

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 742 OF 2003

1. The State of Maharashtra,
Through The District Collector,
Nanded
2. The Special Land Acquisition Officer,
PT-MIW-2, Nanded
3. The Executive Engineer,
Medium Project Division, Nanded

... Appellants

(Ori. Opponent)

VERSUS

1. Laxmanrao Namdeorao Patil,
Age : 36 years, Occ. : Agriculture,
2. Shivaji Namdeorao Patil,
Age : 30 years, Occ. : Agriculture,
3. Venkatrao Marotrao Patil,
Age : 26 years, Occ. : Agriculture,
4. Ganesh Venkatrao Patil,
Age : 26 years, Occ. : Agriculture,
5. Sanjay Venkatrao Patil,
Age : 20 years, Occ. : Agriculture,

Respondent Nos.1 to 5, R/o. : Jigla, Tq. Biloli, Dist. Nanded

6. Govindrao Maraottrao Patil
(Died through LRs')

(6/A) Laxmibai Govindrao Patil,
Age : 68 years, Occ. : Household
R/o. : Jigla, Tq. Biloli, Dist. Nanded

(6/B) Savita Gangadhar Bodke,
Age : 40 years, Occ. : Household,
R/o. Nandgaon, Tq. Mukhed, Dist. Nanded

7. Pratap Govindrao Patil,
Age : 28 years, Occ. : Agriculture,

8. Bhaskar Govindrao Patil,
Age : 26 years, Occ. : Agriculture,

9. Namdevrao Marotrao Patil,
Age : 60 years, Occ. : Agriculture,

Respondent Nos. 7 to 9, R/o. : Jigla,
Tq. Biloli, Dist. Nanded

... Respondents
(Ori. Applicants)

...
Mr. B.V. Virdhe – AGP for Appellants
Mr. S.R. Barlinge – Advocate for Respondents

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CORAM : SANDIPKUMAR C. MORE, J.
RESERVED ON : 25th July, 2023
PRONOUNCED ON : 9th August, 2023

JUDGMENT :

1. The State – acquiring body has preferred this appeal against the judgment and award dated 20th April, 2002 passed by the Civil Judge Senior Division, Biloli, Nanded (hereinafter referred to as “*the learned Reference Court*”) in L.A.R. No. 28 of 1997.

2. **The brief facts leading to the appeal are as under :**

The present respondents who are the original claimants had filed the aforesaid land reference under Section 18 of the Land

Acquisition Act, 1894 for enhancement of compensation granted by the present appellant No.2 in respect of acquisition of their house properties bearing Gram Panchayat No. 70/1 and 77/1 situated at village Jigla, Tq. Biloli, Dist. Nanded. The total area of the aforesaid houses along-with the open land was 1495 sq. mtrs., wherein there was ground floor admeasuring 724 sq. mts. and first floor of same dimensions was in existence. The open land was admeasuring 771 sq. mtrs. excluding the constructed area. The State – acquiring body published the notification under Section 4(1) of the Land Acquisition Act on 4th April, 1991 and the appellant No.2 subsequently passed an award by granting rate of Rs.1853/- per sq. meter in respect of open land admeasuring 771 sq. mtrs. and constructed area of 724 sq. mtrs. Thereafter, the learned Reference Court enhanced the said compensation by awarding Rs.23,98,500/- along-with the shifting charges of Rs.90,000/-. The learned Reference Court also awarded other statutory benefits as mentioned in the award. Hence, this appeal.

3. Learned A.G.P. submits that, the learned Reference Court has granted exorbitant compensation and did not consider the valuation report prepared at the instance of State – Acquiring body and therefore prayed for reduction of compensation.

4. On the contrary, learned Counsel for the respondents – claimants supported the impugned judgment and award and pointed out that, the learned Reference Court has rightly granted the rate, which was even accepted by appellant No.2 i.e. Special Land Acquisition Officer. Moreover, the shifting charges are already determined properly. He pointed out that, the Land Acquisition Officer had in fact erred in counting the area of upper floor, which was rightly considered by the learned Reference Court while enhancing the compensation amount.

5. Heard rival submissions and also perused oral and documentary evidence on record.

6. It is significant to note that, the appellant – acquiring body has challenged the impugned judgment and award mainly on two grounds that, the learned Reference Court erred in holding that, the Special Land Acquisition Officer has awarded inadequate compensation and that the learned Trial Court also erred in relying on the sale-deeds produced by the respondents which are for small pieces of land. However, on going through the judgment it appears that, the learned Reference Court has not relied on any of the sale-deeds for enhancing the compensation but it appears that,

the compensation has been enhanced on the basis of valuation report (Exh.87) submitted by the present respondents – claimants. Therefore, this aspect of relying on the sale-deeds needs no consideration at all.

7. On perusal of the record it appears that, the valuation report of one Mr. Shyam Deshpande, who was Government Architect was placed at Exh. 87-A to 87-D and according to which the compensation for which the respondents – claimants are entitled was shown as Rs.25,07,000/-. It is significant to note that, while preparing said report the D.S.R. of 1991 were considered. The said report appears to be detailed report by considering minute things as regards constructed portion as well as open space. Moreover, it is not in dispute that, total suit plot was admeasuring 1495 sq. mtrs., wherein there was constructed area of 724 sq. mtrs. on the ground floor and the same area also on first floor. Further, it is not disputed that, the open land area was of 771 sq. mtrs. The classification of acquired house under type – C is not in dispute. Considering the date of notification under Section 4(1) of the Land Acquisition Act being 4th April, 1991 the applicability of D.S.R. of 1990 – 91 while calculating the compensation amount appears

appropriate and, therefore, the D.S.R. of 1989 – 90 as considered while preparing the valuation report by the appellant is not proper.

8. It is extremely important to note that, the learned Reference Court has considered valuation report of Mr. Shyam Deshpande at Exh. 87–A to 87–D only for determination for constructed area and open land area but not relied on the rate given in the same. On the contrary, it appears that, the learned Reference Court has considered the same rate as determined by the Special Land Acquisition Officer while passing the initial award. It appears that, the Special Land Acquisition Officer had considered the construction area only of 724 sq. mtrs., though rightly considered open land of 771 sq. mtrs. The main mistake appears to be done is that, he skipped the constructed area of 724 sq. mtrs. of the first floor of the house while determining the compensation. Thus, it appears that the learned Reference Court by accepting the rate granted by the Special Land Acquisition Officer, added the compensation amount of first floor of the house under acquisition. Moreover, the learned Reference Court appears to have considered proper rate of Rs.77.36/- per sq. meter while calculating the compensation in respect of open land area as well as land area

beneath constructed house which is admittedly of 1495 sq. mtrs. The land except constructed house area has been given lessor rate of Rs.77.36/- per sq. meter only because the valuation of constructed portion has been done separately.

9. Further, though the respondents – claimants had claimed shifting charges of Rs.5,00,000/- but the learned Reference Court has granted shifting charges to the nine claimants at the rate of Rs.10,000/- each. Since the respondents – claimants could not produce on record any material justifying their claim of Rs.5,00,000/- in respect of shifting charges, the shifting charges granted by the learned Reference Court appear proper.

10. Thus, considering all these aspects it appears that the learned Reference Court has properly appreciated material on record and granted enhanced compensation by adopting the same rate as granted by the Special Land Acquisition Officer along-with other statutory benefits. As such, I find no substance in this appeal and it stands dismissed.

[SANDIPKUMAR C. MORE]
JUDGE