

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

LETTERS PATENT APPEAL (ST.) NO. 15687 OF 2011
IN/WITH
CIVIL APPLICATION NO. 7596 OF 2008
IN/WITH
FIRST APPEAL (ST.) NO. 400 OF 1998

Nanarao Yadavrao Deshmukh
(Died, through L. Rs.)
Bapurao s/o Nanarao Deshmukh and another ...Appellants

versus

The State of Maharashtra and another ...Respondents

.....
Mr. S. K. Adkine, advocate for the Appellants
Mrs. M.A. Deshpande, A.G.P. for respondents
.....

**CORAM : R.M. BORDE AND
V. K. JADHAV, JJ.**

DATED : 17th APRIL, 2015

PER COURT (PER V. K. JADHAV, J.) :-

1. Heard. Admit.
2. The appellants are the original applicants in Land Acquisition Reference No. 48 of 1985, filed under Section 18 of the Land Acquisition Act 1894, claiming enhancement of compensation of Rs.10,000/- per acre against the acquired land Gat No. 175 to the extent of 1 Hectar 5 Aar, situated at village Amgavan, District Nanded. The learned C.J.S.D. by his judgment and award dated

30.1.1988 partly allowed the Reference, thereby granting compensation at the rate of Rs.3500/- per acre.

3. Being aggrieved and dissatisfied with the judgment and award passed by the learned C.J.S.D. Nanded, the appellants filed first appeal (St.). No. 400 of 1998. Since there was delay of 3627 days in filing the said first appeal, a civil application No. 7596 of 2008 was filed for condonation of delay. However, the learned Single Judge by order dated 8.4.2009 has dismissed the civil application for condonation of delay and consequently the registration of First Appeal was refused. Hence, this Letters Patent Appeal.

4. According to the appellants, delay was caused due to inability of the appellants to pay Court fees within time required for filing first appeal before this Court, on account of their poor financial condition. Considering the reason set out by the appellants, we are of the opinion that there was justifiable cause due to which the appellants were prevented from filing First Appeal within limitation and thus the appellants make out a case for condonation of delay of 3627 days caused in filing First Appeal. We accordingly allow civil application No. 7596 of 2008. Delay of 3627 days caused in filing first appeal is condoned. First appeal be registered.

5. In so far as the First Appeal is concerned, from the record, it appears that, Reference filed before the Reference Court, by the appellants under Section 18 of the Land Acquisition Act was decided by the Reference Court in the year 1988 and the First Appeal was preferred in the year 1998, alongwith application for condonation of delay of 3627 days. Since the said application for condonation of delay was rejected by the learned Single Judge of this Court, Letters Patent Appeal was preferred belatedly in the year 2011. Considering the period i.e. from the date of decision of Reference Court to till today, in the interest of justice, in our view, it would be appropriate to decide the First Appeal itself by passing following order, as the first appeals preferred by other claimants arising out of same acquisition proceedings, came to be decided by the learned Single Judge of this Court and the said decision has not been challenged by the State.

6. In the light of above, Rule, Rule returnable forthwith, with the consent of parties, Heard learned counsel for the appellants and the learned A.G.P. for the respondent / State.

7. The land of the present appellants were acquired for the purpose of construction of Upper Penganga Project. The Special Land Acquisition Officer had awarded compensation at the rate of

Rs.2,000/- per acre. The appellants filed Reference before the Reference Court. The Reference Court enhanced the compensation to Rs. 3500/-. The appellants have assailed the said Award, passed by the Reference Court on the ground that the appellants are entitled to compensation of Rs. 10,000/- per acre. Shri Adkine, learned Counsel for the appellants relies upon the Judgment and order passed by the learned Single Judge of this Hon'ble Court, dated 15/16th January, 2009, in First Appeal No. 109 of 1994 and dated 23.9.2010 in first appeal Nos. 1530 and 1531 of 2010, in respect of lands acquired for the same project.

8. In the said Judgments, this Court had enhanced compensation to Rs. 9,000/- per acre. Shri Adkine, learned Counsel further relies upon the Judgment of the Apex Court in a case of **"Union of India V/s. Haridar Pal Singh and others reported in 2005, AIR, 5900"** and contended that even if the area of land is acquired from different villages, all of them can be capable of being developed in same manner, and also, lands acquired in that case, can be considered to be one single unit. In the light of the above and for the reasons recorded in the Judgment in First Appeal No. 1094 of 1994 and other companion appeals, we allow the present appeal and hold that the appellants are entitled to get the amount of compensation at the rate of Rs. 9,000/- per acre. The claimants are also entitled to get the

statutory interest at the rate of Rs. 9% per annum from the date of taking possession for a period of one year, and thereafter, at the rate of Rs. 15% per annum, till realization of the amount. The claimants are also entitled to 30% solatium on the said enhanced amount, so also to get an interest at the rate of Rs. 12% per annum from the date of Notification U/Sec. 4 of the Act till the date of taking possession. As such, First Appeal is allowed. However, there shall be no order as to costs. The respondents shall pay the amount to the appellants as granted. Accordingly, Letters Patent Appeal, civil application for condonation of delay in filing first appeal as well as the first appeal stand disposed of. Rule made absolute in above terms.

9. However, it is made clear that the appellants would not be entitled to interest and other admissible benefits during the period from 30.4.1988 to 6.1.1998 (i.e. the date of expiry of limitation for filing first appeal to the date of filing of first appeal) and further from 8.4.2009 to 28.6.2011 (i.e. date of dismissal in civil application for condonation of delay in filing of first appeal to the date of filing of Letters Patent Appeal).

(V. K. JADHAV, J.)

(R. M. BORDE, J.)

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