

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1250 OF 2009

1. Bandappa s/o Shantappa Jalkote
died thr LRS
- 1-A) Smt. Sushilabai w/o Bandappa Jalkote
Age: 57 years. Died
- 1-B) Gangadhar s/o Bandappa Jalkote,
Age: 56 years, Occ: Agril.
R/o Marajwadi, Ta. Mukhed, Dist. Nanded.
- 1-C) Sou Shanta w/o Umesh Shirure,
Age: 37 years, Occ: Household,
R/o Halsur, Tq. Aurad, Dist. Bidar,
(Karnataka State)
Presently resident at Udgir, Tq. Udgir,
Dist. Latur. ... APPELLANT

VERSUS

1. The State of Maharashtra,
Through the District Collector,
Nanded.
2. The Special Land Acquisition Officer,
Krishna Khore, Nanded.
3. The Executive Engineer,
Vishnupuri Project Division No.1,
Nanded. ... RESPONDENTS

...
 Advocate for Appellants : G N Chincholkar
 AGP for Respondents: A.M. Phule
 ...

CORAM : P.R. BORA, J.
DATE : 06-10-2016.

ORAL JUDGMENT :

1. Leave to amend forthwith.

2. The appellant has filed the present appeal seeking enhancement in the amount of compensation as awarded by the Civil Judge Senior Division, Kandhar in Land Acquisition Reference No. 13 of 2005 (New) (L.A.R. 12 of 2005 old) decided on 02.02.2009. A house property was acquired of the present appellant for the submergence of Lendi project at Village Marajwadi, Taluka Mukhed, District Nanded. The acquired house was having construction of 26 sq.mtrs, Section 4 notification in that regard was published on 23.12.1997 and the award under section 11 came to be passed on 23.03.2002. The Special Land Acquisition officer had determined the compensation to be offered to the appellant to the tune of Rs. 34,027/-. Dissatisfied with the amount of compensation so offered, the appellant filed an application under Section 18 of the Act to the Collector, Nanded which in turn was forwarded for adjudication to the Civil Court at Nanded.

3. Before the reference court, the appellant had claimed the compensation of Rs.1,35,000/-. In order to substantiate his claim, the claimant himself has deposed before the reference court and has also examined the approved valuer whose valuation report was placed on record by the appellant. The learned reference court, however, enhanced the compensation only to Rs.42,534/- aggrieved by the appellant has filed the present appeal.

4. Mr. Chincholkar, the learned counsel appearing for the

appellant submitted that, the appellant has sufficiently proved the value of his constructed house by examining the approved Government valuer and there was no reason for the reference court to disagree with the evidence of the said valuer. The learned counsel further submitted that, no sufficient reasons are assigned by the reference court for not accepting the evidence of the valuer. The learned counsel submitted that, in his testimony before the court, the valuer has elaborately narrated the method adopted by him for preparing the valuation of the house property along with the land on which the house was constructed. Learned counsel submitted that, in the cross-examination nothing contrary has come on record. The learned counsel submitted that, in the circumstances, the reference court ought to have accepted the valuers report and accordingly must have awarded the compensation to that extent. The learned counsel, therefore, prayed for allowing his appeal and consequently to enhance the amount of compensation as per the report of valuer.

5. The learned counsel has also tendered across the bar a copy of an unreported judgment delivered by this court (Coram: A.V. Nirgude, J.) on 24.08.2016 in First Appeal No. 999 of 2015. The learned counsel submitted that, in the aforesaid appeal also the house property was acquired for the same project for which the the subject house in the present matter was acquired. The learned counsel pointed out that, in the above referred judgment this court

has accepted the valuer's report and accordingly enhanced the amount of compensation.

6. Mr. Phule, learned counsel appearing for the respondent-state submitted that, the reference court has considered the entire evidence on record and has correctly determined the market value of the acquired property and has accordingly awarded compensation. The learned A.G.P. submitted that, a well reasoned order is passed by the reference court which require no interference.

7. I have carefully perused the impugned judgment and the evidence which was adduced before the reference court. The valuer's evidence is more material in the present matter. One Shrisanth Barbade, the approved government valuer was examined by the appellant before the reference court. I have gone through the evidence of the said witness and also the cross-examination of the said witness. It is revealed that, nothing has come in the cross-examination of the said witness, so as to disbelieve the evidence adduced by the said witness. The learned reference court has not assigned any good reason for not accepting the evidence of the valuer. It is further not understood as to what was the basis for the reference court to determine the amount of compensation. It appears that, the reference court has erred in not relying upon the expert's evidence which was the only evidence available on record,

admittedly, no evidence was adduced on behalf of the state.

8. The learned reference court has observed in para 16 of the impugned judgment that the evidence of the claimant and his witness i.e. approved valuer has remained un-shattered, in the cross-examination. The learned tribunal has also observed that for determining the market value of the acquired land or house one of the tested method is to get valued the property in question by the approved valuer. In the instant matter as has been observed by the reference court PW3 Shrisanth Barbade, the witness examined by the claimant is qualified engineer and approved government valuer. The reference court has also observed that the evidence so brought on record by the claimant and the government valuer is worth considering, however, though all such observation are made by the reference court, surprisingly, it has not accepted the report and has also not stated any cogent reason for not accepting the same.

9. I have carefully perused the said valuation report which reveals that the government valuer namely Shrisanth Barbade has prepared valuation of the acquired house in a scientific method. Nothing has come on record so as to discard the valuation so made by the said valuer. A mere observation by the reference court that, the value estimated by the valuer is on higher side without assigning any reason cannot be sustained. After having considered the entire material on record, it appears to me, that the tribunal

must have accepted the report of the valuer and enhanced the amount of compensation accordingly. I am therefore inclined to allow the present appeal. Hence the following order:

ORDER

- i) The appeal is allowed.
- ii) The amount of compensation is enhanced to Rs. 1,35,000/-.
- iii) The appellant is entitled to receive the statutory benefits and the interest as provided under the provisions of the Land Acquisition Act on the enhanced amount of compensation.
- iv) Award be modified accordingly.

(P.R. BORA)
JUDGE