

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

FIRST APPEAL NO.635 OF 2017

Smt. Shobha wd/o Omprakash Karodeeo
Aged about 50 years,
Occ. Agriculturist,
R/o. Kumbharkinh, Tah. Darwaha,
District Yavatmal

...APPELLANT

VERSUS

1. The State of Maharashtra,
through its Collector, Yavatmal
Tq. and District Yavatmal
2. The Sub Divisional Officer and
Land Acquisition Officer,
Darwaha, Tq. Darwaha,
District Yavatmal
3. Executive Engineer,
Minor Irrigation Division,
Pusad, District Yavatmal

...RESPONDENTS

Shri R.J. Shinde, Advocate for the appellant.
Ms S. Haider, AGP for respondent Nos.1 and 2/State.
Shri Vinay V. Dahat, Advocate for respondent No.3.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : MARCH 01, 2023.

ORAL JUDGMENT :

Heard finally with the consent of learned Counsel for the parties.

2. Shri R.J. Shinde, learned Counsel for the appellant submitted that the matter is covered by the judgment of this Court in ***Ganesh Pundlik Deeve Vs. Executive Engineer and ors., First Appeal No.364/2016 decided on 22/02/2021*** as well as in ***First Appeal No.189/2021 (Sadashiv Narayan Rathod Vs. The State of Maharashtra and ors.) decided on 13/12/2022*** in which for the acquisition of the property for the same project, from the same village Kumbharkinhi, from the Notification dated 06/11/1998, which was in respect of Plot No.10, admeasuring 138.4 sq.mtr. for a house standing thereon, 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 at the 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, and judgment of this Court in ***Shankar Baban Rathod Vs. Executive Engineer and ors., First Appeal No.526/2016, decided on 05/12/2022***. It is submitted, that the reasons which are assigned with this Court in enhancing the compensation for the constructed area from Rs.2000/- per sq.mtr. to Rs.3000/- per sq.mtr. The similarity of the construction in *Ganesh Pundlik Deeve (supra)* are the same reasons which are also available in the present matter. The judgment in *Ganesh Pundlik Deeve (supra)* is not disputed by Shri

Dahat, learned Counsel for respondent No.3, which is the acquiring body, and he states that the amount of Rs.2800/- per sq.mtr. would be the just and appropriate compensation towards the constructed area.

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. 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 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 Omannu 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. In the instant matter, the appellant is the owner of the house property No.22 situated at village Kumbharkinh, Tahsil Darwha, District

Yavatmal having built up area 55.30 sq.mtr. and total area 70.15 sq.mtr. Section 4 Notification was issued on 06/11/1997 and Award was declared by the Land Acquisition Officer on 30/12/2000. The Land Acquisition Officer has granted the compensation @ Rs.1,79,540/- as a lump sum amount.

5. Being aggrieved and dissatisfied with the same, the appellant has preferred the reference application for enhancement of the compensation. After appreciation of the evidence, the Reference Court has enhanced the compensation @ Rs.2200/- per sq.mtr. along with the interest towards the construction.

6. In so far as the rate awarded by the learned Reference Court for acquisition of the land is concerned, the learned Counsel for the appellant submitted that the issue is covered by the judgment of this Court and in view of that the amount of compensation is to be enhanced.

7. It is further submitted that considering the nature of the construction which is similar to that as has been considered in Ganesh Pundlik Deeve (*supra*) for which compensation @ Rs.3200/- has been granted which according to him ought to be the rate for the construction in the present matter.

8. In the present matter, the evidence is also adduced by examining Valuer namely Mr. Sunil K. Chandkapure who has given his valuation report on 15/05/1999 at Exhibit 34 in which it has been stated that the house was having a structure of bricks and cement and consists a five rooms, living room, veranda, kitchen and bathroom. Said construction was carried out in the year 1998 and 1999 i.e. prior to 9 years of the Notification under Section 4. So also it is a class 3 construction.

9. Perusal of the judgment of the Reference Court indicates in paragraph No.13 that the report has been partly accepted by the Reference Court on the basis of which it has been held that the compensation for construction needs enhancement. Though it is observed that the rate of construction was not supported on the ground that the rough notes were not placed on record or the receipts of the material used for construction were not seen by the Valuer, the same has been rightly accepted by this Court in the judgment of Ganesh Pundlik Deeve (supra). It is therefore, apparent that the valuation of the Expert done in respect to the construction has been partly accepted by the learned Reference Court. Thus, in view of the position as indicated therein, considering the nature and quality of construction which is not denied in the cross-examination of PW-2 – Valuer.

10. 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, which is observed in the case of Ganesh Pundlik Deeve (*supra*) in so far as the construction is concerned is similar with one prevailing in the instant matter.

11. It is however, material to note that the Notification in the instant matter is earlier in point of time and is dated 06/11/1997, and therefore, the rate as granted in Ganesh Pundlik Deeve (*supra*) considering the similarity of the construction will have to be corrected and the difference is exactly a year in the dates of Section 4 of Notification.

12. Thus, in view of the nature of the construction in the above referred judgment which is similar to the construction in the present case and the difference in the dates of Section 4 Notification, the rate of construction as awarded by the Reference Court is enhanced to Rs.2800/- per sq.mtr.

13. The judgment and Award of the learned Reference Court is accordingly modified as indicated above.

14. Respondent No.3 to calculate the appropriate compensation and ancillary benefits and deposit in this Court within six weeks from today. In case any additional court fees is to be paid, the appellant to pay deficit court fee stamp within four weeks.

15. It is made clear that the appellant shall not be entitled for the interest for the period of delay which has occurred in filing the first appeal.

16. The appeal is accordingly allowed in the above terms. No costs.

(URMILA JOSHI-PHALKE, J.)

**Divya*