

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.364 OF 2016

APPELLANT:

Ori. Petitioner
(On RA)

Ganesh Pundlik Deeve
Age – 48 yrs, Occ.- Agriculture
R/o.- Kumbharkinhi, Tq-Darwha
Dist. Yavatmal.

... Versus ...

RESPONDENTS:

Ori. Respondents
On R.A.

1. The Executive Engineer
Kumbharkinhi Dam Division Pusad.
Tq. Pusad, Dist.- Yavatmal.
2. Special Land Acquisition Officer,
Kumbharkinhi Project, Darwha. Distt. Yavatmal.
3. State of Maharashtra
through Collector Yavatmal.

Shri A.B. Nakshane, Advocate for the Appellant.
Shri R.C. Raibhandare, Advocate for Respondent No.1.
Shri M.A. Kadu, AGP for Respondent Nos.2 and 3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE OF JUDGMENT : 22nd FEBRUARY, 2021

ORAL JUDGMENT:-

The Appellant herein has challenged the judgment and award dated 15/06/2013 passed by the Reference Court in L.A.C. No.2149/2004. By the impugned judgment and award, the Reference Court has enhanced the compensation in respect of the open plot of land at the rate of Rs.240/-

per sq. mtr. and at the rate of Rs.2150/- per sq. mtr in respect of built up area of the house admeasuring 58.80 sq. mtr.

02] Learned Counsel for the Appellant restricts the challenge to the amount of compensation awarded in respect of the structure admeasuring 58.80 sq. mtr. He submits that the Reference Court has discarded the valuation report and the evidence of the expert witness without any justifiable reason. He contends that the compensation awarded in respect of the acquired structure is much below the market value.

03] *Per contra*, learned Counsel for the Acquiring Body submits that the expert witness has not considered the bills and other material data required for assessing the value of the structure. He submits that the report, prepared by the valuer, has rightly been rejected by the Reference Court.

04] It is well settled that the valuation of structures is based either on rent received from the property with suitable multiplier or the value of the building. In the instant case, the Land Acquisition Officer has valued the structures at Rs.73,866/- taking into account the area and other relevant factors such as construction costs, depreciation value etc. Whereas, the Claimant claimed compensation of Rs.1,69,650/- i.e. at the rate of Rs.2,900/- per sq. mtr. The Claimant has deposed that the structure was of bricks and mortar with teak wood doors and windows. The Claimant relied

upon the valuation report at Exh.45, prepared by PW-2 - Sunil Chandkapure. PW-2 has deposed that the area of the structure was 58.50 sq. mtrs. He has deposed that the property is situated in village Kumbharkinhi, at a distance about 10 k.m. from Darwaha Tahasil, a well developed village with all civic amenities available in an around the vicinity. H has deposed that it was a load bearing structure with foundation and plinth in U.C.R. masonry, flooring of cement concrete/shabadi tiles and that the super structure was of brick masonry. His evidence further indicates that the structure had teak wood doors and windows and the roof was of G.I. sheets. The structure had electricity and water connection. The expert witness has classified the construction as class-3 construction and has stated that the structure was well maintained. It consisted of a sitting room, living room, store room, kitchen, dining and bathroom. The age of the structure was stated to be 9 years. The expert witness has based the valuation on PWD schedule of rates and as per the market rate for the year 1997-98. Upon deducting 10% towards depreciation salvage value etc., he valued the structure at the rate of Rs.3,200/- per sq. mtr.

05] It may be mentioned that the Reference Court has rejected the report of the expert witness mainly on the ground that he had not seen the bills and receipts of the construction material in respect of the subject structure. The evidence on record indicates that subject structure was

constructed over ten years prior to the acquisition. It is, indeed, unreasonable to expect the Appellant or any other person to retain the bills in respect of the construction material in anticipation that the property would be acquired in future. The Reference Court, in my considered view, was not justified in rejecting the report when nothing has been elucidated in the cross-examination to impeach credibility of this witness.

06] As it has been held by Apex Court in ***Special Land Acquisition Officer & Another Vs. Sidappa Omanna Tumari & Others*** reported in ***1995 Supp (2) SCC 168***, the Courts can act on expert witness in determining the value of the land or structure. Nevertheless, considering the fact that such expert witnesses are engaged by the Claimant, the Court is required to be cautious while granting the report and evidence in support thereof. The Apex Court has held that the valuation report is of no assistance, if the same is not based on factual data or material, which is proved to be genuine and reliable. Therefore, when a report of an expert is produced before the Court, the Court may choose to act upon such report, if the data or the material on the basis of which such report is produced before the Court and the authenticity of the same is made good and the method of valuation adopted therein is correct.

07] In the instant case, the evidence of the expert witness indicates that the structure was stable in good condition. He has valued the structure

based on the condition of the structure and the area, age, estimated costs, depreciation value etc. Apart from bare denials, the evidence of this witness has virtually gone unchallenged. Hence, the Reference Court was not justified in discarding the valuation report prepared by an expert witness.

08] Under the circumstances, the appeal is partly allowed. The rate of the structure admeasuring 58.80 sq. mtr is held to be Rs.3,200/- (Rupees Three Thousand Two Hundred Only) per sq. mtr. The impugned judgment and award is modified to that extent.

09] The Appellant shall be entitled for all statutory benefits, except the interest during the delayed period.

10] The appeal stands disposed of accordingly.

(SMT. ANUJA PRABHUDESSAI, J.)

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