

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

FIRST APPEAL NO. 186 OF 2021

APPELLANT: Shri Laxman Sadashiv Rathod,
Age 46 years, Occu: Agriculturist,
R/o Kumbharkini, Tq. Darwha,
District Yavatmal.

..V E R S U S..

RESPONDENTS 1] State of Maharashtra,
through Collector, Yavatmal.

2] Special Land Acquisition Officer
of Kumbharkinihi Project, Darwha,
Tq. Darwha, District Yavatmal.

3] The Executive Engineer,
Kumbharkinihi Dam Division, Pusad
Tq. Pusad, District Yavatmal.

Shri Irfan M. Ghongade, counsel for the appellant.
Ms T.H. Udeshi, AGP for the respondent Nos. 1 and 2.
Ms Aachal Mundhada, counsel h/f Mr N.M. Gaidhane, counsel for
the respondent No.3.

CORAM : URMILA JOSHI-PHALKE, J. .
DATE : 03/03/2023

ORAL JUDGMENT :

1. Heard learned counsel appearing for parties.
2. Learned counsel Shri Irfan M.Ghongade for the

appellant submits that the matter is covered by the judgment of this Court in **Ganesh Pundlik Deeve vs. The Executive Engineer and others, First Appeal No.364/2016, decided on 22.2.2021**, in which for the acquisition of the property for the same project, from the same village Kumbharkinhi, from the same Notification dated 6.11.1998, which was in respect of Plot No.228, admeasuring 16.54 square meters plot having construction of 16.54 sq.mtr. As per Award of the Reference Court dated 30.8.2013, which has been filed on record as rate of Rs.240/- per square meter for plot and Rs. 1700/- per sq.mtr for construction, based upon the report of the valuer namely Mr. Sunil K.Chandkapure. It is submitted that the reasons which have weighed with this Court in enhancing the compensation for the constructed area from Rs.1700/- to Rs.3200/- per square meter; the similarity of the construction in **Ganesh Pundlik Deeve** cited supra are the same reasons which are also available in the present matter. The judgment in **Ganesh Pundlik Deeve** cited supra is not disputed by learned counsel Ms Aachal Mundhada, counsel h/f Mr N.M. Gaidhane, counsel for the respondent No.3 which is the acquiring body, and she states that the same has been accepted.

3. Perusal of the judgment in **Ganesh Pundlik Deeve** cited 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 Kumbharkinhi, 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 Omana 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 following position is not disputed.

Kumbharkinhhi Project, Taluka Darwha, District Yavatmal			
Date of Notification under Section 4 of the Land Acquisition Act.			6.11.1998
Property details	Area of property	LAO granted by Award Dated 30.12.2000	Ref. Court granted Award Dated 30.8.2013
Plot No: 228 Village: Kumbharkinhhi Tahsil Darwha District Yavatmal	Plot Area : 16.54 Sq. Mt.	Rs.25,259/- lumpsum for the entire plot + construction	Rs.240/- per square meter for plot
	Construction: Plot 16.54 sq.mtrs		Rs.1700/- per square meter for construction

5. Insofar as the rate awarded by the learned Reference Court for acquisition of the land is concerned, learned counsel for the appellant does not dispute that rate. The only contention is that the rate for construction has been granted on a lower side considering the nature of the construction which is similar to that as has been considered in Ganesh Pundlik Deeve cited supra for which a compensation at the rate of Rs.3200/- has been granted, which according to him ought to be the rate for the construction in the present matter too.

6. The evidence in the instant matter is also that of Sunil K.Chandkapure, who has given the valuation report dated 5.2.1999 at Exhibit-32, in which it has been stated that the house was having a living room, sitting room 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 tin was of GI sheets with the electrification and water supply, so also it is a class-III construction.

7. Perusal of the judgment of the Reference Court indicates (paragraph Nos.20 and 22) that the report has been partly accepted by the learned Reference Court, on the basis of which, it has been held that the compensation for construction needs enhancement. 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, the same as rightly held in Ganesh Pudlik Deeve cited supra, is a clear impossibility. 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 and, therefore, the position, as indicated therein, regarding the nature and quality of construction having not been controverted in the cross-examination of 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. The factual position, therefore, as was occurring in Ganesh Pudlik Deeve cited supra insofar as the construction is concerned, is synonymous with the one prevailing in the instant matter.

8. Thus, considering the nature of construction in Ganesh Pudlik Deeve cited 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.3200/- per square meter.

9. The judgment and award of the learned Reference Court is accordingly modified as indicated above.

10. The 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, it be paid.

11. It is made clear that the appellant shall not be entitled for the interest for the period of delay of 2281 days which had occurred in filing the first appeal as per order dated 15.2.2021 on Civil Application No.883/2020.

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

JUDGE

RKN