

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

FIRST APPEAL NO. 799 OF 2002

1. Laxman Ganpat Jadhav
Age : 45 years, Occu : Agriculturist

2. Sitaram Ganpat Jadhav
Age : 50 years, Occu : Agriculturist

Both R/o Village : Darewadi,
Tal. Nagar, District : Ahmednagar

.. Appellants
(Orig. Claimants)

Versus

The State of Maharashtra

.. Respondent
(Orig. Opponent)

...
Advocate for Appellants : Shri A.B. Gatne
AGP for Respondent – State : Shri A.M. Phule
...

CORAM : PR. BORA, J.
Dated: October 11, 2018

ORAL JUDGMENT :

1. Original claimants in L.R.A. No.92 of 1992 have preferred present appeal seeking enhancement in the amount of compensation awarded by the Reference Court in the said Land Reference Application.

2. The impugned Award is challenged mainly on the ground that, neither the SLAO had taken into account that there

were two houses existing on the acquired land nor the Reference Court has appropriately considered the said aspect. Shri Gatne the learned Counsel appearing for the appellants – claimants took me through the application under Section 18 of the Act as well as the evidence adduced by the claimants to substantiate the contentions raised by them in the said application. The learned Counsel invited my attention to the evidence of Dattatraya Trimbak Dalal, who was examined by the appellants – claimants in order to prove the valuation of the property acquired. The learned Counsel pointed out that, witness Dattatraya Dalal was the Chartered Engineer and was also the Registered Government Valuer. The learned Counsel submitted that, the properties were inspected by the said witness and Valuation Report was accordingly prepared and submitted by him. The learned Counsel invited my attention to Exhs.14 & 15 i.e. valuation of these two houses prepared by the said valuer. The learned Counsel submitted that, nothing has been elicited in his cross-examination so as to disbelieve the evidence of the said witness. The learned Counsel, in the circumstances, submitted that the impugned Award needs to be modified and the amount

of compensation requires to be adequately enhanced in view of the evidence on record.

3. Learned AGP Shri Phule has supported the impugned Judgment and Award. The learned AGP submitted that, the Reference Court has appropriately considered the evidence and has accordingly given due enhancement in the amount of compensation and nothing more is required to be granted than granted by the Reference Court. The learned AGP, therefore, prayed for dismissal of the appeal.

4. I have given due consideration to the submissions made by the learned Counsel appearing for the respective parties. I have also perused the impugned Judgment and the evidence on record.

5. From the material on record, there seems no reason to dispute that, the property which was acquired more particularly Gut No.81/3 was having two constructed houses therein. The claimants had also placed on record the

Grampanchayat extract evidencing the said fact. In his evidence before the Court, claimant - Laxman Ganpat Jadhav has specifically deposed the said fact and the same has not been denied or disputed by the respondent in his cross-examination.

6. I have also perused the evidence of the valuer and more particularly, the cross-examination of the valuer by the learned DGP. Though the said witness was elaborately cross-examined, core fact that there were two houses in the acquired land has not been denied or disputed. From the Award under Section 11 of the Act and from the Judgment passed by the Reference Court, it is apparently revealed that, while determining the amount of compensation no compensation has been awarded insofar as the house properties are concerned. The compensation seems to have been awarded only in respect of the plot, upon which, the houses were built. After having considered the evidence on record, there appears substance in the contentions of the appellants that, the Land Acquisition Officer as well as the Reference Court both have erred in not awarding the compensation for the house properties, which

were acquired along with the plot.

7. On perusal of the Valuation Report submitted by witness Dattatraya Trimbak Dalal, it is revealed that, the said witness has given valuation of the houses on the basis of D.S.R. The valuer has assessed the value of the first house to be Rs.35,898/-, whereas of the other as Rs.27,531/-. The report reveals that, the area of construction of the first house was 42.55 sq. meters, whereas the area of the construction of the other house was 27 sq. meters. It was the submission of the learned Counsel appearing for the appellants that, in absence of any contrary evidence on record, the valuation report has to be accepted as it is and the compensation needs to be awarded as per the said valuation. I am, however, not fully convinced with the submission so made by the learned Counsel. It has to be stated that, for the construction in the village area and more particularly, the construction in question, I am afraid whether the valuation of it could have been done on the basis of DSR rates. In the circumstances, valuation as has been done by the valuer cannot be as it is accepted. However, the valuation of the

first house, on the basis of the evidence which has come on record and having regard to the report of valuation can be determined as Rs.25,000/- and the valuation of the other house as Rs.20,000/-. It appears to me that, the appellants are entitled to receive that much of amount towards the constructed houses, which were acquired by the Government. I am, therefore, inclined to allow the appeal to the aforesaid extent.

8. In the result, the following order is passed.

ORDER

(i) The appellants – Orig. claimants are held entitled for the enhanced compensation of Rs.45,000/- along with the other benefits as are available under the provisions of Land Acquisition Act and also the interest under Section 28 of the Act from the date of Award.

(ii) It need not be stated that, the interest payable on the enhanced amount of compensation will be computed keeping in view the Judgment of the Full Bench of this Court in the case of **State of Maharashtra Vs. Kailash Shiva Rangari, 2016 (4) Bom.C.R. 1.**

. The appeal thus stands allowed in the aforesaid terms.

(iii) Pending Civil Application, if any, stands disposed of.

(P.R. BORA, J.)

ggp