

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 552 OF 2014

Shri Motiram s/o Bapurao Ingole (Dead)
through his legal heirs -

- 1(a) Smt. Malutai wd/o Motiram Ingole,
aged 57 years, Occ. Household work
- 1(b) Shankar s/o Motiram Ingole,
aged 35 years, Occ. Service
- 1(c) Dipa d/o Motiram Ingole,
aged 32 years, Occ. Service
- 1(d) Yogesh s/o Motiram Ingole,
aged 29 years, Occ. Student

All are R/o Gandhi Nagar, Digras,
Tah. Digras, District Yavatmal.

...APPELLANTS

Versus

- 1. The State of Maharashtra.
- 2. The Collector, Yavatmal.
- 3. The Special Land Acquisition Officer,
Benefitted zone, Arunawati Project,
Yavatmal Dist. Yavatmal.
- 4. The Executive Engineer, Arunawati Project,
Digras, Dist. Yavatmal.

...RESPONDENTS

Shri G.R. Kothari, Advocate for the legal heirs of the appellant.
Ms. Shamsi Haider, A.G.P for respondent Nos.1 to 3.
Ms. J.J. Alkari, Advocate for respondent No.4.

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CORAM : PUSHPA V. GANEDIWALA, J.
DATED : OCTOBER 01, 2021.

ORAL JUDGMENT :

Heard.

2. This Appeal takes exception to the judgment and award dated 31/12/2013 passed by the Civil Judge, Senior Division, Darwha, District Yavatmal in Old L.A.C. No. 51/1993 (New L.A.C. No. 199/2004), whereby the Reference Court adjudicated the enhanced compensation @ Rs.25/- per sq. mtr. for open plot area admeasuring 483.27 sq. mtr., and Rs.450/- per sq. mtr. towards constructed area admeasuring 238.95 sq. mtr. for the acquired house having No. 90, situated at Village Laygavhan, Tq. Digras, Dist. Yavatmal. The Reference Court also awarded, along with the said compensation, the statutory benefits and interest as per the provisions of the Land Acquisition Act, 1894 (**“the Act”**).

The facts, necessary to decide the present Appeal, may be stated as under :

3. The appellant/ claimant was the owner of the house bearing No. 90 admeasuring 483.27 sq. mtr. out of which 238.95 sq. mtr. was constructed area, situated at Village Layghavan, Tq. Digras, Dist. Yavatmal (**“the acquired property”**), which was acquired by the respondents vide L.A.C. No. 26/47/1987-88 for the purpose of Arunawati Project. A notification under Section 4 of the Act was issued in Government gazette on 26/01/1989, followed by notification issued under Section 6 of the Act, which was published on 19/04/1989 and 21/04/1989 in the daily new papers – Hunter and Matdar and was also published in the Government Gazette on 23/07/1989. The award came to be passed by the Land Acquisition Officer (**“LAO”**) on 23/01/1990, whereby the LAO has granted compensation for the acquired property @ Rs.9/- per sq. ft., i.e., Rs.86,656/- as total compensation.

4. Being aggrieved and dissatisfied with the amount of compensation awarded as above by the LAO, the appellant/ claimant filed reference proceedings under Section 18 of the Act before the Court of Civil Judge, Senior Division, Darwha, Dist. Yavatmal, whereby the Reference Court passed the award

as mentioned in para 2 of this judgment.

5. The case of the appellant/ claimant, before the Reference Court, was that the LAO ought to have considered that Village Mandwa is just around half kilometer away from Village Layghavan and is having same locality and facility like School, Grampanchayat, etc. That Village Layghavan is situated just around five kilometer away from Digras, which is a Tahsil place and is having all the facilities like Tahsil Court, Hospital, College, etc. That the LAO has declared his award on the basis of rates, which are mentioned in P.W.D., which is totally wrong. It was his case that the expert valuer gave the valuation of the acquired property with construction thereon @ Rs.4,98,797/-. It was his submission that he is entitled to receive compensation as per the market value in terms of Section 23 of the Act. He urged to adjudicate the valuation of his land in terms of valuation report issued by the expert.

6. The respondents, while resisting the claim of the appellant/ claimant, submitted that the valuation done by the LAO is based on sound reasoning after appreciating the

material placed on record. That the LAO has rightly determined the compensation for the subject property considering the evidence on record and the valuation done by the expert.

7. After hearing both the sides, the Reference Court framed necessary issues and recorded evidence as adduced by the parties.

8. The appellant/ claimant examined himself at Exh.91 and brought on record the following documents :

- Copy of award (Exh. 92)
- Copy of notice issued under Section 4(a) of the Act (Exh. 93)
- Sale instance of the year 1985 of Village Mandwa (Exh. 94)

The appellant/ claimant also examined one expert witness, i.e., the valuer Thakurdas Narayandas Boob, and brought on record Valuation Certificate issued by him (Exh.100), whereby he has valued the acquired property as under :

Sr. No.	Particulars	Area	Rate per sq. mtr.	Amount
1	Plot	483.27 sq. mtr.	75/-	36,245/-
2	Constructed area	238.95 sq. mtr.	1760/-	4,20,552/-
3	Compound wall 60 mtr. long	-	700/-	42,000/-
			Total	4,98,797/-
In words – Four lakh ninety eight thousand seven hundred ninety seven				

The appellant/ claimant has also brought on record one judgment dated 02/03/2012 passed by the Civil Judge Senior Division, Darwha in LAC No. 231/2004 (**Laxmanrao s/o Babarao Ingole & Ors. Vs. The State of Maharashtra & Ors.**) below Exh.103, whereby the Reference Court has enhanced the compensation @ Rs.25/- per sq. mtr. for open plot and Rs.625/- per sq. mtr. for constructed area for the land situated at the same Village as is the acquired subject property, i.e., Village Layghavan. The appellant/ claimant filed evidence closing Pursis below Exh. 104.

9. The respondents, i.e., the State and V.I.D.C., preferred not to examine any witness in support of their stand.

10. The Reference Court, on the basis of oral and documentary evidence brought on record, passed the award as mentioned in para 2 of this judgment. The judgment and award of the Reference Court is impugned in this Appeal.

11. I have heard Shri Kothari, learned counsel for the legal heirs of the appellant/ claimant, Ms. Haider, learned A.G.P for respondent Nos. 1 to 3 and Ms. Alkari, learned counsel for respondent No.4.

12. The only point arose for consideration of this Court is whether the valuation, adjudicated by the Reference Court as above, depicts the true market value of the acquired property ?

13. Shri Kothari, learned counsel for the legal heirs of the appellant/ claimant, while reiterating the case as is before the Reference Court, has mainly relied on the valuation report (Exh.100) and submits that this Court in the case of **Madhavrao Govindrao Awagan Vs. The State of Maharashtra & Ors. (First Appeal No. 803/2004 decided on 03/11/2017)** has considered the valuer's report as it is and awarded

compensation of Rs.17,09,924/- for the land which was acquired by a notification issued under Section 4 of the Act and was published on 04/03/1989 and 14/03/1989. He further relied on the sale instance (Exh.94), wherein the sale transaction was of dated 22/01/1985 for consideration of Rs.38.39/- per sq. mtr. for the land admeasuring 1135 sq. ft., situated at Village Mandwa, which is at a distance of around 1 ½ kilometer away from the acquired property. He submits that the Reference Court relied on the said sale instance, and erroneously deducted 50% of the valuation without indicating any reason for deduction. He urged to allow the Appeal and enhance the compensation in terms of the valuation report (Exh.100).

14. Per contra, Ms. Haider, learned A.G.P and Ms. Alkari, learned counsel, while supporting the impugned judgment and award of the Reference Court, pointed out the admissions of the valuer in his cross-examination, wherein he has admitted that the constructed house of the appellant/claimant was not having foundation of cement concrete. He has also admitted that he has not done the actual measurement

of each of the rooms in the acquired property. He further admits that the acquired property was having tin roof, and has applied the current rates for valuation and not the rates at the time of construction, which was constructed 20 years back.

Ms. Alkari, learned counsel, has relied on the judgment of the Hon'ble Supreme Court in the case of **Executive Engineer, Minor Irrigation Works Vs. Vitthal Damodar Patil And Another**, (2019) 7 SCC 225 in support of her submissions.

15. I have considered the rival submissions put forth on behalf of both the sides and perused the record.

16. At the outset, in the case of **Executive Engineer Vs. Vitthal Damodar Patil** (*supra*), the Hon'ble Supreme Court, in para 13, has held as under :

"13. XXXX The High Court relied upon the subject valuation report essentially because the same witness had prepared a similar valuation report and submitted it in some other reference proceeding, which came to be accepted by this

Court in Chindha Fakira Patil v. LAO, (2011) 10 SCC 787. There is no proper analysis of the oral evidence which has come on record in the present case and more so the efficacy of lengthy cross-examination of the said witness by the appellant in respect of matters such as his eligibility, competence and including credibility, reliability and admissibility of the evidence given by him regarding the contents of the valuation report. XXXX”

The aforesaid observations are made in the context that the grievance of the appellant in that case, before the Hon’ble Supreme Court, was that the High Court mechanically accepted the subject valuation report merely because another valuation report of the same witness came to be accepted by this Court in respect of some other acquisition proceedings. Instead, it ought to have analysed the factual position emanating from the evidence produced by the parties in that case, on its own merits.

17. Relying on the aforesaid observations of the Hon’ble Supreme Court, in the instant case, Ms. Alkari, learned counsel, has rightly pointed out the detailed cross-examination of the expert witness wherein he has admitted that the

constructed house of the appellant/ claimant was not having foundation of cement concrete. He has also admitted that he has not done the actual measurement of each of the rooms in the acquired property. He further admits that the acquired property was having tin roof and has applied the current rates for valuation and not the rates at the time of construction, which was constructed 20 years back. Furthermore, nowhere in his valuation report he has stated that he is an approved valuer.

18. Considering the aforesaid admissions made by the expert witness in his cross examination, the valuation as done by him cannot be accepted as it is.

19. With regard to the judgment delivered by this Court in the case of **Madhavrao Govindrao Awagan** (*supra*), I called the record of that case in order to peruse the evidence of the valuer. On perusing the same, it appears that in that case, the valuer had not given any admissions in his cross-examination, and therefore, the instant case is distinguishable on facts from the case referred by Shri Kothari, learned counsel.

20. This Court in the case of **The State of Maharashtra & Ors. Vs. Atmaram s/o Gobra Rathod (Banjari) (First Appeal No. 286/2006** decided on **23/07/2021**) and another connected matter, while relying on the judgments delivered by the Hon'ble Supreme Court in the case of **Baliram Vs. The State of Maharashtra & Ors. (Civil Appeal No(s) 5146-5147/2011** decided on **11/04/2018**) so also by this Court in the case of **Deosing s/o Gobra Rathod (dead) thr. LRs Vs. The State of Maharashtra and Ors. (First Appeal No. 348/2003** decided on **17/10/2018**), adjudicated the enhance compensation @ Rs.6,50,000/- per hectare (Rs.65/- per sq. mtr.) for the land situated at Village Mokh, Tah. Digras, Dist. Yavatmal. Evidently, Village Mokh is at a distance of around half kilometer from Village Laygavhan. Furthermore, the date of issuance of notification under Section 4 of the Act, in these cases, are also during the said period.

21. Considering the valuation in afore-cited judgments, in the considered opinion of this Court, the legal heirs of the appellant/ claimant are entitled to receive compensation for open plot area @ Rs.65/- per sq. mtr.

22. As far as the valuation for constructed portion of the acquired property is concerned, except the valuation report of the expert witness, there is no other material, which could be brought on record by the appellant/ claimant about valuation of construction of the acquired property. The Reference Court awarded compensation @ Rs.450/- per sq. mtr. towards constructed area. The expert witness, i.e., the valuer has valued the constructed area @ Rs.1760/- per sq. mtr. The valuer has considered P.W.D.C.S.R. 1989-90 plinth area rate for the specific building and arrived at the rate Rs.2,200/- per sq. mtr. After deducting depreciation @ 1% per annum for 20 years old house and future life of 35 years, the valuation comes to Rs. 1760/- per sq. mtr. However, as stated earlier, the valuer has given certain material admissions in his cross-examination, and hence, the valuation, as done by him, cannot be taken as it is considering the law laid down by the Hon'ble Supreme Court in the case of **Executive Engineer Vs. Vitthal Damodar Patil** (*supra*).

23. In this context, it would be worthwhile to rely on the judgment delivered by the Hon'ble Supreme Court in the

case of **Prabhakar Raghunath Patil And Ors. Vs. State of Maharashtra, (2010) 13 SCC 107**, wherein the question for consideration before the Hon'ble Supreme Court is with regard to valuation of the constructed portion of the building, which was acquired along with the open land. In that case, notification for acquisition was of the year 1983 and the circular issued by the revenue authorities was of the year 1991, and therefore, the Hon'ble Supreme Court found it appropriate to deduct 60% of valuation towards depreciation, and awarded compensation @ Rs.1,700/- per sq. mtr.

24. The aforesaid authority of the Hon'ble Supreme Court has been further followed by the co-ordinate Bench of this Court in the case of **Gunwant Mahadeo Gulhane Vs. State of Maharashtra & Ors. (First Appeal No. 1264/2013 decided on 15/06/2015)** and other connected matters.

25. Given the aforesaid facts and circumstances of the case, so also considering the law laid down by the Hon'ble Supreme Court so also by this Court, this Court is of the opinion that ends of justice would meet if the legal heirs of the

appellant/ claimant would be held entitled to receive compensation for constructed area @ Rs.1,000/- per sq. mtr.

Hence, the following order :

ORDER

- i. The Appeal is partly allowed.
- ii. The judgment and award dated 31/12/2013 passed by the Civil Judge, Senior Division, Darwha, District Yavatmal in Old L.A.C. No. 51/1993 (New L.A.C. No. 199/2004) stands modified to the extent that the respondents shall pay the enhanced amount of compensation to the legal heirs of the appellant/ claimant @ Rs.65/- per sq. mtr. for open plot area admeasuring 483.27 sq. mtr and Rs.1,000/- per sq. mtr. towards constructed area admeasuring 238.95 sq. mtr along with all statutory benefits and interest, for the acquired property.
- iii. Needless to say that the respondents are entitled to deduct the amount, which has already been paid by them.

26. The Appeal stands disposed of. No costs.

JUDGE

Sumit