

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

FIRST APPEAL NO. 666 OF 2013

1. Shivkant Nagnath Rakte
Age : 36 years, occu.: agri.,
R/o Marajwadi, Tal. Mukhed,
District Nanded.
2. Chandrakant Nagnath Rakte
Age : 45 years, occu.: agri.,
R/o Marajwadi, Tal. Mukhed,
District Nanded.

Appellants.

Versus

1. The State of Maharashtra
Through District Collector,
Nanded.
2. Special Land Acquisition
Officer, Krishna Khore,
Nanded.
3. The Executive Engineer,
Lendi Project, Degloor,
District Nanded.

Respondents.

Mr. G.N. Chincholkar, Advocate for the appellant.
Mr. R.B. Bagul, Advocate for the respondent.
Smt. Ranjana Reddy, Advocate for respondent No.3.

CORAM : SUNIL K.KOTWAL,J.

**Judgment reserved on : 31st August 2018.
Judgment pronounced on : 5th September 2018.**

JUDGMENT : (PER SUNIL K. KOTWAL,J.)

1. This appeal is directed by the original claimants against

the judgment and award passed by the Civil Judge, Senior Division, Kandhar in L.A.R. No. 18/2005 (New) / L.A.R. No.17/2005 (old).

2. Respondent No.1 is the State of Maharashtra, respondent No.2 is Special Land Acquisition Officer, Krushna Khore and respondent No.3 is the Executive Engineer, Lendi Project.

3. Heard Mr. Chincholkar, learned Counsel for the appellants, learned Additional Government Pleader for respondent Nos.1 and 2 and Smt. Ranjana Reddy, learned Counsel for respondent No.3 – Acquired Body.

4. With the consent of both parties, the appeal is taken up for final hearing.

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

6. Mr. Chincholkar, learned Counsel for the appellants, 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), **“Venkati s/o Masnaji Susterphod vs The State of Maharashtra”** (First Appeal No. 832 of 2014, decided on 24.01.2018) and **“Rajesh Valel**

Puthuvalil and another Vs. Inland Waterways Authority of India and another” (2014 AIR SCW 4215). 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.

7. Learned Counsel for the respondents submit that each case has to be assessed on the basis of evidence led by the claimants and Valuer. There cannot be uniform enhancement in such matters. According to them, the Authorities relied upon by Mr. Chincholkar - learned Counsel for the appellants, are not applicable to the present appeal due to distinguishing fact that the report of the Valuer is not reliable. They placed reliance on the case of “**Special Land Acquisition Officer Vs. Sidappa Omana Tumari**” [1995 AIR (SC) 840], wherein the Apex Court ruled that, report of Valuer need not be accepted as gospel truth, if it is not reliable.

8. There cannot be two opinions that the Valuation Report cannot be accepted as gospel truth unless it is based on some material. So also, in the case of “**Rajesh Puthuvalil Vs. Inland Waterways Authority of India**” (supra), the Apex Court made it clear that the guess estimate is not warranted when the material evidence in the shape of Valuation Report is available on record and

no rebuttal evidence is adduced by the respondents. In the case of **“Bandappa Jalkote Vs. State of Maharashtra”** (supra), this Court had consistently taken a view that when the report of the Valuer of acquired house property is on record and when scientific method is adopted by the Valuer to ascertain the value of acquired property, unless the Reference Court assigns cogent reasons in not accepting the evidence of the valuer and his report, it cannot be rejected.

9. In the case at hand, apart from the oral evidence of claimant (PW-1), the claimant has also adduced the evidence of Government approved Valuer Shrishant Vishawanath Barbade (PW-3), who visited the site on 07.04.2002, inspected the house and prepared Valuation Report (Exh.18) applying scientific method i.e. using DSR rates of the area. The price of the acquired Grampanchayat House No.160/1, 160/2 and 160/3 situated at village Marajwadi, offered by Land Acquisition Officer, is Rs.1,91,526/-. On the other hand, the Valuation Report (Exh.18) shows that the Valuer ascertained the valuation of the acquired house as Rs. 2,63,260/- (Rupees Two Lakh Sixty Three Thousand Two Hundred and Sixty only).

10. It is surprising to note that in this case the Valuation Report (Exh.18) submitted by Government approved Valuer Barbade (PW-3), is not rejected by the learned Reference Court by assigning any reason. On the other hand, the report is rejected by

Reference Court only on the ground that the Valuer failed to explain the foundation of his estimation. However, in para 16 of the Judgment, the Reference Court has observed that the evidence of claimant and his witnesses is not properly shaken in the cross-examination. The material used in the construction of house is properly stated by the claimants and Valuer. This para shows that the Reference Court was inclined to accept the report of the Valuer, but even then enhanced the compensation by giving one-fourth rise only, on the guess work only, without assigning separate reasons for the same.

11. The Reference Court has not given any reason as to how the rise of one-fourth in the offered price was granted by the Reference Court. Thus, it is suffice to say that report of the Valuer was erroneously rejected by the Reference Court when the report itself indicates that the value of house was ascertained by using scientific method and DSR rates by the Valuer. Even a depreciation of the cost of house is considered by the Valuer.

12. After going through the evidence of Valuer (PW-3), it emerges that the learned Counsel for respondents only got admission regarding non issuance of notice to Acquiring Body and non preparation of panchnama to prove his visit to the valued house. However, when the report of Valuer is on record and when he stepped in witness box and successively faced the cross-

examination, mere non preparation of panchnama cannot be a ground to reject this expert's report. So also, the visit of Valuer to the acquired house is not a visit of a Court Commissioner. Therefore, the service of prior notice to the Acquiring Body before visiting the acquired house, is not at all necessary. On that count, the report of Valuer cannot be discarded.

13. Thus, for the reasons stated above, the admissions given by Valuer are not sufficient to reject his expert opinion regarding approximate value of the acquired house on the date of inspection. Therefore, I am fully satisfied that no cogent reasons are assigned by the Reference Court to reject the report of Valuer. This Court is fully satisfied that the evidence of Valuer and his report is absolutely reliable to ascertain the value of acquired house on the date of issuance of notification under Section 4 of the Land Acquisition Act.

14. Thus, I have no hesitation to hold that the method adopted by learned Reference Court by enhancing one-fourth compensation, is absolutely erroneous and not acceptable.

15. Accordingly, my conclusion is that the judgment passed by the Reference Court awarding meager compensation of Rs.1,32,304/- is incorrect and the correct valuation of the acquired house No.160/1, 160/2 and 160/3 situated at village Marajwadi, Taluka Mukhed, District Nanded is Rs. 2,63,260/- (Rupees Two Lakh

Sixty Three Thousand Two Hundred and Sixty only). Accordingly, this appeal will have to be allowed and compensation in respect of the house property will have to be enhanced.

15. In the result, First Appeal No.666 of 2013 is allowed in the above-said terms and the compensation in respect of the house property is enhanced to Rs. 2,63,260/- (Rupees Two Lakh Sixty Three Thousand Two Hundred and Sixty only).

(SUNIL K. KOTWAL)
JUDGE

vdd/