

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

FIRST APPEAL NO.1714/2019

Moreshwar Krushnarao Jawanjal and anr ..vrs... The State of
 Maharashtra and others

 Shri S.A.Mohta, Advocate for appellants
 Shri M.A. Kadu, Advocate for respondent no.3
 Mrs. M.H. Deshmukh, AGP for respondent nos.1 and 2

CORAM : AVINASH G. GHAROTE, J.

DATE : 30/11/2022

- 1] Heard learned counsels for the parties.
- 2] The factual position in the present appeal is as under -

Bembla River Project, District Yavatmal			
Date of Notification under Section 4 of the Land Acquisition Act.			26/10/2005
Property details	Area of property	LAO Award Dated 06/09/2008	Ref. Court Award Dated 14/08/2017
Plot No: 165 Village: Ghuikhed Tahsil Chandur Railway District : Amravati	Plot Area : 389.2 Sq.mtr.	₹.140/- per Sq.mt	₹.500/- per Sq.mtr.
	Construction: 243.2 Sq.mtr.	₹.1179/- per Sq. mtr.	₹.1592/- per Sq. mtr.

- 3] The appeal challenges the judgment of the Reference Court dated 14/08/17, whereby the learned Reference Court has

enhanced the compensation for the open plot to ₹.500/-per square meter and has granted compensation for the constructed area at the rate of ₹.1592/- per square meter in respect of plot No.165, as detailed above.

4] In First Appeal No.1378/2018 (Sharad Gangadhar Gulhane Vs. The State of Maharashtra through the Collector, Camp, Amravati and others) and First Appeal No.389/2018 (Lilabai Omkarrao Giri and others Vs. The State of Maharashtra through the Collector, Camp, Amravati and others) decided on 06/09/2021, this Court, while considering the claim for enhancement of compensation in respect of plots at village Ghuikhed had decided the compensation at ₹.575/- per square meter. The fixing of the said rate of open plot was based upon the fact that the said village is located on the border of the State Highway i.e. Aurangabad - Nagpur Highway, about half kilometer from the highway there is an approach road to the village and considering the sale deed dated 30/03/1995 of the same village, the compensation was enhanced considering the escalation/ increase per year for a period of 10½ years and the aforesaid rate of ₹.575/- per square meter for open plot has been fixed.

5] In the instant matter, no material, has been brought to my notice existing on record, for me to take a different view than what has been already taken by this Court in First Appeal No.1378/2018 (Sharad Gangadhar Gulhane Vs. The State of Maharashtra through the Collector, Camp, Amravati and others).

6] In so far as the construction is concerned, there is no report of an expert on record indicating the valuation of the construction, nor is there anything on record to indicate the nature and quality of construction, apart from what has been considered by the LAO in his valuation report at Appendix-A Exh.24, which indicates that the foundation was in UCR in mud mortar, CR masonry, mud walls and tin roof which PCC floor. Considering this nature of construction, the LAO had granted the rate of ₹. 1179/- per square meter, which has been enhanced by the Reference Court to ₹.1592/- per square meter.

7] Though Mr. Mohta, learned counsel for the appellant relies upon the judgment in F.A. No.1264/2013 and other connected matters, decided on 15.6.2015, to contend that based upon the circular dated 3.1.1991 issued by the Chief Engineer, Amravati, the

Appellant would be entitled to a rate of ₹.1700/- per square meter, however, a perusal of the judgment of the Reference Court would indicate that the circular dated 3.1.1991 has been indeed considered while determining the compensation based upon the nature of construction as reflected in Exh.24. Nothing has been brought to my notice to indicate that the nature of construction was not what is listed in Exh.24, but was of a higher quality so as to merit enhancement, that too based upon the circular dated 3.1.1991. It is apt to note that there cannot be a strait jacket formula for determining the compensation for construction as the rate of construction depends upon the nature and quality of construction, which can differ from house to house. I am therefore not persuaded to take a view different than what has been taken by the learned Reference Court in the matter of awarding the rate of construction.

8] That being the position, in view of the rate of open plot of village Ghuikhed, having already been determined by this Court at Rs.575/- per square meter, the appellant, would only be entitled to that benefit and nothing else.

9] In the result, the impugned judgment under reference is

modified by enhancing the rate of open land as granted by the learned Reference Court at ₹.500/- per square meter to ₹.575/- per square meter, as held in ***Sharad Gangadhar Gulhane*** (supra). Rest of the judgment of the learned Reference Court is maintained.

10] The difference in the amount of compensation, and all ancillary benefits arising therefrom as per the provisions of the Land Acquisition Act, as applicable thereto be calculated and deposited in the Reference Court within a period of eight weeks from today. The difference in the court fee shall be deposited within a week from the date of determination of the enhanced amount to which the appellant would be entitled to in terms of this order.

11] The first appeal is partly allowed and disposed of accordingly. All pending civil applications, if any, shall stand disposed of. No order as to costs.

(AVINASH G. GHAROTE, J.)

Rvjalit

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