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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

938 FIRST APPEAL NO. 1459 OF 2014

Rajaram Bhagwan NukulwadAppellant

VERSUS

The State of Maharashtra & othersRespondents

WITH
FIRST APPEAL NO. 2911 OF 2022

Gangaram Maroti Sustarphod
(died) Thr Lrs. Bhagirathibai G. Sustarphod
& othersAppellants

VERSUS

The State of Maharashtra & othersRespondents

WITH
FIRST APPEAL NO. 2910 OF 2022

Anteshwar Gangaram SustarphodAppellant

VERSUS

The State of Maharashtra & othersRespondents

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Mr. G. N. Chincholkar, Advocate for Appellants.
Ms. K. R. Jamdhade, AGP for the State.
Mr. S. C. Arora, Advocate for acquiring Body.

CORAM : R. M. JOSHI, J.

DATE : 9th JULY, 2024.

PER COURT :

1. These First Appeals arise out of order passed by Reference Court in LAR No. 66/2008, 36/2005 and 35/2005 respectively whereby compensation towards house and land beneath thereto is determined by the Reference Court. Claimants being aggrieved by the said determination, have filed these appeals.

2. By consent of both sides, heard finally at the stage of admission.

3. Learned counsel for Appellants has relied upon observations made by this Court in First Appeal No. 719/2013 and First Appeal No. 1250/2009. It is his submission that since present acquisition is in respect of villages which were covered by these appeals, valuation done by the valuer in respect of the suit properties be accepted.

4. Learned counsel for Respondent/Acquiring Body has raised objection with regard to accepting judgments in aforementioned appeals mechanically by relying upon judgment of the Hon'ble Supreme Court in case of Executive Engineer, Minor

Irrigation Works, Jalgaon vs. Vitthal Damodar Patil and another, **(2019) 7 Supreme Court Cases 225**, wherein it is held that mechanical acceptance of the valuation report submitted by expert is not permissible on the ground that his valuation was accepted by courts in proceedings relating to some other lands. He further drew attention of this Court to evidence on record as well as findings recorded by Reference Court while discarding valuation done by the valuer in the instant case. It is submitted that it is evident from the record that the valuer has valued the said property after four and half years of notification under Section 4 of the Act and in view of judgment of this Court in case of Shekar S Sheth vs. Executive Engineer, **(2022) 4 AIR Bom R 580**, such valuation report deserves to be discarded.

5. There cannot be any dispute made with regard to the fact that when the references are decided on the basis of different valuation reports, valuation accepted in other proceeding cannot be mechanically considered for the purpose of entertaining other proceedings though from sale acquisition. This Court, therefore, finds it appropriate to consider the evidence led by claimants before the Reference Court to substantiate claim for enhancement. There is no

dispute about the fact that all claimants led their evidence and more particularly common valuer Mr. Barbade was examined before the Reference Court. It is sought to be canvased on behalf of learned counsel for Respondent that this valuer is said to have valued 30 houses a day which itself creates doubt about proper valuation thereof. This submission is not now open for argument because this Court in various appeals has accepted the valuation done by the very same valuer and that number of houses being valued on a day would not become sole ground to discard his evidence, more particularly in the facts of the present case. He also argued that panchanama is also not filed on record before the Reference Court.

6. Perusal of record indicates that this valuer has deposed on oath about he visited the acquired house on 07.04.2002. he has not only deposed about the date of visit but has also led evidence with regard to the nature of construction and house of various ingredients for the same. Merely because panchanama is not produced on record, this would not be a sufficient ground to discard his evidence. As far as cross examination of this witness is concerned, nothing is elicited therefrom to discard/disbelieve his report and testimony. As such, the claimants have discharged the

initial burden on them of proving valuation of the suit property. Now, the onus shifts upon the Respondents to show otherwise. Admittedly, there is no evidence led by the Respondents in this regard.

7. As far as the judgment of this Court relied by Respondents in case of Shekar Sheth (supra), a general observation is made in paragraph No. 9 of the judgment to the effect that valuer's report if acquired after a long period of date of issuance of notification it can be discarded. That does not mean that even in appropriate case where the valuer's report is found to be trustworthy, the same needs to be discarded and disbelieved. In any case, having regard to the nature of dispute, it is never expected from the claimants to get done valuation of their properties before acquisition thereof or even before the SLAO passes award because there is every possibility that the SLAO would consider proper valuation of the property and grant reasonable/adequate compensation. It is only when the SLAO fails to take into account all relevant factors for determination of compensation, question would arise for the claimants to substantiate their claim before the Reference Court and hence there cannot be

straight jacket formula applied that if valuation of house property is done at later stage it must be discarded.

8. Having regard to the peculiar facts of the case, this Court finds no reason or justification in order to discard the valuation done by the valuer. As far as grant of interest, the Reference Court has erred in granting interest from the date of issuance of notification under Section 4 of the Act. It is settled position of law by judgment of Full Bench in case of State of Maharashtra vs. Kailash Shiva Rangari, **2016 SCC OnLine Bom. 2236**, that interest is liable to be paid from the date of award and not from date of acquisition. Accordingly, the appeals are partly allowed. Hence, following order :-

ORDER

(1) First Appeals are partly allowed.

(2) The Respondents are directed to pay compensation Rs.1,50,212/-, Rs. 1,42,249/- and Rs. 88,334/- to claimants in First Appeal Nos. 1459/2014, 2910/2022 and 2911/2022 respectively.

(3) The Respondents shall pay 30% solatium under Section 23(2) of the Land Acquisition act and 12% additional component under Section 23(1-A) of the Act

on the enhanced amount of the compensation from the date of the notification under Section 4 of the Act till the date of the award.

(4) The Respondents shall pay interest @ 9% per annum for the first year from the date of award and for the subsequent year @ 15% per annum on the enhanced amount of compensation till the realization as contemplated under Section 28 of the Act.

(5) The compensation amount which is already paid by the Respondents to claimants shall be deducted at the time of actual payment.

(6) Amount of enhanced compensation be paid within a period of three months from today.

(R. M. JOSHI)
Judge