

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

FIRST APPEAL NO. 684 OF 2009
WITH
FIRST APPEAL NO. 397 OF 2009
WITH
FIRST APPEAL NO. 331 OF 2009

Keshavrao Govindrao Avagan,
aged about 58 years,
Occupation Agriculturist,
R/o Mokh, Tq. Digras,
District Yavatmal.

...APPELLANT

Versus

1. The State of Maharashtra,
through the Collector, Yavatmal.
2. The Collector, Yavatmal,
District Yavatmal.
3. The Special Land Acquisition
Arunawati Project Officer,
Benefitted Zone at Yavatmal,
District Yavatmal.
4. V.I.D.C., through The Executive Engineer,
Arunawati Project, Tq. Digras, Dist. Yavatmal.

...RESPONDENTS.

Shri S.U. Nemade, Advocate for the appellant.
Shri A.M. Kadukar, A.G.P. for respondent Nos. 1 to 3.
Shri A.B. Patil, Advocate for respondent No.4.

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CORAM : PUSHPA V. GANEDIWALA, J.

ARGUMENTS WERE HEARD ON : OCTOBER 04, 2021.

JUDGMENT IS PRONOUNCED ON : OCTOMBER 08, 2021.

JUDGMENT :

Heard.

2. These Appeals take exception to the judgment and award dated 22/12/2005 passed by the Civil Judge, Senior Division, Darwha in LAC Nos. 459/2004, 492/2004 and 682/2004. In all these Appeals, the appellant Keshavrao Govindrao Avagan is the owner of the properties, which came to be acquired for the submergence of Arunawati Project.

3. First Appeal Nos.684/2009, 397/2009 and 331/2009 arose out of the LAC Nos. 459/2004, 492/2004 and 682/2004 respectively.

4. First Appeal No. 684/2009 is in respect of house No. 171/1 admeasuring 444.3 sq. mtr. out of which constructed area is 264.22 sq. mtr and open space is 180.08 sq. mtr., First Appeal No.397/2009 is in respect of house No. 268 having total open space of 65.9 sq. mtr., and First Appeal No.331/2009 is in respect of house No. 306 admeasuring 50

sq.mtr having total 50 sq. mtr. as constructed area.

All these properties are situated at Village Mokh, Tq. Digras, District Yavatmal.

5. The subject properties of the appellant/ claimant came to be acquired by the Land Acquisition Officer (“**LAO**”) by issuance of notification under Section 4 of the Land Acquisition Act, 1894 (“**the said Act**”), which was published in Government Gazette on 08/06/1989, and the award came to be passed by the LAO on 26/03/1991, thereby awarded compensation of Rs.1,69,158/- for house No.171/1, Rs.923/- for house No.268 and Rs.14,710/- for house No.306.

6. Being dissatisfied with the amount of compensation awarded by the LAO, the appellant/ claimant filed a reference proceeding under Section 18 of the Act and claimed compensation of Rs.10,26,648/- in LAC No. 459/2004, Rs.8962/- in LAC No. 492/2004 and Rs.1,80,097/- in LAC No. 682/2004.

7. The respondents/ State filed their written statement resisting the claim of the appellant for enhancement of compensation and submitted that the award passed by the LAO is adequate and proper, and therefore, deserves no interference.

8. The Reference Court framed necessary issues and recorded evidence as adduced by the parties. The claimant examined himself below Exh.24 and one expert witness Shri Abhay Patil below Exh.31 in support of his claim for enhancement of compensation for constructed area and also examined one Tulsiram Tukaram Thakre to prove one comparable sale instance. The respondents/ State and V.I.D.C. preferred not to examine any witness.

9. The Reference Court on appreciation of evidence vide common judgment and award dated 22/12/2005 partly allowed the claim of the appellant and enhanced the amount of compensation as under :

For house No. 171/1, the Reference Court enhanced the compensation of Rs.2,10,000/- along with statutory benefits and interest against Rs.1,75,378/- as has been awarded by the LAO.

For house No. 268, the Reference Court enhanced the compensation of Rs.2,000/- along with statutory benefits and interest against Rs.923/- as has been awarded by the LAO.

For house No.306, the Reference Court enhanced the compensation of Rs.30,000/- along with statutory benefits and interest against Rs.15,014/- as has been awarded by the LAO.

This judgment of the Reference Court is impugned in this Appeal by the appellant – owner of the lands.

10. I have heard Shri Nemade, learned counsel for the appellant, Shri Kadukar, learned A.G.P. for State and Shri Patil, learned counsel for V.I.D.C.

11. On the basis of submissions made on behalf of both the sides, following point arose for determination of this Court :

“Whether the appellant is entitled for enhancement in compensation for his subject lands house Nos. 171/1, 268 and 306 ?”

12. At the outset, as far as valuation for the open space of land, ad measuring 180.08 sq. mtr. in house No. 171/1 and 65.9 sq. mtr in house No. 268, learned both the counsel are at ad idem that this issue has been covered by the judgment of this Court in **First Appeal No. 552/2014 decided on 01/10/2021 (Shri Motiram s/o Bapurao Ingole (Dead) thr. Lrs Vs. The State of Maharashtra & Ors.)** wherein this Court on the strength of the judgment of the Hon’ble Apex 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 the judgment of 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 enhanced compensation @ Rs.65/- per sq. mtr. for the land situated at Village Layghavan, which is at a distance of half kilometer from Village Mokh, Ta. Digras, District Yavatmal.

13. As the issue with regard to valuation of open space at Village Mokh is already covered by the aforesaid judgments, i do not see any reason to take different view of the matter. Therefore, the appellant, in these cases, is entitled for enhanced compensation @ Rs.65/- per sq. mtr. for the open space area in his land surrounding house No. 171/1 admeasuring 180.08 sq. mtr. and in house No. 268 admeasuring 65.9 sq. mtr. with all statutory benefits.

14. However, as regards the valuation of constructed portion of the houses, learned the counsel on behalf of both the parties have argued at length. Shri Nemade, learned counsel for the appellant, submits that the trial Court has not considered the evidence of the expert witness for valuation of the built-up area of the house of the appellant solely for the reason that there is a discrepancy in the measurement of the

constructed area as claimed by the appellant and the area reflected in the valuer's report. The learned counsel submits that the valuer's report has to be considered along with the map (Exh.32) of the constructed area of the house. It is the contention of the learned counsel that in the report as well as in the map, the built-up area is taken as carpet area alongwith the surrounding open space in the house. The learned counsel submit that the court is bound to treat the matter judicially and should not be too technical and pedantic in approach. In support of his contention, the learned counsel relied on observation in the case **Asstt. Development Officer, Trombay Vs. Tayaballi Allibhoy Bohori, A.I.R. 1933 Bombay 361**, wherein the Division Bench of this Court has observed that the valuation of immovable property is not an exact science and the Court is bound to treat the matter judicially as far as possible and it should only guess when science of common sense will not point to a definite conclusion. It is further observed that the Judge ought to be liberal in the sense that he should not be too meticulous or pedantic in dealing with the evidence and the Court is justified in taking a broad view as favorable to the owner as the evidence permits.

The learned counsel further relied on the judgment of this Court in the case of **Pandhari s/o Dhondiba Nukulwad Vs. State of Maharashtra and others, 2020(2) Mh.L.J. 412**, wherein the Aurangabad Bench of this Court after taking stock of earlier decisions, in para 9 held that when the evidence of the expert valuer has been adduced and the contents of the valuation reports have been explained as well as proved then there was no reason to discard such evidence.

15. Per contra, Shri Patil, learned counsel, while supporting the impugned judgment and award submits that the Reference Court has properly appreciated the evidence on record and the perusal of evidence of the valuer along with the report shows that the valuer has never visited the spot of the inspection, and therefore, the report of the valuer cannot be relied on.

16. I have considered the rival submissions put forth on behalf of both the sides.

17. First and foremost, there is no dispute with regard to measurement of the open space and the constructed area in the subject house properties in the instant proceedings. Admittedly, constructed area in house No. 171/1 is 264.22 sq. mtr. and constructed area in house No. 306 is 50 sq. mtr.

18. I have minutely perused the testimony of the valuer and the report submitted by him along with the map showing construction. The valuer assessed the valuation for house No. 171/1 showing built up area 444.3 sq. mtr. at Rs.11,73,126/-. This amount is inclusive of including electrification and after depreciation. If this amount is divided by 444.3 per sq. mtr, the built up area as per valuer's report, the sum comes to Rs.2640.39 per sq. mtr. Therefore, as per valuer's report, the rate for constructed area is 2640.39 sq. mtr. The valuer in his examination in chief has deposed that the houses of the owner were load bearing structures consisting of bricks masonry. The doors and windows of the house were of country teak wood. One house was having roof of Dhaba in some portion. With regard to house No. 306, he says that the said house was in a

good condition and was in use. He has given details with regard to technical aspects of construction in his testimony. In the cross-examination of this witness, some questions were asked on technical aspects in order to impeach the testimony of this witness. I do not find it necessary to go into those technical aspects. The question is, whether, the valuation report needs to be discarded altogether. Admittedly, there is no other evidence for valuation of the construction except the valuer's report. The LAO has not granted any separate amount towards construction. Admittedly, the acquired properties are houses alongwith open spaces.

19. The Reference Court has completely ignored the valuation report. No doubt there are some discrepancies in the owner's testimony and the valuer's evidence with regard to the age of construction, the date of his visit for inspection the properties of and on some technical aspects, as pointed out by the learned counsel Shri Patil. However, in the opinion of this Court, in the absence of any other evidence with regard to valuation of construction, the evidence of this witness cannot be ignored altogether, in the teeth of the fact that admittedly,

there was no dispute with regard to the constructed portion in the aforesaid houses and one of the house No. 171/1 is double storied house.

20. In this context, it would be worthwhile to note that for the similarly situated land, this Court in the case of **Shri Motiram s/o Bapurao Ingole** (*supra*) wherein the open plot area along with constructed area of the appellant therein came to be acquired by issuance of notification under Section 4 of the Act dated 26/01/1989 situated at Village Layghavan, Ta. Digras, Dist. Yavatmal, wherein this Court relied on the judgment of the Hon'ble Apex Court in the case of **Prabhakar Raghunath Patil And Ors. Vs. State of Maharashtra, (2010) 13 SCC 107**, so also the judgment of 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)** adjudicated the compensation for constructed area @ Rs.1,000/- per sq. mtr. against the valuation as has been done by the expert witness therein @ Rs.1,716/- per sq. mtr.

21. Considering the quality of construction, in the instant case, i.e., house No.171 is double storied building and house No. 306 which was in residential use at the relevant time, in the opinion of this Court, Rs.1,200/- per sq. mtr. for the constructed area of the aforesaid houses would be just and reasonable compensation as against the rate of Rs.2640.39/- per sq. mtr. fixed by the valuer.

22. Considering the aforesaid facts and circumstances so also considering the law laid down by the Hon'ble Apex Court, this Court is of the opinion that ends of justice would meet if the appellant would be held entitled to receive compensation for the constructed area @ Rs.1,200/- per sq. mtr. Hence, the following order :

ORDER

- i. The Appeals are partly allowed.
- ii. The judgment and award dated 22/12/2005 passed by the Civil Judge, Senior Division, Darwha in LAC Nos.

459/2004, 492/2004 and 682/2004 is modified to the extent that the respondents shall pay enhanced amount of compensation to the appellant @ Rs.65/- per sq. mtr. for open plot area admeasuring 180.08 sq. mtr. in house No.171/1 and admeasuring 65.9 sq. mtr. in house No.268 and Rs.1,200/- per sq. mtr. for constructed area admeasuring 264.22 sq. mtr. in house No.171/1 and admeasuring 50 sq. mtr. in house No.306 along with all statutory benefits and interest.

iii. Needless to say, that the respondents are entitled to deduct the amount, which has already been paid by them.

23. The Appeals stand disposed of. No costs.

JUDGE

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