such, the appeals are decided together by a common judgment.

3. Mr. Thombare, the learned counsel for the appellant submits that the Special Land Acquisition Officer had awarded compensation in respect of open space at the rate of Rs.10 per square meter and in respect of house property, awarded compensation at different rates as per quality of construction, extent of construction etc. The reference court has granted compensation @ Rs30/- per square meter for open space and Rs.50,000/- in lump sum for the super structure to each claimants. The learned counsel submits that the reference court has not considered the quality of construction of houses, extent of construction and awarded lump sum compensation @ Rs.50,000/- to each claimant. The same is without

application of mind. Even compensation of Rs.30/- per square meter is on the higher side. According to the learned counsel, the claimants, in almost 16 matters out of 37, had claimed compensation less than Rs.50,000/-. in some matters it is claimed at Rs.13,500/- to 17,800/- but to them also, for the constructed structure Rs.50,000/- is awarded.

4. Mr. Natu, the learned counsel for the claimants submits that L.A.R. No.162/1987 was decided by the reference court earlier which was in respect of the same acquisition proceeding. Certified copy of the said judgment was filed on record at Exh.95, wherein, the Court has awarded compensation for open space at Rs.30/- per square meter. The said judgment is not assailed either by the State or the acquiring body. As such, the same rate is awarded in the present matters also. The learned counsel submits that valuers' report has been submitted before the Court but the same is not accepted only on the ground that the valuer has not inspected the property in presence of the State and the acquiring body. The learned counsel submits that the valuer is also examined and has proved his report.

5. I have considered the submissions.

6. As far as the compensation for the open space awarded @ Rs.30/- per square meter is concerned, the reference court has considered the judgment delivered in other references which were dealing with the acquisition for the same project as in the present matter and thereafter, the reference court, relying on the judgment in the said references, awarded compensation for open space @ Rs.30/- per square meter. Acquisition in those matters and the present matters is vide the same notification, for the same purpose so also the lands acquired are in the same vicinity. The court has not committed any error in relying on the said judgment. Moreover, the said judgment was not assailed either by the State or by the acquiring body.

7. As far as the compensation for house property is concerned, the reference court has awarded lump sum compensation of Rs.50,000/- to each and every claimant. The reference court has discarded the valuer's report. There was absolutely no evidence on record *de hors* the valuation report. The reference court has not even taken pains to discuss the extent of the construction in each claim applications. Without ascertaining the quality of construction, extent and magnitude of construction, has

awarded Rs.50,000/- for the constructed property to each and every claimant. The same does not appear to be with due application of mind. The reference court was required to consider the case put forth by each of the claimants with regard to super structure *vis-a-vis* quality and extent of construction. In many of the references, I find that the claimants themselves have claimed an amount of Rs.13,000/- to Rs.17,000/- etc. as total compensation. Naturally, the same must have been based on the valuer's report. The court was required to consider that aspect. For them also, the court has awarded Rs.50,000/- as lump sum compensation for the constructed house properties. No doubt, the court has powers to grant more compensation amount subject to the claimant paying court fees. However, the same has to be arrived at after considering all the relevant aspects of the matter i.e. quality of construction, extent of construction etc.

8. In the light of above, the compensation awarded for open space @ Rs.30/- per square meter is confirmed. However, the compensation awarded towards house property is set aside and the matter is relegated to the reference court for determination of compensation in respect of house properties, for which the reference

court is required to scan the evidence threadbare. The parties are also allowed to lead further evidence, if they chose so, in respect of house property. In the result, I pass following order:

O R D E R

- i. Judgment and award passed by the reference court granting compensation @ Rs.30/- per square meter for open space is confirmed and upheld.
- ii. Judgment and award of the reference court granting lump sum compensation @ Rs.50,000/- for the house property is quashed and set aside.
- iii. The parties are relegated to the reference court to the extent of determination of compensation for the constructed portion of the house properties.
- iv. The parties shall appear before the reference court on 26th November, 2015.
- v. The parties are entitled to adduce further evidence with regard to the compensation of the constructed structure. The reference court, after appreciating the evidence which is already led and the evidence which would be led, shall

redetermine the compensation amount in respect of the house properties and decide the references within six months from the date of appearance.

- vi. The appellant shall deposit the compensation in respect of open space @ Rs.30/- per square meter along-with statutory benefits as awarded by the reference court.
- vii. The first appeals along-with civil civil applications stand disposed of. No costs.

(S. V. GANGAPURWALA, J.)

JPC