

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

FIRST APPAL NO. 1456 OF 2014

Baswaraj Kashinath Panchade,
Age; 31 years, Occ; Agril,
R/o; Marajwadi, Tq. Mukhed,
Dist; Nanded.

APPELLANT

(Original Claimant)

VERSUS

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

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

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

RESPONDENTS

FIRST APPAL NO. 1457 OF 2014

Ganpati Masnaji Sustarphod,
Age; 60 years, Occ; Agril,
R/o; Marajwadi, Tq. Mukhed,
Dist; Nanded.

APPELLANT

(Original Claimant)

VERSUS

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

2. The Special Land Acquisition Officer, Krishna Khore, Nanded.
3. The Executive Engineer, Vishnupuri Project Division No. 1, Nanded. **RESPONDENTS**

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Shri. G.N. Chincholkar, Advocate for Appellant
Shri. S.N. Morampalle, AGP for Respondent Nos.
1 & 2
Smt. Sunita D. Shelke, Advocate for respondent
No. 3
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CORAM : SUNIL K. KOTWAL, J.

Date : 17/06/2019

ORAL JUDGMENT :

Heard Mr. G.N. Chincholkar, learned counsel for appellants/ claimants and Mr. S.N. Morampalle, learned AGP for respondent Nos. 1 & 2 and Smt. Sunita D. Shelke, learned counsel for respondent No. 3.

2. Only point for consideration is in respect of appropriate compensation to be paid in respect of house property of the appellants, which has been acquired by respondents for 'Lendi Project'.

3. In both these appeals, the date of publication of notification under Section 4 (1) of the Land Acquisition Act is 21/08/1997 and the date of passing of award by the Special Land Acquisition Officer is 26/03/2002. The First Appeal No. 1456 of 2014 is against the judgment and award passed by the Reference Court in Land Acquisition Reference No. 78 of 2008 and First Appeal No. 1457 of 2014 is against the judgment and award passed by Reference Court in Land Acquisition Reference No. 51 of 2008. These both appeals are disposed of by this common judgment.

4. Learned counsel for claimants has pointed out that in First Appeal No. 693 of 2017, arising out of the same project and same notification, this Court has enhanced the compensation in accordance with the valuation report proved by the Valuer. He prays for enhancement as per report of the valuer.

5. Learned counsel for respondent No. 3 Acquiring Body submits that each case is to be decided on the basis of evidence before the Court

and the nature of the property acquired. She has pointed out that the Reference Court erroneously awarded interest under Section 28 of the Land Acquisition Act from the date of notification under Section 4 (1) of the Land Acquisition Act, instead of, from the date of passing of the award.

6. I have gone through the judgment and award passed by this Court in First Appeal No. 693 of 2017, in which previous judgments delivered by this Court in **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 Resegave Vs. State of Maharashtra (First Appeal No. 868 of 2015, decided on 23.8.2016)** are considered by this Court. The sum and substance of the ratio of previous decisions is that the valuation report in such matters cannot be ignored unless there are some grounds to do so.

7. I have gone through the record and proceeding of both Land References judgments

passed by the Reference Court. Un-disputedly, the judgment passed in First Appeal No. 693 of 2017 pertains to the property acquired in the same project under the same notification. Even the same valuer is examined in previous matters and in the Land Reference at hand. I have gone through the evidence of Mr. Barbade, who has proved the respective valuation report (Exh. 17) in Land Reference No. 78 of 2008 and (Exh. 20) in Land Reference No. 51 of 2008. In his cross-examination, only it has been brought on record that though he prepared panchanama at the time of valuation of acquired house property, the same is not produced before the Reference Court. However, that cannot be the sole ground for rejection of the valuation report of Valuer Mr. Barbade (PW 2). I do not find any reason to dis-believe the evidence of valuer Mr. Barbade (PW 2), who is examined in both land references. After going through the valuation report (Exh. 17), it emerges that the valuation of house property acquired in Land Reference No. 78 of 2008 comes to Rs. 1,25,281/- and in Land Reference No. 51 of 2008 comes to Rs. 1,68,555/- as per valuation report

(Exh.20).

8. Therefore, following the judgment passed by this court in First Appeal No. 693 of 2017, I hold that First Appeal No. 1456 of 2014 and First Appeal No. 1457 of 2014 deserves to be partly allowed.

9. Accordingly, First Appeal No. 1456 of 2014 is partly allowed. The award passed by the Reference Court in Land Reference No. 78 of 2008 is modified to enhance the compensation of acquired house property to the tune of Rs. 1,25,281/- with other statutory benefits under Section 23 (1A) and under Section 23 (2) of the Land Reference Act as awarded by the Reference Court. The claimant is entitled to interest under Section 28 of the Land Reference Act from 26.3.2002, @ 9% p.a. on enhanced (excess) compensation together with component and solatium till the date of deposit of entire compensation amount in the Court.

10. First Appeal No. 1457 of 2014 is partly

allowed.

11. The award passed by the Reference Court in Land Reference No. 51 of 2008 is modified to enhance the compensation to the tune of Rs. 1,68,555/- together with other statutory benefits under Section 23 (1A) and under Section 23 (2) of the Land Reference Act as awarded by the Reference Court. The claimant is entitled to interest under Section 28 of the Land Reference Act from 26.3.2002, @ 9% p.a. on enhanced (excess) compensation together with component and solatium till the date of deposit of entire compensation amount in the Court.

12. Parties to bear their respective costs of the appeal.

13. Both appeals are disposed of in above said terms.

(**SUNIL K. KOTWAL**)
JUDGE

mahajansb/