

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

FIRST APPEAL NO.1312 OF 2013

Shantappa Rudrappa Mathdevru (Died)
Through L.Rs.

- 1 Smt. Shakuntalabai w/o Shantappa Mathdevru,
Age 56 yrs., Occ. Household,
 - 2 Santosh Shantappa Mathdevru,
Age 41 yrs., Occ. Labour,
- Both are r/o Marajwadi, Tq. Mukhed,
Dist. Nanded.
- 3 Mrs. Surekha w/o Balaji Swami,
Age 31 yrs., Occ. Household,
R/o Gundopant Dapka, Tq. Mukhed,
Dist. Nanded.

... **Appellants.**

... **Versus** ...

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

... **Respondents.**

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Mr. G.N. Chincholkar, Advocate for the appellants

Mr. R.B. Bagul, AGP for the respondent Nos.1 and 2

Mr. B.R. Surwase, Advocate for the respondent No.3

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 03rd JULY, 2019

PRONOUNCED ON : 21st AUGUST, 2019

JUDGMENT :

1 Present appeal has been filed by the original claimant for enhancement in the compensation granted by learned reference Court viz. Civil Judge Senior Division, Kandhar in Land Acquisition Reference No.22/2005 (Old L.A.R. No.21/2005) decided on 23.02.2009.

2 Claimant was the owner of House property bearing Grampanchayat No.85 admeasuring 63.45 (open space and constructed area) and Grampanchayat No.85 admeasuring 49.00 sq.mtrs. (constructed area) situated at village Marajwadi, Tq. Mukhed, Dist. Nanded. The Notification under Section 4 of the Land Acquisition Act came to be published on 23.04.1997 and it was published in Grampanchayat on 23.12.1997. Notice under Section 6 of the Act was published in the Government Gazette on 15.12.1998 and in Grampanchayat it was published on 28.03.2000. In pursuant to the said Notification under Section 9(3) & (4) of the Act notice

was served on the claimant, who raised objection and prayed to the Special Land Acquisition Officer that the compensation be awarded as per true market value. The objection raised by the claimant was not considered and Award under Section 11 of the Act was passed by the original respondent No.2 on 26.03.2002. Compensation has been awarded to the claimant at Rs.63,756/- + Rs.15,149/- = Rs.78,905/-. According to the claimant, it was not as per the market value of the house as well as courtyard and open space. Hence, he filed reference under Section 18 of the Act to the Collector, Nanded, who was then forwarded to Civil Court, Nanded and transferred Civil Judge Senior Division, Kandhar for its adjudication.

3 After the reference was filed, written statement was filed by all the respondents, who supported the Award, that was passed by respondent No.3. It was stated that the respondent No.2 had acquired the area of construction and open portion by getting the measurement done through Taluka Inspector of Land Record in presence of acquiring body and the concerned authorities. The site plan, situation at the spot, construction of the house was considered to arrive at true market value.

4 After the issues were framed, only claimant led oral as well as documentary evidence. Taking into consideration the evidence on record, the

learned reference Court partly allowed the petition. Claimant was granted compensation of Rs.98,631/- instead of Rs.78,905/- with other statutory benefits. Being aggrieved by this part enhancement, the claimant has further come in this appeal.

5 Heard learned Advocate Mr. G.N. Chincholkar for the appellants, learned AGP Mr. R.B. Bagul for respondent Nos.1 and 2 and learned Advocate Mr. B.R. Surwase for respondent No.3.

6 It has been vehemently submitted on behalf of the appellants that the learned reference Court has not taken into consideration the evidence on record. Claimant had examined himself and another witness i.e. CW 2 Narayan to prove sale instance. He had got the property valued through Government Approved Valuer and the said valuer was examined as CW 3 Shrikant Barbade. His report is at Exh.18. Expert had given his opinion that the market value of the acquired property is Rs.1,37,844/-. Since no evidence was adduced by the respondents, the evidence adduced by the claimant ought to have been considered. The learned reference Court has halfheartedly accepted the report of the valuer and at the same time, it had also been stated that the compensation awarded by the Land Acquisition Officer was not proper. Therefore, while arriving at the true value of the

property acquired, the evidence on record ought not to have been brushed aside. He prayed for fixing the market price as per the valuer's report Exh.18. He also relied on the decision in **Bandappa Shantappa Jalkote (died) through LRs. vs. The State of Maharashtra and others, First Appeal No.1250 of 2009** passed by this Court on 06.10.2016, wherein the report of the same valuer was accepted. In that case also the property was acquired for the same project and it was from the same village. Thereafter in **Mallikarjun Vishwanathappa Rakte vs. The State of Maharashtra and others, First Appeal No.976 of 2015** decided by this Court on 05.09.2018 similar view was taken.

7 Learned AGP supported the reasons given by the reference Court. It was submitted that the evidence of the valuer was considered by the reference Court and taking into consideration the admissions given by him the said report was not taken as gospel truth. It was also submitted that when reasoned order has been passed, there is no necessity to interfere with the same.

8 The learned Advocate for the acquiring body supported the argument submitted on behalf of the State and further submitted that when each and every aspect was considered by the learned reference Court and

when it was found, that the compensation given by the Special LAO is on a lesser side, the said amount has been properly enhanced.

9 Apart from examining himself at Exh.13, the claimant has examined CW 2 Narayan, who was examined to prove the sale instance. It is to be noted that since the acquired portion consisted of constructed portion, open space, the proper person to arrive at a market value on the date of the Notification under Section 4 of the Act would be a valuer. CW 3 Shrikant Barbade was the Government Approved Valuer. The evidence of this witness as well as contents of his report Exh.18 would show that he had measured the property. He has drawn the map. He has also mentioned the method of valuation, which he had adopted and after taking note of his own observations as well as based on the said data and by applying the method to value the property; he has valued the property at Rs.1,37,844/-. The reasons assigned for discarding his report given by reference Court are not appealing at all. It has been observed, "it is needless to say that the opinion of the said valuer is not liable to be accepted as a gospel truth because this witness has failed to explain the basic foundation of his estimation." If we peruse the cross-examination of the witness, no technical defence was taken, which would show that he had no knowledge or his knowledge to value the property was not proper. Merely because notice was not given to the

acquiring body while carrying out valuation task of the acquired property, his report and testimony cannot be brushed aside. This Court in **Mallikarjun Rakte's** case (supra) it has been observed that, "*As the valuer was not appointed by the Court as a Commissioner, he need not serve notice to acquiring body prior to his visit to the acquired house.*" It will not be out of place to mention here itself that the same valuer, who had valued the properties acquired in both the appeals, of which the decisions have been cited above, was believed by this Court and his cross-examination is on the same line. Therefore, it is absolutely not necessary to discard his valuation report.

10 It is to be noted that after brushing aside the report Exh.18, the learned reference Court after considering the documentary proof supported with the evidence of valuer and open plot purchaser went on to calculate by giving $\frac{1}{4}^{\text{th}}$ rise in the Award. In fact, there was no basis for his said method. The reference Court was not justified in doing guess work by brushing aside the evidence, that has been led. In fact, the job of the reference Court to weigh the evidence properly and come to his own conclusion in respect of the said evidence.

11 The learned reference Court has come to the conclusion that whatever amount of compensation was awarded by the Special LAO was not

as per the market value. In fact, there was an opportunity to both the sides to get the Court Commissioner appointed to value the suit property. However, none of the parties had resorted to this method. The valuation report before Special LAO could not have been taken into consideration for the simple reason that the author of that report was not examined by the respondents. Under such circumstance, when the valuer was a Government Approved Valuer and it has not been pointed out, which rules of the Government while valuing the property had not been adhered to by him, he deserves to be believed. The learned reference Court erred in discarding the evidence of PW 3 Barbade. The compensation amount ought to have been granted on the basis of the said valuation report. Under such circumstance, the said award passed by the reference Court deserves to be corrected by enhancing the compensation.

12 The learned AGP submitted that the learned reference Court had erred in granting interest under Section 28 and 34 from the date of the Notification and it has to be now made in consonance with the decision in **The State of Maharashtra vs. Kailas Shiva Rangari, 2016 (4) ALL M.R. 513 (FB)** and **State of Maharashtra vs. Ramesh Tukaram Meshram, 2018 (1) All M.R. 645**. It deserves to be awarded from the date of award.

13 Taking into consideration the above said decisions, especially the Full Bench of this Court, the interest under Section 28 and 34 deserves to be corrected. Hence, I proceed to pass following order.

ORDER

1 Appeal is hereby partly allowed.

2 The Judgment and Award passed by learned reference Court in L.A.R. No.22/2005 (Old L.A.R. No.21/2005) by learned Civil Judge Senior Division, Kandhar dated 23.02.2009 is hereby set aside to the extent of quantum and it is enhanced to Rs.1,37,844/- instead of Rs.98,631/- granted by the learned reference Court.

3 The appellant is entitled to receive the statutory benefits under Sections 28 and 34 of the Land Acquisition Act, 1894 from the date of the Award i.e. 26.03.2002 and not from the date of Notification under Section 4 of the Act as awarded by reference Court.

4 Award be modified accordingly.

(Smt. Vibha Kankanwadi, J.)