

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

FIRST APPEAL NO.1797 OF 2018

Balasaheb Gangadharrao Deshmukh,
Age 33 yrs., Occ. Agri.,
R/o Kolnur, Tq. Mukhed,
Dist. Nanded.

... **Appellant.**

... **Versus** ...

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

... **Respondents.**

...

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

Mr. A.M. Phule, AGP for the respondent Nos.1 and 2

Mrs. Sunita D. Shelke, Advocate for the respondent No.3

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 28th 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, Mukhed in Land Acquisition Reference No.80/2013 decided on 25.01.2018.

2 Claimant was the owner of House property bearing Grampanchayat No.112 and Grampanchayat No.113 in all admeasuring 175.74 sq.mtrs. constructed area + 543.20 sq.mtrs. open space situated at village Kolnur, Tq. Mukhed, Dist. Nanded. The Notification under Section 4 of the Land Acquisition Act came to be published on 08.10.1998. Notice under Section 6 of the Act was published in the Government Gazette on 17.02.2000. 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 25.02.2006. Compensation of Rs.6,18,920/- was fixed for House No.112 and Rs.32,700/- for House No.113 has been awarded to the claimant. 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, Mukhed 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 35% of compensation fixed by Special Land Acquisition Officer for constructed area and @ Rs.70/- per sq.mtr. for open space with other statutory benefits as compensation under reference. Being aggrieved by this part of enhancement, the claimant has further come in this appeal.

5 Heard learned Advocate Mr. G.N. Chincholkar for the appellants, learned AGP Mr. A.M. Phule for respondent Nos.1 and 2 and learned Advocate Mrs. Sunita D. Shelke 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 Anil Phulari. He had got the property valued through Government Approved Valuer and the said valuer was examined as CW 2 Anil Phulari. His reports are at Exh.28 and 32. Expert had given his opinion that the market value of the acquired property House No.112 was Rs.16,62,229/- and House No.113 was Rs.3,86,016/-. 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 reports Exhs.28 and 32. 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 valuer was accepted. 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 Claimant has examined himself at Exh.16. 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 2 Anil Phulari was the Government Approved Valuer. The evidence of this witness as well as contents of his reports Exhs.28 and 32 would show that he had measured the property. He has drawn the map and taken photographs. 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. No reasons have been assigned for discarding his report by reference Court. 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.*" Therefore, it is absolutely not necessary to discard his valuation report.

10 It is to be noted that after brushing aside the reports Exhs.28 and 32, 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 35% rise in the Award for constructed area and @ Rs.70/- per sq.mtr. for open space. 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 2 Anil Phulari. 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 and learned Advocate for acquiring body 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.80/2013 by learned Civil Judge Senior Division, Mukhed dated 25.01.2018 is hereby set aside to the extent of quantum and it is enhanced to Rs.16,62,229/- for House No.112 and Rs.3,86,018/- for House No.113 instead of 35% of price fixed by Special Land Acquisition Officer for constructed area and @ Rs.70/- per sq.mtr. for open space 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. 25.02.2006 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.)

agd