
(2023) 12 BOM CK 0014

Bombay High Court (Nagpur Bench)

Case No: First Appeal No. 404 Of 2019

Executive Engineer,
Bembla Project Division

APPELLANT

Vs

Dnyaneshwar
Pandurang Junghare
And Others

RESPONDENT

Date of Decision: Dec. 6, 2023

Hon'ble Judges: Vrushali V. Joshi, J

Bench: Single Bench

Advocate: P.B.Patil, A.B.Nakshane, S.C.Joshi

Final Decision: Partly Allowed

Judgement

Vrushali V. Joshi, J

1. Heard.

2. Being aggrieved by the judgment and award dated 07.09.2016 passed by the 7th Joint Civil Judge Senior Division, Yavatmal, Dist.Yavatmal in

L.A.C No.210 of 2007, the appellant has filed this appeal. By notification dated 31.07.2003 under Section 4, the land of the appellant was acquired.

The claimant was the owner of house No. 65 admeasuring 73 square meter open area having 91.70 square meter Constructed area. The Land

Acquisition Officer has granted compensation i.e. @ Rs.90/- per square meter for open plot and @ of Rs. 425.34/- per square meter for constructed

area. The claimant has filed the reference on 01.08.2005 demanding enhanced compensation. The Reference Court has granted enhanced

compensation @ of Rs. 750/- per square meter for open plot and @ Rs. 553/- per square meter for constructed area. The said judgment has been

challenged by the acquiring body by filing this appeal.

3. The appellant has pointed out that in the First Appeal No.791 of 2010 (V.I.D.C. through Executive Engineer X Vinayak Shankarrao Parimal and

three ors.) decided on 11.07.2017, this Court has determined an amount of Rs. 650/- per square meter as fair compensation for the plot of land from

village Kolhi and following the said judgment this Court has passed an order in First Appeal No.353 of 2015 and reduced the compensation granted by

the reference Court.

4. The following points arise for consideration:

“Whether the amount of compensation as granted by the Reference Court is just and proper?

5. I have heard the learned counsel for the parties and I have perused the evidence on record insofar as, the acquisition of the open plot of land is

concerned, the Reference Court has enhanced the same to Rs. 750/- per square meter. This is after referring to the sale instance dated 25.03.1994.

Said sale instance pertains to an open plot of land at village Pahur. Which was sold at the rate of Rs. 868/- per square meter. In the first appeal

No.791 of 2010 acquisition from village Kolhi itself with regard to the plot no. 28 was under consideration. The notification under Section 4 of the said

Act is dated 31.07.2003, which is also the same notification in the present appeal. After considering the same sale instance and after recording a

finding that village Kolhi was the smaller village than village Pahur which had better facilities. This Court held that the amount of Rs. 650/- per square

meter as compensation for the open plot of land would be fair compensation. It is to be noted that an application seeking review of that judgment has

been recently dismissed. Considering the fact that for the adjoining plot bearing No.28 from the same village an amount of Rs. 650/- per square meter

has been granted after referring to the same sale instance dated 25.03.1994. I am inclined to follow the said judgment and hold that fair compensation

for the open plot of land would be Rs.650/- per square meter. To that extent the compensation determined by the Reference Court is liable to be reduced.

6. Insofar as the constructed portion of the house is concerned, the Reference Court has taken into consideration the valuation report at Exh.55 and

nature of construction and its quality. The expert valuer had shown rate of construction at higher side. It is found that the entire evidence on record

has been taken into consideration while arriving at the figure of Rs. 553/- per square meter. There is no other evidence available that could warrant

further enhancement. Hence, that finding recorded by the Reference Court deserves to be confirmed.

7. The point as framed is answered by holding that the claimant is entitled to Rs.650/- per square meter as compensation for the open plot and

Rs.553/- per square meter for constructed portion.

8. As a result of the aforesaid discussion the following order is passed:

(i) The judgment of the Reference Court dated 07.09.2016 is partly modified. It is held that the claimants are entitled to compensation @ Rs. 650/- per

square meter for open plot of land and Rs. 553/- per square meter for the constructed portion. Subject to this modification, the award stands

confirmed.

(ii) The First Appeal is partly allowed. The parties shall bear their own costs.