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

FIRST APPEAL NO.1293 OF 2019

Namdeo S/o Kantuji Banukar,
(Died on 24.07.2017)
Through his legal Representative,

- 1) Smt. Panchafhula Wd/o Namdeo Banukar (Ori. Claimant)
Aged About 72 Years, Occ.-Housewife,
- 2) Shri Prakash S/o Namdeo Banukar,
Aged about 50 Years, Occ- Agriculturist,
- 3) Shri Narayan S/o Namdeo Banukar,
Aged about 45 years, Occ- Agriculturist,
All R/o, Kumbharkinh, Punarwsan No.2,
Tq. Darwaha, District – Yavatmal,
Through : Power of Attorney Holder
Jagdish S/o Prakash Banukar,
Aged about 23 Years, Occ.: Agriculturist, **APPELLANTS**
R/o Kumbharkinh, Punarwsan No.2,
Tq. Darwaha, District – Yavatmal.

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- 1) The State of Maharashtra,
Through the Collector, Yavatmal,
Tah. and District Yavatmal.
- 2) The Special Land Acquisition Officer,
Kumbharkinh Project, Darwaha,
Tq. Darwaha, District Yavatmal.
- 3) Executive Engineer of Kumbharkinh,
Dam Division, Pusad, **RESPONDENTS**
Tq. Pusad, District Yavatmal.

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

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

1. Learned Advocate Mr. Ingole for the appellants 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 Kumbharkinhi, 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 construction, based upon the report of the Valuer Namely, Mr. Sunil K. Chandkapure. It is submitted, that the reasons which have assigned by 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 respondent No.3 which is the acquiring body.

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2. In the present case, the appellant has preferred this appeal for enhancement of the compensation on the ground that the house property No.177 owned by him having total area 145.00 sq. mtr out of which open courtyard area was 92.99 sq mtr and constructed area 52.01 sq. mtr. situated at Kumbharkinhi, Taluka Darwha, District Yavatmal was acquired by the respondents for public purpose i.e. for the submergence area of Kumbharkinhi Project vide Land Acquisition Case No. No.15/47/1997-98 of village Kumbharkinhi. A preliminary notification under Section 4 of the Land Acquisition Act (for short 'the Act') to that effect was published in the Government Gazette dated 06.11.1998. Subsequently after making necessary enquiry, the Land Acquisition Officer declared award dated 30.12.2000 and awarded compensation to the claimant for his acquired house property at the rate of Rs.80/- per sq. mtr. for open plot area and Rs.41.944 for construction standing thereon as per the data and market value fixed by the acquiring body. Thus, the Land Acquisition Officer has granted total compensation of Rs.86,515/- to the claimant.

3. Being aggrieved and dissatisfied with the Award passed by the Special Land Acquisition Officer. The claimant has preferred the reference on the ground that, the Special Land Acquisition Officer has not considered the prevailing market value of the acquired land and had

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not considered that acquired land is situated linking with the approached road to Darwha and also at the distance of 10 km from Darwha. The Special Land Acquisition Officer failed to consider all the facilities at village Kumbharkinhni and awarded inadequate compensation. The claimant claimed compensation at the rate of Rs.740/- per sq. mtr. and Rs.2,900/- per sq. mtr. for cost of construction.

4. The claim of the claimant was resisted by the respondents on the ground that Special Land Acquisition rightly determined the amount of compensation.

5. In order to substantiate the claim, the claimant has examined himself as PW-1 and PW-2 Sunil Chendkapure who is expert Valuer. Besides the oral evidence, claimant relied upon certified copy of sale deed dated 19.12.1995 Exh.22, certified copy of sale deed dated 23.01.1996 at Exh.23, copy of notice issued under Section 12 (2) of the Act Exh.24, certified copy of the judgment of the Reference Court delivered in Land Acquisition Case No.1601/2004 at Exh.26. The Reference Court after appreciating the evidence awarded the compensation at the rate of Rs.240/- per sq. mtr. for open plot admeasuring 145 sq. mtr. and at the rate of Rs.1600/- for built up area of the house admeasuring 52.01 sq. mtr.

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6. Being aggrieved and dissatisfied with Judgment and Award passed by the Reference Court present appeal is preferred for enhancement of the compensation.

7. During submission, learned Advocate Mr. Ingole for the appellants submitted that the issue involved in the appeal is covered by the earlier judgment of this Court in the case of **Ganesh Pundlik Deeve Vs. Executive Engineer and others in First Appeal No.364/2016** wherein this Court observed as follows.

“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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8. The evidence in the instant matter is also that of Sunil K. Chandkapure, who has issued the valuation report dated 05.09.1999 at Exh.33, in which it has been stated that the property under valuation is the plot and house in the Gaothan area of mouza Kumbharkinhhi which is located and situated on Darwha to Manora road about 10 Km. from Darwha – Tahsil place. The Gaothan area is well developed. All the basic facilities and amenities are available. The permanent roads, electric supply line, water supply, telephone lines etc. amenities are available at Kumbharkinhhi. He had taken into consideration all the important factors, such as size, shape of the plots, frontage of the plot, location and situation of the plot. Sale instances of the plots in the surrounding areas. The quality of construction and the maintenance of building, the age of construction, the depreciation and the further expected life etc. He further observed that the construction of the house was ten years old. At the time of Section 4 notification, the constructed area is 52.01 sq. mtr. having load bearing structure, foundation and plinth in U.C.R. masonry, flooring is of cement concrete, super structure is in brick, teak wood doors and windows, roof is of G.I. sheets, electrification, water supply etc. complete and it is Class III construction.

9. 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

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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 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 occurred in **Ganesh Pundlik Deeve** (supra) insofar as the construction is concerned, is synonymous with the one prevailing in the instant matter.

10. Learned Advocate Mr. Ingole for the appellant does not pursue his claim in so far as the construction for the rate of the land is concerned, as in **Ganesh Pundlik Deeve** (supra), the rate of Rs.240/- per sq. mtr. has been upheld by this Court.

11. Thus, considering the nature of construction in **Ganesh Pundlik Deeve** (supra) which is similar to the construction in the present

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case, the rate of construction as awarded by the learned Reference Court is enhanced to 3100 per sq. mtr. The respondent No.1 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.

12. 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 in Civil Application No.3716/2018 i.e. the delay 1483 days.

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

(URMILA JOSHI-PHALKE, J.)

Sarkate./-.