

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.832 OF 2014

Venkati s/o Masnaji Susterphod,
age: 40 years, Occ: Agril.,
R/o Marajwadi, Tq. Mukhed,
District Nanded.

Appellant

Versus

01 The State of Maharashtra,
through District Collector, Nanded.

02 The Special Land Acquisition
Officer, Krishna Khore,
Nanded.

03 The Executive Engineer,
Vishnupuri Project Division No.1,
Nanded.

Respondents

WITH
FIRST APPEAL NO.779 OF 2014

Kashinath s/o Vishwanathappa Rakte,
age: 65 years, Occ: Agril.,
R/o Marajwadi, Tq. Mukhed,
District Nanded.

Appellant

Versus

01 The State of Maharashtra,
through District Collector, Nanded.

02 The Special Land Acquisition
Officer, Krishna Khore,
Nanded.

03 The Executive Engineer,
Vishnupuri Project Division No.1,
Nanded.

Respondents

WITH
FIRST APPEAL NO.820 OF 2014

Dhondiba s/o Vithalrao Hendge,
age: 57 years, Occ: Agril.,
R/o Marajwadi, Tq. Mukhed,
District Nanded.

Appellant

Versus

01 The State of Maharashtra,
through District Collector, Nanded.

02 The Special Land Acquisition
Officer, Krishna Khore,
Nanded.

03 The Executive Engineer,
Vishnupuri Project Division No.1,
Nanded.

Respondents

WITH
FIRST APPEAL NO.833 OF 2014

Sharnappa s/o Vishwanathappa,
age: 61 years, Occ: Agril.,
R/o Marajwadi, Tq. Mukhed,
District Nanded.

Appellant

Versus

01 The State of Maharashtra,
through District Collector, Nanded.

02 The Special Land Acquisition
Officer, Krishna Khore,
Nanded.

03 The Executive Engineer,
Vishnupuri Project Division No.1,
Nanded.

Respondents

Mr.G.N.Chincholkar, advocate for the appellant
Mr.A.M.Phule, A.G.P. for Respondents No.1 & 2.
Mr.B.R.Surwase, advocate for Respondent No.3.

CORAM : M.S.SONAK, J.

DATE : 24th January, 2018.

ORAL JUDGMENT :

1 Heard Mr.Chincholkar, learned Counsel for the appellants, Mr.Phule, learned A.G.P. for Respondents No.1 & 2 and Mr.Surwase, learned Counsel for Respondent No.3 – acquiring body. Parties agree that all these four appeals can be disposed of by a common judgment and order.

2 The issue involved in all these four appeals is in respect of appropriate compensation to be paid in respect of the house properties of appellants, which have been acquired by the respondents for Lendi Project.

3 Mr.Chincholkar, learned Counsel for 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) and in the case of **Kondiba s/o Yadavrao Rasegave Vs. State of Maharashtra** (First Appeal No.868 of 2015, decided on 23.08.2016). He submits that both these decisions relate to very same acquisition proceedings and in both these decisions, this Court has awarded enhanced compensation as per the valuation report submitted by the Valuer. He submits that applying these two decisions, these appeals should also be allowed and compensation should be enhanced.

4 Learned Counsel for the respondents submit 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 appellants, on their own face, are inapplicable to the present appeals.

5 The record has been perused. From the record as also from the impugned judgment and award, it does appear that decisions in **Bandappa and Kondiba** (*supra*) relate to same acquisition proceedings. In both 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 both 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 un-shattered, 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 two decisions, is that the valuation report in such matters may not simply be ignored, unless there are good grounds to do so.

9 In each of these appeals, the claimants have led evidence not only of themselves but also of the expert valuer. The valuation reports prepared by the valuers have 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. Accordingly, these appeals will have to be

allowed and the compensation in respect of house properties will have to be enhanced.

In the result,-

(A) First Appeal No.820 of 2014 is allowed and compensation in respect of house property is enhanced to Rs.2,45,914/-;

(B) First Appeal No.779 of 2014 is allowed and compensation in respect of house property is enhanced to Rs.1,25,537/-;

(C) First Appeal No.820 of 2014 is allowed and the compensation in respect of house property is enhanced to Rs.2,75,237/-;

(D) First Appeal No.833 of 2014 is allowed and the compensation in respect of house property is enhanced to Rs.2,09,410/-.

All the appeals are disposed of in the aforesaid terms.

M.S.SONAK
JUDGE