

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1248 OF 2009

Gangadhar S/o Bandappa Jalkote .. Appellants

Versus

The State of Maharashtra & ors. .. Respondents

Mr.G.N. Chincholkar, Advocate for the appellant
Mr.S.P. Sonpawale, A.G.P. for respondents/State

CORAM : A.V.NIRGUDE, J
DATED : 24.08.2016

P.C. :-

1. This appeal challenges judgment and award dated 03.02.2009 passed by the learned Civil Judge, Senior Division, Kandhar in Land Acquisition Reference No.14 of 2005 (New) i.e. 13 of 2005 (Old) in which present appellant was the claimant. The case before the Lower Court was reference under section 18 of the Land Acquisition Act, 1894 (for short "the Act") in respect of re-determination and enhancement of compensation of a houses 141/2, 141/3 and 329, admeasuring 36 square meter, 34 square meter and 32 square meter, total area 102.89 square meters situated at village Marajwadi Tq. Mukhed, Dist. Nanded. The Notification under section 4 of the

Act was published in Government Gazette on 23rd December, 1997. The Notification under section 6 of the Act was then published on 15th December, 1998. Thereafter, the award was passed in respect of acquiring house on 26.03.2002. The Special Land Acquisition Officer proposed compensation of Rs.93,054/-. The Reference was filed challenging the quantum of compensation. The appellant/claimant sought compensation of Rs.3,80,400/-. He adduced evidence to indicate as to where house were situated. The evidence disclosed that the village Marajwadi is situated on the boundary of Maharashtra, Karnataka and Andhra Pradesh and the market value of the three houses could not be less than Rs.3,80,400/-. In order to substantiate this claim the appellant/claimant adduced evidence of an expert. He was a consulting engineer and Government approved valuer. He stated in his deposition that he visited the reference house on 7th April 2002 and inspected it carefully. According to him the valuation of the house was Rs.3,51,668/-. He submitted a valuation report on record.

2. The sole basis for enhanced compensation is the expert report. The expert was cross-examined. The learned Civil Judge disbelieved the evidence of the expert but practically did not record any reason as to why he had disbelieved the deposition. The expert is a third party,

ideally not interested in the claimant. In this case the expert was a Government approved one. His opinion, thus, should carry more weight. In my view the learned Civil Judge committed serious error in disbelieving the expert's evidence. In a case of this nature, the Civil Judge ought to have believed the deposition of the expert and awarded compensation as per the expert's suggestion. The appeal should, therefore, succeed.

3. Hence, the first appeal is allowed with costs. The compensation awarded for the reference house is enhanced to Rs.3,51,668/- (Rupees Three Lac Fifty One Thousand Six Hundred Sixty Eight) as claimed originally. Rest of the order regarding solatium etc. shall remain as it is.

[A.V.NIRGUDE,J.]