IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 976 OF 2015

Mallikarjun Vishwanathappa Rakte
Age : 40 years, occu.: agri.,
R/o Marajwadi, Taluka Mukhed,
District Nanded. **Appellant**.

Versus

1. The State of Maharashtra
Through District Collector,
Nanded.

2. Special Land Acquisition
Officer, Krishna Khore,
Nanded.

3. The Executive Engineer,
Vishnupuri Project, Division
No.1, Nanded. **Respondents**.

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Mr. G.N. Chincholkar, Advocate for the appellant.
Mr. R.B. Bagul, Advocate for respondent Nos.1 and 2.
Smt. Ranjana Reddy, Advocate for respondent No.3.

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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 claimant against the judgment and award passed by the Civil Judge, Senior Division, Mukhed in Land Acquisition Reference No. 48/2008.

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, Vishnupuri Project.

3. Heard Mr. Chincholkar, learned Counsel for the appellant, 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 appellant which has been acquired by the respondents for Vishnupuri Project, Division-1, Nanded.

6. Mr. Chincholkar, learned Counsel for the 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), **“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 appellant, 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 Omanna 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 for 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-2), who visited the site on 07.04.2002, inspected the house and prepared Valuation Report applying scientific method i.e. using DSR rates of the area. The price of the acquired Grampanchayat House No.78/1 situated at village Marajwadi, offered by Land Acquisition Officer, is Rs. 1,28,118/-. On the other hand, the Valuation Report (Exh.14) shows that the Valuer ascertained the valuation of the acquired house as Rs. 1,99,456/-.

10. After going through the judgment passed by the Reference Court, it emerges that the Reference Court rejected the Valuation Report prepared by expert witness (PW-2) merely by referring some columns of the Valuation Report. No other reason is assigned by the Reference Court for rejecting this report. Learned Counsel for the respondents pointed out that the Valuer did not produce panchnama of the acquired house and he has not filed

receipts of raw material purchased by the claimant for construction of the house. Even Grampanchayat permission for construction of the house is not produced before the Valuer, as admitted by him.

11. However, when the substantial evidence of Valuation Report and oral evidence of Valuer is placed before the Reference Court, there was no reason to produce the panchnama, when every particular of the acquired house is mentioned in the report of Valuer. The report of Valuer clearly shows that for ascertaining the value of the acquired house, he has used scientific method. He has also mentioned the age of building as 29 years and life of building as 65 years. Even depreciated value of the building is indicated in the column of the cost. The land cost, cost of structure, plinth rate of construction, plinth area is also mentioned in the report. Therefore, production of panchnama of the building before the Court is absolutely redundant. In the report itself the Valuer has given scientific reasons as to why the acquired house is valued as Rs. 1,99,456/- (Rupees One Lakh Ninety Nine Thousand Four Hundred Fifty Six). The cost abstract and plan of construction is also annexed by the Valuer with his report. In the cross-examination of Valuer (PW-2), nothing could be elicited except non-filing of panchnama and not issuance of prior notice to Acquiring Body or Government Officer. In normal course, in case of such old construction, it is impossible to produce receipts of raw material. As

the Valuer was not appointed by Court as a Commissioner, he need not serve notice to Acquiring Body prior to his visit to the acquired house.

12. 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.

13. On the other hand, learned Reference Court blindly accepted the method of one-fourth enhancement of the value of the house, only on the basis of the award passed by another Reference Court in Reference No.14/2005. In fact, no substance was placed before the Court to examine whether the house acquired in Reference No.14/2005 was of identical age and it was constructed by identical construction material. Even what was the condition of that house, is not clear from the said award. Thus, I have no hesitation to hold that the method adopted by learned Reference Court by enhancing one-fourth compensation blindly relying on the award passed in another Reference of acquisition of house in the

same village, is absolutely erroneous and not acceptable.

14. Accordingly, my conclusion is that the judgment passed by the Reference Court awarding meager compensation of Rs.1,60,148/- is incorrect and the correct valuation of the acquired house No.78/1, situated at village Marajwadi, Taluka Mukhed, District Nanded is Rs. 1,99,456/- (Rupees One Lakh Ninety Nine Thousand Four Hundred Fifty Six 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.976 of 2015 is allowed in the above-said terms and the compensation in respect of the house property is enhanced to Rs. 1,99,456/- (Rupees One Lakh Ninety Nine Thousand Four Hundred Fifty Six only).

(SUNIL K. KOTWAL)
JUDGE

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