HIGH COURT OF JUDICATURE AT BOMBAY

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

FIRST APPEAL (ST) NO. 189 OF 2018
WITH
CROSS OBJECTION NO. 119 OF 2018

1. Vidarbha Irrigation Development Corporation through its Executive Engineer, Bembla Project Division, Yavatmal, Tahsil and District Yavatmal.

2. The Executive Engineer
Bembla Project Division, Yavatmal.
Tahsil and District Yavatmal. … APPELLANTS

V E R S U S

1. Shri Vasant Nanaji Patre
Aged about 45 Years, Occu – Agriculturist;
Resident at – Pahur (Dabha), Tahsil Babhulgaon, District Yavatmal.

2. The State of Maharashtra
Through Collector, Yavatmal
Tahsil and District Yavatmal.

3. The Special Land Acquisition Officer,
Minor Irrigation Work No.II, Yavatmal.
Tahsil and District Yavatmal. … RESPONDENTS

Mr. M. A. Kadu for Appellants.
Mr. A. B. Nakshane for Respondent No.1.
Ms. Prabhu, AGP for Respondent Nos.2 & 3 – State.

CORAM : NITIN W. SAMBRE, J.
DATE : DECEMBER 19, 2018.

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JUDGMENT

. The present Appeal is preferred by the Appellants - Acquiring Body questioning the Judgment of the reference court, alleging grant of unreasonable enhanced compensation, whereas the Respondent – land owner has preferred Cross Objection seeking enhanced compensation for open land and construction.

2. The Cross Objection preferred by the land owner seeking enhanced compensation is also being disposed of with this common order by consent of the parties.

3. The land in question is a piece of open plot located at Mouza Pahur, Tahsil Babhulgaon, District Yavatmal admeasuring 163.70 square meters and constructed area of 55.54 square meters. The land was acquired pursuant to Section 4 Notification which was issued on May 11, 2000 for an Irrigation Project. The Award came to be passed on October 17, 2003 awarding compensation of Rs.80/- per square meter for open plot and Rs.44,983/- for constructed area.

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4. Since the claimant was not in agreement with the offer of the Land Acquisition Officer, preferred reference vide Land Acquisition Case No. 252 of 2007 seeking compensation of Rs.1612/- per square meter for open plot and Rs.2690/- per square meter for constructed area. The claim is sought to be justified based on the location of village Pahur which is 12 kelometers away from taluka place Babhulgaon.

5. In the aforesaid background, the reference court by appreciating the evidence of the Claimant and one Sunil Chendkapure, the expert who was examined at Exhibit – 23, awarded the enhanced compensation based on the Report (Exhibit – 24) at the rate of Rs.900/- per square meter for open plot and Rs.1620/- per square meter for constructed area. The enhancement of Rs.900/- per square meter so also Rs. 1620/- for the constructed area is questioned by the Acquiring Body claiming to be on higher side, whereas the claimant has filed Cross Objection seeking enhanced compensation for constructed area at the rate of Rs.2690/-.

6. The learned counsel for Appellants - Acquiring Body while trying to make out a case of reduction in the compensation awarded for

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the plot area would urge that the Sale Deed (Exhibit – 22) speaks of transaction of plot area of 56.25 square meter on 25th March 1994 for a consideration of Rs.50,000/- i.e. Rs.888/- per square meter. The said transaction is in relation to plot which was put to commercial use, located in the village Pahur. In the aforesaid background, considering the fact that Section 4 Notification in the present case is of 11th May 2000, appropriate reduction to the extent of 40% is sought. Reduction is sought based on the location of the plot of which the Sale Deed is produced at Exhibit – 22 on the count that the said property was having commercial potential as is sought to be demonstrated from the evidence of claimant and the expert witness.

7. The learned Counsel would also try to rely upon the evidence and findings recorded in the other similar Land Acquisition Cases, i.e. - LAC No.79 of 2004 (Premchand V/s State of Maharashtra) against which First Appeal No. 22 of 2016 is preferred and Land Acquisition Case No.603 of 2006 (Namdeo Giri V/s State of Maharashtra & Ors.).

8. *Per contra,* Mr. Nakshane, the learned Counsel for Claimant would urge that the Award of compensation of Rs.900/- per square meter

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is justified. According to him, even if it is presumed that the location of plot shown at Sale Deed (Exhibit – 22) can be used for commercial purpose, still it was expected of the Appellant to demonstrate that the plot of the claimant was not similarly situated as that of the plot shown at Exhibit -22.

9. The next submission of Mr. Nakshane is the Award of compensation of Rs.1620/- per square meter is unreasonable and there should be enhancement to the extent of Rs.2700/- per square meter for constructed area. He has invited attention of this Court to the Expert Report (Exhibit – 24) and submits that the expert has visited the spot on 15th December 2001 and has noticed that the construction of house is by cement, bricks and ceiling was of tin shed. According to him, all necessary facilities were available in the constructed area and as such the Award of compensation is on lower side. He invites attention of this Court to the Judgment delivered in First Appeal No.47 of 1998, particularly paragraph no.6 which reads thus :

> *"6. The reference court has considered the valuation report for determining the amount of compensation, however without any basis the reference court has recorded that the*

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valuation shown in the report is exaggerated as the material used for construction was not as mentioned in the valuation report. The reference court has assessed the valuation on its own, concluding that the market value of the acquired house might be between 40% to 50% of the valuation report. In my view, the approach of the reference court is not proper. The reference court could not have reassessed the valuation report as the court is not an expert in the matter of assessment of valuation. From the material on record, I find that the evidence of Shri Deodatta Pendse – Architect/Valuer cannot be doubted. Therefore, it has to be held that the claimant has proved that market value of the acquired house was Rs.1,66,000/- at the relevant time.

10. Mr. Nakshane would urge that this Court would be slow in interfering with the expert's report and in absence of any contradictory or contrary evidence, expert's report should be accepted at its face value. He would also draw support from the Judgment of the Apex Court in the matter of ***Mahesh Dattatray Thirthkar V/s State of Maharashtra***[1], particularly paragraph nos. 28 and 34 so as to claim that this Court should not substitute its own opinion to that of opinion of the expert. The paragraph nos.28 and 34 reads as under :-

1 **AIR 2009 Supreme Court 2238**

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"28. In Special Land Acquisition Officer V/s Sidappa Omanna Tumari and ors. [1995 Supp (2) SCC 168] it was held that a report of an expert for establishing the market value can be acted upon by the Court if "relevant factual data or material which constituted basis for the report is also produced and the same is proved to be genuine and reliable and the method adopted by the expert is found to be recognized and correct." In this appeal, the report of the engineer engaged by the appellant to prove the market value of the acquired property, is based on his personal visit to the site of the acquired property, the map drawn by him after taking the measurements of the acquired property and the valuation report made by him after deducting the cost of depreciation. The valuer of the appellant has also submitted a map as well as the cost of depreciation report and the valuation report. He has also given details of the date of his visit to the said property in 1985. Further, it is not disputed that he has used the PWD practice and standard engineering norms while deciding the value of the acquired property. All these factors seem to make the valuation of the expert valuer worthy of credence, as per the ratio of the above-stated case.

34. Further, the inconsistency pointed out in the testimony of the expert valuer is that he stated in the cross-examination that it is necessary for valuation of the acquired property to consider the type of material used in the construction of the same and the place from which the materials were procured and in the

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examination-in-chief, he agreed that he did not see any report regarding the same. These statements are, however, not contradictory. While it might be necessary for the valuer to consider the abovementioned factors in the process of his valuation, it is not necessary for him to rely on the report of another person with regard to the same. He, being an expert in his field, can rely on his own knowledge, experience and judgment to come to conclusions regarding these aspects of the acquired property. Thus, the testimony of the expert valuer is not rendered discredited on this ground."

11. According to him, there is sufficient evidence on record justifying claim of compensation of Rs.2700/- per square meter for the constructed area.

12. In response to the above, Mr. Kadu, the learned Counsel for Acquiring body would urge that in response to the questions which were put to the expert in the cross-examination it has come on record that the expert has carried out valuation in a stereo type manner. He would rely upon the Judgment of the Apex Court in the matter of ***Special Land Acquisition Officer and Another V/s Sidappa Omanna Tumari and Others***[1] , particularly paragraph nos.15, 16 and 17 which read thus :-

1 **1995 Supp (2) Supreme Court Cases 168**

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"15. It has become a matter of common occurrence with the claimants who seek enhanced compensation for their acquired lands from court to produce the reports of valuation of their lands in court purported to have been prepared by the experts. No doubt, courts can act on such expert evidence in determining the market value of the acquired lands, but the court having regard to the fact that experts will have prepared the valuation reports produced in the court and will depose in support of such reports, at the instance of the claimants, must with care and caution examine such reports and evidence given in support thereof. Whenever valuation report made by an expert is produced in court, the opinion on the value of the acquired land given by such expert can be of no assistance in determining the market value of such land, unless such opinion is formed on relevant factual data or material, which is also produced before the court and proved to be genuine and reliable, as any other evidence. Besides, if the method of a valuation of acquired land adopted by the expert in his report is found to be not in consonance with the recognized methods of valuation of similar lands, then also, the opinion expressed in his report and his evidence can be of no real assistance to the court in determining the market value of the acquired land. Since the exercise which will be done by the expert in arriving at the market value of the land in his report on the basis of factual data bearing on such valuation, will be similar to that to be undertaken by the court

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in determining the market value of the acquired land, it can no doubt receive assistance from such report, if it is rightly done and the data on which the report is based is placed before the court and its authenticity is established.

16. Therefore, when the valuation report of an acquired land is made by an expert on the basis of prices fetched or to be fetched by sale deeds or agreements to sell relating to the very acquired lands or the lands in the vicinity, need arises for the court to examine and be satisfied about the authenticity of such documents and the truth of their contents and the normal circumstances in which they had come into existence and further the correct method adopted in preparation of that report, before acting on such report for determining the market value of the acquired land. The opinion expressed in the report that the author of the report has made the valuation of the acquired lands on the basis of his past experience of valuation of such lands should never weigh with the court in the matter of determination of market value of the acquired lands, for such assertions by themselves cannot be substitutes for evidence on which it ought to be based and the method of valuation adoptable in such report.

17. Therefore, when a report of an expert is got produced by a claimant before the court giving the market value of the acquired lands, the court may choose to act upon such report for determination of the amount of compensation payable for the

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acquired lands, if the data or the material on the basis of which such report is based is produced before the court and the authenticity of the same is made good and the method of valuation adopted therein is correct."

13. According to him, there are sufficient reasons recorded by the reference court for disbelieving the expert's report in the case in hand, particularly which is based on the information extracted in the cross-examination of the said expert witness. He sought dismissal of the cross-objection and prayed for allowing the Appeal.

14. Considered rival submissions.

15. So as to justify the claim for enhanced compensation before the reference court so also in this Appeal, Sale Deed (Exhibit - 22) dated 25th March 1994 is relied upon whereby upon plot having area admeasuring 56.25 square meters was sold for Rs.50,000/- on 25th March 1994.

16. If the said document is appreciated, particularly the consideration offered in the said Sale Deed (Exhibit – 22) in the light of evidence of valuer and the claimant recorded in LAC No. 603 of 2006

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(Namdeo Giri V/s State of Maharashtra & Ors.), which is also the subject matter of challenge in First Appeal No. 938 of 2016, it can be inferred that in the said transaction consideration was offered on higher side. In the evidence of claimant and the valuer it has come on record that the plot reflected in the said Sale Deed(Exhibit – 22) was having commercial potential as same was put to commercial use by operating the Dispensary and Pharmaceutical Shop.

17. It has also come in the evidence of the claimant that he has not received any offer for use of plot for commercial purpose. It is worth to clarify here that in all these Appeals the enhancement granted by the reference court under Section 18 of the Land Acquisition Act is based on same sale transaction i.e. Exhibit – 22 a property having commercial potential. From the evidence of the parties, it can be easily inferred that the claimants have failed to establish that their plot was also having commercial potential.

18. Apart from above, in the same Section 4 Notification this Court had an occasion to consider the value of the plot in First Appeal No.1028 of 2007. This Court while dealing with the prayer for

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enhancement at the behest of the Claimant, has observed in paragraph nos.4, 5 & 6 as under :-

> *"4. The learned Advocate for the respondent No.3 has pointed out that huge tracts of land have been acquired for the bembala project. It is submitted that all the lands situated in village Pahur, Tq. Babhulgaon, District Yavatmal have been acquired. It is further submitted that around 475 persons (claimants) have settled the dispute and the claimants and the acquiring body have worked out compensation receivable by the claimants for the land (plot area) at Rs.750 per square meter. It is pointed out that the settlements are arrived at before the Lok Adalat.*
>
> *5. After hearing the learned advocates for the respective parties, I find that the following points arises for consideration :-*
>
> *"Whether the amount of compensation receivable by the claimants determined by the Reference Court is just and proper ?'*
>
> *6. Most important and relevant factor in the present case is that the entire land of village Pahur has been acquired for the same project and 475 claimants have settled the matter with the acquiring body before the Lok Adalat. Considering these aspects, I find that the compensation for the land has to be @ Rs.750/- per square meter along with the statutory benefits."*

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19. So far as the enhancement granted by the reference court is concerned, the reference court has lost sight of the fact that the land owner under the same Section 4 Notification has agreed to receive compensation at the rate of Rs.750/- per square meter. These 475 land owners have accepted the offer of Rs.750/- per square meter for plot area made by the Appellant – Acquiring Body and 25% enhancement on the compensation awarded by the Land Acquisition Officer for constructed area. In the aforesaid background, the reference court ought to have awarded the same compensation, particularly when the majority of the land owners have agreed for the same, but for the claimants who are the Respondents before this Court. This Court has already observed that the claimants have not demonstrated that the land which was acquired was having commercial potential. Once 475 claimants under same Section 4 Notification have agreed for the enhanced compensation of Rs.750/- per square meter for plot area, the Respondent – land owners cannot be treated differently by awarding more compensation that too in absence of any convincing evidence.

20. So far as the claim in the cross objection is concerned, the

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claimant has sought enhanced compensation at the rate of Rs.2700/- per square meter for the construction. The learned Counsel for the claimant has also relied upon the evidence of an expert and the report at exhibit – 24. The learned Counsel has submitted that in absence of any contradictory evidence, the report of expert should have been accepted. He has drawn support from the Judgment of this Court in the matter of ***Deorao Ganpatrao Gawande V/s The Collector, Yavatmal in First Appeal No. 47 of 1998***, particularly paragraph no.6 *(cited supra)*. He has also relied upon the judgment in the matter of **Mahesh Dattatraya Tirathkar** *(cited supra)*.

21. If both the Judgments including the Judgment cited by Mr. Kadu, the learned Counsel for Appellants in the matter of **Special Land Acquisition Officer and another V/s Sidappa Omanna Tumari and others** *(cited supra), are* appreciated, what is required to be noted is, the report of the expert needs to be in tune with the practice that is adopted by the Valuer of Public Works Department and the standard of Engineering norms while deciding the value of the acquired property. Not only this, the court is required to satisfy about the vicinity of the said

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report and the truth of all their contents in the existing normal circumstances which would have existed at the relevant time. It is also required to be seen whether the correct method for determining correct market value of the acquired property is followed or not.

22. In the matter of **Mahesh Dattatraya Tirathkar** (cited supra), this Court has observed that the evidence of an expert witness needs to be scrutinized with great care and circumspection. The expert needs to follow the standard protocol, such as the practice followed by the Public Works Department and standard engineering norms while calculating the value of acquired property.

23. In the matter of **Special Land Acquisition Officer and another V/s Sidappa Omanna Tumari and others** *(cited supra),* the Apex Court in addition to above observations has noted that the expert's evidence and his opinion should be based on the relevant factual data which is also produced before the Court and proved to be genuine and reliable. The method of valuation of acquired land has to be a recognized method of valuation. His mere assumption and presumption will not help the Court in forming an opinion of grant of enhanced compensation. Such

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expert is also required to consider the type of material use for construction, placed from where such material was produced and such method should be found in the report drawn by him. The basis of which forming an opinion should also be reflected in the report.

24. If the evidence of the expert witness in the case in hand so also the report drawn by him *qua* the property in question is analyzed, the only inference that can be drawn is that the said evidence is based on assumption and presumption. He has not taken pains to find out the exact valuation. He has deposed in stereo type manner in each of the matters supporting the claim of the claimant. As such, the Appellant has rightly raised a serious doubt on the testimony of the said expert witness.

25. In the aforesaid background and having regard to the fact that constructed structure was having only ceiling of tin shed which perhaps constructed much before the Section 4 Notification is gazetted. The fact remains that the learned Counsel for the Acquiring body has demonstrated that it has offered 25% enhanced compensation for the constructed area over and above the compensation awarded by the Land Acquisition Officer and the same was accepted by almost 475 land owners.

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Same analogy needs to be applied with equal force even in the Cross objection. The reference court has not furnished any sustainable reason for grant of enhanced compensation from Rs.810/- per square meter to Rs.1620/- per square meter, particularly when in the evidence of expert it was brought on record that the relevant material viz – the age, cost, quality of construction, sanctioned map, prevailing Government rates were not looked into. This Court is alive to the principle which is brought to the notice of this Court by the learned Counsel for the Claimant that this Court should be slow in substituting its own opinion. In the cross-examination of the expert, it is noticed that the expert has deposed in a stereo type manner and has not followed the standard protocol while working out the valuation of the constructed area. In such an eventuality, reference court so also this Court is right in discarding evidence of the expert.

26. The aforesaid view is supported by the Judgment of the Apex Court in the matter of **Special Land Acquisition Officer V/s Sidappa** *(cited supra)*. This Court is also required to be sensitive to the fact that the

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public money cannot be distributed in an arbitrary manner merely for asking just because the land of claimant is acquired.

27. In the light of above, Appeal of the Acquiring Body stands partly allowed in above terms, whereas the Cross Objection of the claimant stands dismissed.

28. It is clarified that this Court has reduced enhanced compensation for the open land of plot at the rate of Rs.750/- per square meter, whereas has maintained the compensation awarded for construction.

29. The acquiring body will be at liberty to submit its fresh calculation in the wake of aforesaid observation with an advance copy to the learned Counsel for the Claimant.

30. The Acquiring Body will be at liberty to withdraw the excess amount of compensation deposited in this Court along with interest accrued thereon after calculating the same in the wake of observations made herein above.

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31. Needless to say that claimant will be entitled to withdraw the amount of compensation.

(NITIN W. SAMBRE, J.)

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