

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

FIRST APPEAL NO.149 OF 2016

Vilas Pandurang Borchate (Dead)
through LRs.

1. Yenubai Vilas Borchate
Age – 55 yrs, Occ. Agriculture
2. Bhaskar Vilas Borchate,
Age – 32 yrs, Occ. Agriculture
3. Jeevan Vilas Borchate
Age – 29 yrs, Occ. Agriculture
4. Kalpana Sanjay Zalke
Age – 30 yrs, Occ. Agriculture
5. Pushpa Vilas Holgare
Age – 57 yrs, Occ. Agriculture

All R/o. - Kumbharkinhni,
Tq.- Darwha, Dist. Yavatmal.

...APPELLANTS

VERSUS

1. The Executive Engineer,
Kumbharkinhni Dam Division,
Pusad, Tq. Pusad, District Yavatmal
2. Special Land Acquisition Officer,
Kumbharkinhni Project, Darwha,
District Yavatmal
3. State of Maharashtra,
through Collector,
Yavatmal

...RESPONDENTS.

Shri A.B. Nakshane, Advocate for the appellant.
Mrs. U.A. Patil, Advocate for respondent No.1.
Ms T.H. Udeshi, AGP for respondent Nos.2 and 3/State.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : FEBRUARY 20, 2023
PRONOUNCED ON : APRIL 28, 2023.

JUDGMENT :

Heard learned counsel for the parties.

2. The appeal is under Section 54 of the Land Acquisition Act against the judgment and award passed by the Civil Judge, Senior Division, Darwha in L.A.C. No.56/2008 dated 26/04/2013 granting compensation @ Rs.240/- per sq.mtr. in respect of open plot area admeasuring 18.70 and @ Rs.2000/- per sq.mtr. for built up area of the acquired plot admeasuring 85.29 sq.mtr. in respect of the acquired Plot No.189.

3. As per the contention of the claimant he was owner of the Plot No.189 having open plot area 18.70 sq.mtr. and built up area 85.29 sq.mtr. The respondent No.1 issued a Notification under Section 4 on 06/11/1998 and award was published on 30/12/2000 by which Special Land Acquisition Officer awarded the compensation @ Rs.80/- per

sq.mtr. for open plot and amount of Rs.68,066/- for constructed area @ Rs.798/- per sq.mtr.

4. Being aggrieved and dissatisfied with the judgment and award, the present appellant preferred reference on the ground that the Special Land Acquisition Officer has not considered the valuation report, the quality of the construction and awarded inadequate compensation.

5. The respondents resisted the claim on the ground that the Land Acquisition Officer determined the compensation amount on the basis of evidence produced. Hence, no interference is called for.

6. The Reference Court had considered the evidence and enhanced the compensation @ Rs.240/- per sq.mtr. in respect of open plot and Rs.2000/- in respect of constructed area. Being aggrieved with the same present appeal is preferred for enhancement of the compensation.

7. Heard Shri Nakshane, learned Counsel for the appellant. He submitted that the matter is covered by the judgment of this Court in *Ganesh Pundlik Deeve Vs. Executive Engineer and ors. 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 the house standing thereon, having 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, 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 M. Chandkapure. It is submitted, that the reasons which have laid with this Court in enhancing the compensation for the constructed area from Rs.2150/- to Rs.3200/- per sq.mtr. The similarity of the construction in Ganesh Pundlik Deeve (supra) and in the present matter is not disputed by Mrs. U.A. Patil, learned Counsel for respondent No.1 which is the acquiring body.

8. 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 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.”

9. The evidence in the instant matter is also that of Sunil K. Chandkapure who was giving the valuation report Exhibit – 43 which shows that at the time of valuation he had assessed the cost of construction, age of construction of the built up area and issued the valuation report. His evidence shows that the acquired house was constructed by standard material such as bricks, cement and sand having doors and windows of teak wood, there were facilities of electricity, water supply etc. Considering the factors like increasing rates of building material, labour charges, nature and quality of construction, he issued the valuation report.

10. Perusal of the judgment of the Reference Court indicates that report has been accepted by the Court on the basis of which enhancement has been granted by the learned Reference Court though it

has observed that the Expert has not produced any data available with him at the time of his so called valuation about the cost of construction, age of construction of the built up area. The report is further not accepted by observing that the rate of construction quoted by the Expert @ Rs.3100/- per sq.mtr. appears to be exorbitant one. In Ganesh Pundlik Deeve (supra), it is held by the Court that the perusal of the judgment of the Reference Court indicates that report has not been accepted 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 is clearly 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.

11. Shri Nakshane, learned Counsel for the appellant does not pursue his claim insofar 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.

12. Thus, considering the nature of construction in 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 Rs.3100/- per sq.mtr. The respondent No.1 to calculate the appropriate compensation and deposit in this Court within ten weeks from today. In case any additional court fees is paid, it be paid.

13. It is made clear that the appellant shall not be entitled for the interest for the delayed period which had occurred in filing of the appeal as per the order of this Court dated 14/12/2015 in Civil Application No.3053/2015.

14. The appeal is accordingly allowed in above terms with no order as to costs.

(URMILA JOSHI-PHALKE, J.)