

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 293 OF 2001

Habib Dadamiya Tamboli,
Age : 48 years, Occu. Agri.,
R/o Laul No. 1, Tal. Majalgaon,
District Beed

APPELLANT

VERSUS

1. The State of Maharashtra,
through Special Land Acquisition
Officer, Beed, Jayakwadi
Project No. 2/B, Beed.

2. Smt. Asarabai Babasaheb Zute,
Age : 55 yeas, Occu. Household,
R/o Laul, Tal. Majalgaon,
District Beed.

RESPONDENTS

Mr. B.S. Kudale, Advocate for the appellant
Mr. S.G. Sangle, A.G.P. for respondent No.1/State
None for respondent No. 2

CORAM : M.T. JOSHI, J.

DATE : 12/02/2015

ORAL JUDGEMENT :

1. Heard learned counsel for the appellant and
learned A.G.P. None appears for respondent No.2.

2. The only issue in the present appeal is
regarding apportionment of the compensation awarded by

the Special Land Acquisition Officer as regards the structure and a well standing in the acquired land.

3. The judgement of the learned Civil Judge Senior Division would show that both sides admitted that the present appellant Habib Tamboli had purchased half of the acquired land on 22nd September, 1976 from the sister of respondent No. 2 – Asarabai Zute and other co-owners and therefore, there is no dispute regarding the apportionment of half of the compensation so far as the acquired land is concerned. While the present appellant Habib claimed 50% share in the compensation awarded by the learned Land Acquisition Officer in the structure and well amounting to Rs. 99,559.70 paise, the respondent No. 2 – Asarabai claimed that the present appellant has no right, interest or title in the structure and the well and the same is situated within the portion owned by her.

4. Upon hearing both sides and considering the material on record, the following point arises for my determination:-

"Whether the present appellant is having equal share in the compensation awarded for the structure and well situated in the acquired land ?"

My finding to the above point is in the affirmative. The appeal is, therefore, allowed with costs, for the reasons to follow :-

R E A S O N S

5. The reading of the award of the learned Reference Court would show that the learned Reference Court has misunderstood that there were two wells in the land and the present dispute is regarding the third well which is excavated and a new one. In fact, time and again, the present appellant has made applications/representations to the Land Acquisition Officer for apportionment. The certified copy of the 7/12 extract on record would show that there was only one well and a structure standing in the land. Naturally, in the 7/12 extract, there is no mention as to in which portion of the land, the same is situated. We have, however, the

true copies of the certified copies of the sale-deeds executed in favour of the present appellant by the sister of the respondent No.2 and other co-owners. The sale is an admitted fact. The recitals of the sale-deed, which was executed on 22nd September, 1976 would show that the present appellant had purchased 1/2 share in the superstructure as well as in the well. In the circumstances, the issue would not be as to where the structure or the well is located, but the fact remains that the present appellant had purchased 1/2 share in the superstructure and the well in the year 1976 and the same was no-where challenged by the respondent No. 2 at any time. In that view of the matter, the appeal deserves to be allowed. Hence, the following order:-

6. The appeal is hereby allowed with costs. It is hereby declared that the present appellant has right to withdraw 50% of the amount from the amount granted by the Land Acquisition Officer towards the cost of the structure and well. The decree be drawn accordingly.

. The appeal accordingly stands disposed of.

7. In view of disposal of the first appeal, civil

application No. 4797/2001, for grant of stay, stands disposed of.

[M.T. JOSHI]
JUDGE

npj/fa293-2001