

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

FIRST APPEAL NO. 693 OF 2017

Nagnath s/o Dhondiba Nukulwad,
age 42 years, occ. Agriculture,
r/o Marajwadi, Tq. Mukhed,
District Nanded

...Appellant

VERSUS

- 1] The State of Maharashtra,
represented by the Collector,
Nanded, Tq. & Dist. Nanded,
- 2] The Special Land Acquisition
Officer, Krishna Khore Vikas
Mandal, Nanded,
- 3] The Executive Engineer,
Vishnupuri Project Division,
Jangamwadi, Nanded,
District Nanded

...Respondents

....

Advocate for Appellant : Mr. Chincholkar G.N.
AGP for Respondents 1 and 2 : Mr. R.B.Bagul
Advocate for Respondent no.3 : Mr. Karlekar Sujeet G.

... .

CORAM : SUNIL K. KOTWAL, J.

DATE : AUGUST 20, 2018

ORAL JUDGMENT :

1. Heard Mr.Chincholkar, learned Counsel for the appellant,
Mr.Bagul, learned A.G.P. for Respondents No.1 & 2 and Mr.Karlekar,

learned Counsel for Respondent No.3 – acquiring body. With the consent of the learned counsel for the parties the appeal is taken up for final hearing.

2. The issue involved in this appeal is in respect of appropriate compensation to be paid in respect of the house property of appellant, which has been acquired by the respondents for Lendi Project.

3. Mr.Chincholkar, learned Counsel for appellant, places reliance upon the decision of this Court in the case of **Bandappa s/o Shantappa Jalkote Vs. State of Maharashtra** (First Appeal No.1250 of 2009, decided on 06.10.2016), in the case of **Kondiba s/o Yadavrao Rasegave Vs. State of Maharashtra** (First Appeal No.868 of 2015, decided on 23.08.2016) and **Venkati s/o Masnaji Susterphod vs The State of Maharashtra** (First Appeal No. 832 of 2014, decided on 24.1.2018). He submits that all these decisions relate to very same acquisition proceedings and in these decisions, this Court has awarded enhanced compensation as per the valuation report submitted by the Valuer. He submits that applying these decisions, this appeal should also be allowed and compensation should be enhanced.

4. Learned Counsel for the respondents submits that each case has to be assessed on the basis of evidence led by the claimants and, therefore, there cannot be uniform enhancement in such matters. He submits that decisions relied upon by Mr.Chincholkar, learned Counsel for appellant, on their own face, are inapplicable to the present appeal.

5. Perused the record. In these decisions, the Reference Court has ignored the valuation reports in respect of the house properties and awarded compensation, which was much less than the compensation valued by the valuer. This Court, in these decisions, ruled that in such matters, report of the valuer is most important and cannot be simply ignored by observing that the valuation is on the higher side.

6. In **Kondiba** (F.A. NO.868/2015), in paragraph no.2, this is what was observed :

“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 weightage. 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.”

7. Similarly, in **Bandappa** (F.A. No.1250 of 2009), this is what was observed :

“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 unshattered, 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 observations 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 allowed the present appeal. “

8. The principle, in the aforesaid decisions, is that the valuation report in such matters may not simply be ignored, unless there are good grounds to do so.

9. In this appeal, the claimant has led evidence not only of himself but also of the expert valuer. The valuation report prepared by the valuer has been placed on record. Therefore, the principle in **Bandappa** and **Kondiba** (supra) is to be applied and there is no reason to discard the reason given by the expert valuer. Similar view is taken by this Court in the case of **Venkati vs State** (First Appeal No. 832 of 2014). Accordingly, this appeal will have to be allowed and the compensation in respect of house property will have to be enhanced.

10. In the result, First Appeal No.693 of 2017 is allowed in the aforesaid terms and compensation in respect of house property is enhanced to Rs.1,37,224/- (Rs. One Lac Thirty Seven Thousand Two Hundred Twenty Four only).

[SUNIL K. KOTWAL, J.]

dbm