

Filed on - 18-07-2003
Registered on- 13-07-2005
Decided on- 05-04-2007
Duration-1 Yr. 8 Mths. 22 days
Exhibit-

IN THE COURT OF AD HOC DISTRICT JUDGE- I YAVATMAL

(Presided over by Shri S.Y. Ranpise)

LAND ACQUISITION CASE NO.250/2005

- 1)Subhash Mahadeorao Barde,
aged about 42 years
- 2) Deepak Mahadeorao Barde,
aged about 35 years,

Both-Agriculturists

R/o Dighi Tq.Babhulgaon

Distt.Yavatmal

PETITIONERS

---VERSUS---

- 1) The State of Maharashtra
Represented by the the Collector,
Yavatmal,Tq.& Dist.Yavatmal
- 2) The Special Land Acquisition officer,
Bembala Project,Yavatmal
Tq.& Dist.Yavatmal .
- 3) The Executive Engineer,
Bembala Project Division,Vidarbha Development
CorporationYavatmal
Tq.&Distt.Yavatmal..... ... **RESPONDENTS**

Shri Kaprekar,Adv. appearing for the Petitioners.
Shri Kazi, A.P.P.. appearing for the Respondents 1 & 2,
Shri Jani,Adv. appearing for Respondent no.3

J U D G M E N T

(Delivered on this 5th day of April,2007)

1. This is a reference for enhancement of the compensation of

the plot and structure thereon of village Dighi, arose out of L. A. Case No.4/47/97-98 of Dighi of the Award declared on 10.4.2002.

2. Facts in brief :-

The Petitioners contend that their plot and the house bearing no.72 has been acquired by the Respondents for Bembla Project. After adopting due procedure, the Respondent no.2 has granted the compensation of the plot and the structure thereon at Rs.2,03,076/- with the other requisite benefits. The Petitioners contend that as per the market rate, the Spl. L.A.O. should have granted the cost of the open plot at Rs.75/- per sq.ft and and cost of construction at Rs.325/- per sq.ft. Looking to the structure and teak wood applied, the market value of the plot and the construction thereon was much higher than determined by the Spl.L.A.O. Accordingly, they pray for the additional compensation at that rates.

3. The claim is opposed by the Respondents, inter-alia, contending that they have rightly and correctly determined the compensation by taking into consideration the factors for determination. As per the market trend and price and looking to the condition of the house, the compensation was adequately paid. The petition is only made to grab the enhanced amount. Accordingly they pray for the dismissal.

4. In view of the rival contentions, the following issues came to be formulated. I record my findings against them for the reasons mentioned below:-

ISSUES

FINDINGS

1. Do the claimants prove that the compensation paid by the Spl. L. A. O. is inadequate and does not reflect correct market price?... ..

Yes.

- 2) Is the application within limitation ?... ..Yes.
3. Are claimants entitled to enhanced compensation and if so at what rate? Reference is partly allowed as per final order.

REASONS

5. To substantiate the claim, the Petitioner, on their behalf examined applicant Subhash Madhaorao Barde vide Exh.24 and has adduced the evidence of Chandrashekhar Panjabrao Wankhade -PW.2 (Architecture & Valuer) vide Exh.32 and closed their side. The Respondents have not stepped into witness box.

6. **As to Issue No.1 :-**

What it reveals from the oral version of the Petitioner's witness is that they rely on the sale instances of village Pahur and Dighi, for making comparison and for determination of market value. It is also admitted from the other side that there is sale instance from village Dighi, when the notification u/s.4 of L.A.Act was published.

7. In this connection, the sale instance of village Dighi Exh.28 will display that the area of 220 sq.ft. i.e. 20.40 sq.mtr. has been sold for Rs.6000/- in the year, 1992. Admittedly, this sale instance is prior to the publication of the notification u/s.4 of L.A.Act. It is admitted on record that village Pahur is bigger and equipped with all modern facilities than in comparison to Dighi and Barad. However, by no stretch of imagination, it can be said that there can be lessor comparison between those villages. Village Pahur is at a distance of 1 k.m. from Dighi.. Consequently, it cannot be said that those villages had no potential being they are adjoining to village Pahur, which is well equipped. Consequently, it can be safely said that those villages are also coming towards development

though not faster. But, by no means it could be said that these villages have no potential value.

8. In this regard, if we perused the oral version of PW.1, it will be seen that he is not an expert to say about the quality of construction or that of market trend of the open space. As such, the oral version of PW.2, who is Architecture and Valuer, plays an important role.

If we go through his oral version, it will be seen that he is well qualified with a adequate knowledge in his profession. He has visited the acquired plot and house and has also taken into consideration the sale instances of village Dighi. In spite of searching cross-examination, nothing fruitful came out from his mouth so as to disbelieve his version. It is nowhere demonstrated that he is interested in the theory put forth by the Petitioner so as to make him a favour. There is no counter expert evidence on record so as to discard the evidence of this witness in toto.

9. The valuation report Exh.33 will display the situation that he has made the total valuation of the open plot and structure thereon at Rs.9,10,000 /-. He has also shown the structure alongwith the map, drawn by him, when he has visited the spot. The map is not disputed by the other side to stamp it as an exaggerated. He has further testified that he has adopted the methods for valuing the property. Looking to the circumstances and to the sale instance available on record, when the property of village Pahur could fetch Rs.80/-per sq.feet i.e. Rs.875/- per sq.meter in the year 1994, why at least this property of village Dighi could not fetch Rs.400/-per sq.meter at the time of acquisition which is just near village Pahur. So far as the claim of plot & construction is concerned, the petitioner has claimed Rs.75/-sq.ft. And Rs.325/- per.sq.ft. respectively. As per the report of the valuer, after making depreciation of the property, he has shown the same to the extent of Rs.5,56,000/-. The

L. A. O. has paid compensation for house at Rs.1,70,196/-. Even if we accept the report in part, it can not be said that the cost of construction could be less than Rs.2,50,000/-. I feel that this should have been just and reasonable amount of compensation, which should have been granted to the Petitioner.

Accordingly I fix the the compensation for plotable area and construction , as under :-

- 1) Compensation for open area 438.40 x 400 = Rs.1,75,200/-
- 2) Compensation for cost of construction : Rs. 2,50,000/-
- 3) Less—Compensation awarded by the L. A. O.Rs. 2,03,076/-

ADDITIONAL COMPENSATION : Rs.2,22,124/-

12. In the result, I answer Issues accordingly and pass the following order.

ORDER

Reference is hereby partly allowed.

The Respondents shall pay **Rs.2,22,124/-**(Two lakh twenty two thousand one hundred twenty four only) to the Petitioner.

The Respondents shall pay 12% additional component on the enhanced amount of compensation from the date of notification i.e. 31-1-2000 till the date of award i.e. 10-4-2002.

The Respondents shall pay 30% solatium on the enhanced amount of compensation.

The Respondents shall also pay interest @ 9% per annum on the enhanced amount of compensation from the date of Award i.e. 10.4.2002 till one year.

The Respondents shall also pay interest @ 15% per annum on

the aggregate amount of compensation from 10.4.2003 till its actual realization.

The Respondents shall pay proportionate cost to the Petitioner.

The entire amount shall be paid within fifteen months.

Dt/-5.4.2007

(S.Y.Ranpise)
Ad hoc District Judge-I
Yavatmal