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

FIRST APPEAL NO.1300 OF 2019

Namdeo S/o Pandurang Chavhan,
Aged about yrs, Occ. Agriculturist,
R/o. Khumbarkinhi, Tq. Darwaha,
District Yavatmal.

APPELLANT
(Ori. Petitioner)
On R.A.

// VERSUS //

- 1) The State of Maharashtra,
through the Collector, Yavatmal.
- 2) The Special Land Acquisition Officer,
Darwaha, Tq. Darwaha,
District Yavatmal.
- 3) The Chief Executive Engineer,
Kumbharkinhi Dam Division, Pusad,
Tq. Pusad, District Yavatmal.

RESPONDENTS
(Ori. Rests)

Mr. S. V. Ingle, Advocate for the appellant.
Mr. T. H. Udeshi, AGP for respondent Nos.1 and 2.
Mr. N. M. Gaidhane, Advocate for respondent No.3.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 28/02/2023
PRONOUNCED ON : 03/05/2023

JUDGMENT

1. Present appeal is preferred against the Judgment and Award passed in Land Acquisition Case No.2179/2004 dated 06.08.2016 by which the Reference Court has awarded the compensation at the rate of

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Rs.1634/- per sq. mtr. for constructed area admeasuring 58.33 and 240 per sq. mtr. for open plot admeasuring 47.77 sq. mtr.

2. As per contention of the appellant, he was owner of house No.25 admeasuring 106.01 sq. mtr. having constructed area 58.83 sq. mtr. and open plot 47.68 sq. mtr. The said land was acquired by the Government for Kumbharkinhi Project. Accordingly, Section 4 notification was issued on 06.11.1998. The Special Land Acquisition Officer has passed an award on 30.12.2000 vide Award No.15/47/98-99 and awarded the compensation of Rs.56,172/-.

3. Being aggrieved and dissatisfied with the determination of the compensation, the appellant has preferred the reference bearing No.2179/2004 on the ground that the Special Land Acquisition Officer has not considered that appellant has constructed house by using stones and soil. The doors and windows of the house was made of Sagwan wood (teak wood). All the facilities were available in the house. The facilities like school, electricity, Hospital, Granpanchayat was also available in Kumbharkinhi village. Kumbharkinhi is at a distance of 10 Km from Darwha. However, the Special Land Acquisition Officer without considering all these facts awarded the compensation at the rate of Rs.80/- per sq. mtr. which is inadequate.

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4. Learned trial Court had considered the evidence adduced by the appellant and after hearing both the sides awarded the compensation at the rate of Rs.240/- per sq. mtr. for open place admeasuring 47.68 sq. mtr. and Rs.1634/- per sq. mtr for constructed area 58.33 sq. mtr.

5. Being aggrieved and dissatisfied with the award passed by the Reference Court. Present appeal is preferred by the appellant, who was the claimant on the ground that, the Reference Court has not considered the sale instances which shows that at the relevant time while the Section 4 notification was issued, the market rate in the village was 200 per sq. mtr. for the open plot. The sale deeds Exh.21 and 22 shows that plot admeasuring 75.27 sq. mtr was sold out of consideration of Rs.15,000/- on 19.12.1995 i.e. prior to Section 4 notification. The another sale deed shows that plot admeasuring 51.11 was sold out for Rs.10,000/- showing the market rate 195/- per sq. mtr. As the reference Court has not considered the said sale instances present appeal is preferred for enhancement of the compensation.

6. It is submitted on behalf of respondent that the Reference Court has considered the market price on the basis of evidence adduced before it and no enhancement of compensation is to be awarded and no

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interference is called for.

7. The learned Advocate Mr. Ingole for the appellant and learned Advocate Mr. Gaidhane for the respondent No.3 both have submitted that the issue involved in the appeal is already covered by the judgment passed in First Appeal No.1025/2015 (Premsingh alias Premchand Shankar Rathod Vs. The Executive Engineer, Kumbharkinhhi Dam Division, Pusad and others) and First Appeal No.364/2016 (Ganesh Pundlik Deeve Vs. The Executive Engineer, Kumbharkinhhi Dam Division Pusad and others).

8. Heard both the sides. Perused the evidence on record it appears that the learned Advocate Mr. Ingole submitted that the matter is covered by the judgment of this Court in **Ganesh Pundlik Deeve Vs. Executive Engineer and others in 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 Kumbharkinhhi, 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 15.06.2013, 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.3,200/- was granted for the

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construction, based upon the report of the Valuer Namely, Mr. Sunil K. Chandkapure. It is submitted, that the reasons which have laid with this Court in enhancing the compensation for the constructed area from Rs.2,150/- to Rs.3,200/- per Sq mtr. The similarity of the construction in **Ganesh Pundlik Deeve** (supra) and in the present matter, is not disputed by learned Advocate Mr. Gaidhane, for the acquiring body.

9. A perusal of the Judgment In **Ganesh Pundlik 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. He 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

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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."

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10. The evidence in the instant matter is also that of Sunil K. Chandkapure, who was giving the valuation report Exh.33, in which it has been stated that the construction of the house was in stones and bricks prior to Section 4 notification. The constructed area constructed in stones and soil. The structure, foundation and the doors and windows of Sagwan wood (teak wood) shows it is class III construction.

11. On perusal of the judgment of the Reference Court indicates 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 rough notes were not placed on record or the receipts of the material used for the construction were not seen by the Valuer, which is rightly held in **Ganesh Pundlik 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 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, the factual position, therefore, as was occurred in **Ganesh Pundlik Deeve** (supra) insofar as the construction is concerned,

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is synonymous with the one prevailing in the instant matter.

12. 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.

13. Under the circumstances, the appeal is partly allowed. The rate of structure admeasuring 58.33 sq. mtr is held to be Rs.3,100/- per sq. mtr. Thus, considering the nature of construction in view of **Ganesh Pundlik 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 3,100/- per sq. mtr. The respondent No.3 to calculate the appropriate compensation and deposit in this Court within six weeks from today. In case, any additional Court fee is paid, it be paid.

14. 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 28.06.2019 i.e. delay of 412 days in Civil

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Application (CAF) No.3661/2018.

15. The appeal is accordingly allowed in above terms. No order
as to costs.

(URMILA JOSHI-PHALKE, J.)

Sarkate./-