



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

FIRST APPEAL NO. 02 OF 2008

APPELLANT : Pavan S/o. Ghanshyam Chandak,
 Aged about 30 years, Occupation
 Cultivator, Permanent R/o. Mirzapur
 (Neri), Tahsil Arvi, District Wardha,
 Now at present Resident of Arvi,
 Tahsil Arvi, District Wardha.

//VERSUS//

RESPONDENTS : 1. State of Maharashtra, through
 Collector, Wardha.
 2. The Special Land Acquisition Officer
 & Sub Divisional Officer, Tahsil Arvi,
 District Wardha.
 3. Executive Engineer, Vidarbha
 Patbandhare Vikas Mahamandal,
 Wardha.

Ms. Varsha Y. Wasu, Advocate for the Appellant.
 Mr. H.D. Dubey, AGP for Respondent Nos.1 & 2.
 Ms. A.S. Athalye, Advocate for Respondent No.3.

CORAM : G. A. SANAP, J.
DATED : 5th FEBRUARY, 2024.

ORAL JUDGMENT

. In this appeal, challenge is to the judgment and decree
 passed by learned 1st Ad-hoc Additional District Judge, Wardha
 (for short “the Reference Court”), whereby the reference filed by

the appellant/claimant was partly allowed and the compensation was enhanced.

02] BACKGROUND FACTS:

The house property bearing No.97/2, area 206 sq. mtr. and the open plot of land, admeasuring 359 sq. mtrs., situated at mouza Mirzapur, Tahsil Arvi, District Wardha were owned by the appellant. The property was acquired for the purpose of the Submergence Area of the Lower Wardha Project. The notification under Section 4 of the Land Acquisition Act, 1894 was published on 6th September, 1998. The award was passed on 8th January, 2001. The Land Acquisition Officer determined the compensation for the open plot @ Rs.91/- per sq. mtr. The Land Acquisition Officer awarded Rs.1,18,223/- for 206 sq. mtr. constructed area and Rs.500/- for well. In the reference filed by the appellant, the compensation for the construction was enhanced from Rs.1,18,223/- to Rs.1,60,000/- and for the well, from Rs.500/- to Rs.19,500/-. In respect of the open plot of land, there was no enhancement by the Reference Court. Being aggrieved by this judgment and decree, the appellant has come before this Court in appeal.

03] According to the appellant, the rate of the open plot was Rs.250/- per sq. mtr. According to him, the cost of the constructed area was Rs.3,99,269/- and the valuation of the well was Rs.1,32,150/-. The appellant contended that neither the Land Acquisition Officer nor the Reference Court took the sale instances of the similarly situated open plots into consideration. The written statement was filed by the respondents. According to the respondents, the compensation determined by the Land Acquisition Officer was just, proper, and reasonable. It was contended that the enhancement sought for was excessive and exorbitant.

04] I have heard Ms. Varsha Y. Wasu, learned advocate for the appellant, Mr. H.D. Dubey, learned AGP for respondent Nos.1 and 2 and Ms. A.S. Athalye, learned advocate for respondent No.3-Acquiring Body. Perused the record and proceedings.

05] In view of the facts and circumstances, following point falls for my determination:

“Whether the enhancement granted by the Reference Court was just, proper, and reasonable ?”

06] Learned advocate for the appellant submitted that the decision rendered by the Reference Court in LAC No.376/2001 of the same village, dated 24th April, 2006, was relied upon to substantiate the enhancement in respect of the open plot of land. Learned advocate submitted that the Reference Court has failed to consider this judgment. Learned advocate submitted that the plot in the said judgment bearing No.124 was situated in the vicinity of the plot in this appeal. Learned advocate pointed out that the appeal filed by the Acquiring Body against this judgment and order passed by the Reference Court was withdrawn. Learned advocate submitted that the Reference Court ought to have recorded the reasons for not considering this judgment. As far as this aspect is concerned, learned advocate for respondent No.3-Acquiring Body submitted that the appeal filed against the judgment and order of the Reference Court at Exh.41 was withdrawn.

07] The Reference Court maintained the rate of compensation awarded by the Land Acquisition Officer @ Rs.91/- per sq. mtr. The Reference Court has failed to consider the evidence of AW-1 as well as the evidence of the expert witness. The Reference Court has also disbelieved the valuation report submitted by the Engineer of the Acquiring Body.

08] The question that needs to be addressed in this case is whether the Reference Court was justified in not considering this judgment at Exh.41. In my view, the Reference Court has committed a grave error in excluding this judgment from consideration. The Acquiring Body has admitted this judgment and, ultimately, the rate awarded @ Rs.120/- per sq. mtr. in respect of the open plot. The open plot in the judgment at Exh.41 and in this appeal are not only situated in the same village but also situated in the same locality. In my view, the Reference Court ought to have taken this judgment into consideration. The acquisition was a compulsory acquisition. The Reference Court ought to have recorded reasons for rejecting the judgment at Exh.41. Even if the evidence of the expert examined by the appellant is kept out of consideration, in my view, in this case the appellant would be entitled to get compensation in respect of the open plot of land @ Rs.120/- per sq. mtr. In my view, in this appeal, the claimant is entitled to get compensation in respect of the open plot of land @ Rs.120/- per sq. mtr.

09] Learned advocate for the appellant submitted that the original report submitted by the Engineer of the Acquiring Body after carrying out the inspection on the spot was corrected by the

Superior Officer. Learned advocate submitted that, on account of this, the said report was discarded. Learned advocate submitted that the report of valuation prepared by PW-2 was on the basis of the CSR of the relevant year. Learned advocate submitted that, considering the nature and quality of construction, the Reference Court ought to have granted enhancement at the rate claimed by the appellant. Learned advocate for the Acquiring Body submitted that the report submitted by the Engineer after carrying out the inspection was not changed in such a manner to create doubt about its veracity. It is pointed out that the cost of construction, arrived at Rs.93,319/-, was corrected to Rs.92,370/-. It is seen that the Land Acquisition Officer did not take this report into consideration and awarded the compensation of Rs.1,18,223/- for the structure. It was enhanced by the Reference Court to Rs.1,60,000/-.

10] It is to be noted that in the report of the valuer, there is no specific mention of the date and year of the CSR. No reason or explanation has been placed on record for the failure to mention this fact in the report as well as for the non-production of the same at the time of the evidence. In my view, the production of CSR of the relevant year was necessary to substantiate the contention. It is true that the report was prepared after an actual inspection and

survey of the construction. It is stated by the valuer that the cost of construction was arrived at by making necessary deductions on the basis of the CSR for the relevant year. In my view, failure to produce the CSR or the plausible explanation for non-production is against the appellant. The Reference Court, after considering the nature of construction and other factors, has enhanced the compensation in respect of the structure as well as the well. On consideration of the evidence afresh, I do not see any reason to find fault with this finding recorded by the Reference Court.

11] In this appeal, the appellant has made out a case for enhancement of the compensation of open plot @ Rs.120/- per sq. mtr. Accordingly, I answer the above point in the affirmative to the extent of the open plot of land. As such, the appeal is **partly allowed**.

12] The appellant is entitled to get the compensation in respect of the open plot of land, admeasuring 359 sq. mtr. @ Rs.120/- (Rupees One Hundred and Twenty) per sq. mtr. The amount of difference with accrued interest and other benefits as awarded by the Reference be deposited in this Court within four months.

13] The appeal stands disposed of in the above terms. No order as to costs. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)

Vijay