

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

FIRST APPEAL NO. 526 OF 2016

Shankar Baban Rathod
Age 65 yrs. Occ. - Agriculture
R/o – Kumbharkinh, Tq. Darwha
Dist. Yavatmal

.. APPELLANT

Versus

1 The Executive Engineer,
Kumbharkinh Dam Division, Pusad,
Tq. Pusad, Dist. Yavatmal

2 Special Land Acquisition Officer,
Kumbharkinh Project, Darwha,
Distt. Yavatmal

.. RESPONDENTS

3 State of Maharashtra through Collector,
Yavatmal

Mr. A.B. Nakshane, Advocate for appellant

Mr. Amit Kukday, Advocate for Respondent No.1

Ms. Mayuri Deshmukh, A.G.P. for respondent Nos.2 & 3

CORAM: AVINASH G. GHAROTE, J.

DATE : 05/12/2022

ORAL JUDGMENT :

Mr. Nakshane, learned counsel for the appellant submits, that the matter is covered by the judgment of this Court in **Ganesh Pundlik Deeve Vs. Executive Engineer and others**, First Appeal No.364/2016, decided on 22/02/2021, in which for

the acquisition of the property for the same project, from the same village Kumbharkinihi, from the same Notification dated 06/11/1998, which was in respect of Plot No.10, admeasuring 138.4 sq.mtr. with a house standing thereupon, having a built up area 58.04 sq.mtr. as per Award of the Reference Court dated 15/6/2013, which has been made available to this Court, a rate of Rs.240/- per sq.mtr. was granted for the land and that of Rs.3200/- was granted for the construction, based upon the report of the Valuer namely Mr. Sunil K. Chandkapure. It is submitted, that the facts which have weighed with this Court in enhancing the compensation for the constructed area from Rs.2150/- to Rs. 3200/- per sq.mtr. are the same in the present case too.

2. The similarity of the construction in **Ganesh Pudlik Deeve** (Supra) and in the present matter, is not disputed by Mr. Amit Kukday, learned counsel for the respondent No.1 which is the acquiring body.

3. A perusal of the judgment in **Ganesh Pudlik Deeve**

(Supra) indicates the following nature of construction.

“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 Kumbharkinh, at a distance about 10 k.m. from Darwha 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.”

4. The evidence in the instant matter is also that of

Sunil K. Chandkapure, who was giving the valuation report dated 15/02/1999 at Exh.48, in which it has been stated that the construction of the house was about 10 years old at the time of Section 4 Notification, the constructed area was 81.37 sq.mtrs. having a sitting room, living room, two store rooms, kitchen and bathroom. The structure was a load bearing structure, the foundation and plinth being in UCR masonry, the flooring being of cement concrete / Shabadi stones and the super structure was in brick masonry, the doors and windows of teak wood and the roof was of GI sheets with the electrification and water supply so also it is a class III construction.

5. Perusal of the judgment of the Reference Court indicates (para 16) that the report has been accepted by the Court, on the basis of which the enhancement has been granted by the learned Reference Court though it has observed that the rate of construction was not supported on the ground that the rough notes were not placed on the record or the receipts of the material used for the

construction were not seen by the Valuer, which as rightly held in ***Ganesh Pudlik Deeve*** (Supra), is a clear impossibility. It is therefore apparent that the valuation of the Expert done in respect to the construction has been accepted by the learned Reference Court and therefore, the position, as indicated therein, having not been controverted in the cross-examination of the PW 2 / Valuer, the learned Reference court, was not justified in relying upon the report of the Valuer in part regarding the construction but discarding it so far as the rate is concerned (para 12 and 14 of the judgment of the Reference Court). The factual position, therefore, as was occurring in ***Ganesh Pudlik Deeve*** (Supra) insofar as the construction is concerned, is synonymous with the one prevailing in the instant matter.

6. Mr. Nakshane, learned counsel for the appellant does not pursue his claim insofar as the construction for the rate of the land is concerned, as in ***Ganesh Pudlik Deeve*** (Supra) the rate of Rs.240/- per sq.mtr. has been upheld by this Court.

7. Thus, considering the nature of construction in **Ganesh Pudlik Deeve** (Supra) which is similar to the construction in the present case, the rate of construction as awarded by the learned Reference Court is enhanced to Rs.2878 per sq.mtr., which is the rate according to the report at Exh.48 by the PW 2. The respondent No.1 to calculate the appropriate compensation and deposit in this Court within six weeks from today. In case any additional court fees is paid, it be paid.

8. It is made clear that the appellant shall not be entitled for the interest for the period of delay which had occurred in filing of the appeal as per order dated 16/10/2015 on CA No. 2589/2015.

9. The appeal is accordingly allowed in above terms. No costs.

JUDGE

MP Deshpande