

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

FIRST APPEAL NO.47 OF 1998

Deorao s/o Ganpatrao Gawande,
(Dead) through Legal Heirs

-(Amended as per
Court's order dt. 14-4-2016)

- 1) Mohan Deorao Gawande,
Aged 41 years, Occ. - Service,
- 2) Pramod Deorao Gawande,
Aged 38 years, Occ. - Agriculturist,
Nos.1 and 2 R/o Village Bori,
Tahsil Digras, District Yavatmal.
- 3) Tara Ramesh Mahalle,
Aged 54 years,
R/o Suyog Nagar, Yavatmal,
Tahsil and District Yavatmal.
- 4) Sou. Premila Balaji Choure,
Aged 46 years,
R/o Shastri Nagar, Digras, Tahsil
Digras, District Yavatmal.
- 5) Sou. Nalini Vishwanath Choudhari,
Aged 44 years, Occ. - Irthal, Tahsil
Darwha, District Yavatmal.

.... **APPELLANTS**

VERSUS

The Collector, Yavatmal,
District Yavatmal.

.... **RESPONDENT**

Shri R.J. Shinde, Advocate for the appellants,
Shri M.A. Kadu, A.G.P. for the respondent.

CORAM : Z.A. HAQ, J.
DATED : 5th OCTOBER, 2016.

ORAL JUDGMENT :

Heard Shri R.J. Shinde, Advocate for the appellants and
Shri M.A. Kadu, Assistant Government Pleader for the respondent.

2. Pursuant to the notification under Section 4 of the Land Acquisition Act, 1894 published on 24-07-1986, the house owned by predecessor of the present appellants admeasuring 258.18 square meters was acquired. The Land Acquisition Officer granted compensation of Rs.54,371/- alongwith statutory benefits. On reference, the reference Court has determined the compensation at Rs.70,000/- alongwith statutory benefits. Being dissatisfied with the amount of compensation determined by the reference Court, the claimant has filed this appeal.

During the pendency of appeal, the original claimant died and the present appellants are brought on record. According to the appellants, they are entitled for compensation of Rs.1,66,000/- as per

the report of Architect/Valuer.

3. The learned Advocate for the appellants has submitted that the claimant has filed the valuation report given by the Architect/Valuer which shows that the market value of the house which was acquired was Rs.1,66,000/- at the relevant time. It is submitted that PW2-Shri Deodatta Pendse, Architect is examined on behalf of the claimant and the respondent has not been able to bring on record anything in the cross-examination on the basis of which it could be said that the valuation report submitted by the Architect/Valuer was not proper. It is argued that the reference Court has committed an error by granting compensation of Rs.70,000/- only though the valuation report shows that the market value of the house was Rs.1,66,000/- at the relevant time. It is prayed that the impugned award be modified and the amount of compensation be enhanced.

4. Shri M.A. Kadu, Assistant Government Pleader has submitted that the valuation report could not have been accepted as the report shows that the house which was acquired was admeasuring 147.5 square meters and the claim made by the claimant shows that the house was admeasuring about 258.18 square meters. It

is submitted that the impugned award is proper and need not be interfered with.

5. After hearing, the following point arises for consideration :
Whether the impugned award is proper or is required to be modified ?

6. The reference Court has considered the valuation report for determining the amount of compensation, however, without any basis the reference Court has recorded that the valuation shown in the report is exaggerated as the material used for construction was not as mentioned in the valuation report. The reference Court has assessed the valuation on its own, concluding that the market value of the acquired house might be between 40% to 50% of the valuation report. In my view, the approach of the reference Court is not proper. The reference Court could not have reassessed the valuation report as the Court is not an expert in the matter of assessment of valuation. From the material on record, I find that the evidence of Shri Deodatta Pendse - Architect/Valuer cannot be doubted. Therefore, it has to be held that the claimant has proved that market value of the acquired house was Rs.1,66,000/- at the relevant time.

7. Shri M.A. Kadu, Assistant Government Pleader has argued that in the reference filed by the claimant the valuation of construction was shown as Rs.1,43,435/- and Rs.13,000/- was shown as valuation of plot on which house was constructed and the reference Court has recorded that only house of claimant was acquired and adjoining land was not acquired and therefore, the claimant would be entitled for compensation of Rs.1,43,435/- only. The submission cannot be accepted as the claimant has made claim for Rs.1,43,435/- for construction and Rs.13,000/- for the land on which the construction stood. The submission on behalf of the respondent that the valuation report showed that the construction was admeasuring 147.5 square meters only and not 258.18 square meters and therefore, the claimant is not entitled for the enhanced amount of compensation cannot be accepted as the reference Court has recorded that the house which is acquired was admeasuring 258.18 square meters and this finding is not challenged by the respondent.

Answering the point accordingly, it is held that the appellants are entitled for the additional amount of Rs.96,000/- alongwith statutory benefits on it.

8. Hence, the following order :

- i) In addition to the amount of Rs.70,000/- granted by the reference Court, the appellants are entitled for Rs.96,000/- towards compensation and statutory benefits on this amount of Rs.96,000/-.

The amount be given to the appellants in equal proportion.

- ii) The impugned award is modified accordingly.

The appeal is allowed with costs.

JUDGE

adgokar