

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 784 OF 2015

The Executive Engineer,
Minor Irrigation Division, Jalna,
Through Assistant Engineer.

... Appellant

Versus

Pralhad s/o Bapurao Borkar and others.

... Respondents

...

Mr. S.C.Arora, Advocate for the Appellant.

Mr. Ajeet B. Kale, Advocate for Respondent No.1.

Mr. P.P.More, AGP for Respondent Nos.2 and 3.

...

WITH

CIVIL APPLICATION NO. 8476 OF 2015

IN

CIVIL APPLICATION NO. 272 OF 2015

IN

FIRST APPEAL NO. 784 OF 2015

Pralhad s/o Bapurao Borkar.

... Applicant

Versus

The State of Maharashtra and others.

... Respondents

...

Mr. Ajeet B. Kale, Advocate for the Applicant.

Mr. P.P.More, AGP for Respondent Nos.1 and 2.

Mr. S.C.Arora, Advocate for Respondent No.3.

...

CORAM : **N. W. SAMBRE, J.**

DATE : 04th August, 2015.

Per Court:

1 Heard Mr.Arora, learned counsel for the Appellant and Mr.Kale, learned counsel for Respondent – claimant.

2 The appeal is against the enhancement order under Section 18 of the Land Acquisition Act.

3 The parties are in agreement that in First Appeal No.68 of 2014 alongwith other connected matters, this Court has already upheld the judgment of the Reference Court by its order dated 11th February, 2015.

4 In view thereof, the learned counsel for the Respondent – claimant would urge that the present appeal be also decided on same line.

5 Mr.Arora, learned counsel for the Appellant – Acquiring Body has tried to distinguish the said judgment on the following issues:

- (a) That, in case of acquisition of large land, the deduction particularly under the head “largeness

of land” is required to be appreciated by adjusting appropriate deduction which is lost sight of by the First Appellate Court while delivering the judgment in First Appeal No.68 of 2014. He has tried to draw support of the Apex Court in the matter of **Smt. Lila Ghosh (dead) through LR. Vs. State of W.B.**, reported in, **AIR 2004 Supreme Court 288**. He would further urge that while determining the market value, the award passed in respect of neighbouring land or the land in the same village, has an evidential value, however, the same is not *ipso facto* binding on the Reference Court while enhancing the compensation and would urge that other factors with regard to the location, facilities attached etc. are required to be appreciated. He has drawn support of the judgment of the Apex Court in the matter of **Union of India Vs. Pramod Gupta (D) by L.Rs. and others**, reported in, **AIR 2005 Supreme Court 3708(1)**. In addition to above, he would urge that even if

certified copy of the sale instance was placed on record and appreciated by this Court while dismissing the First Appeal No.68 of 2014, unless transaction is proved, the party to the proceedings cannot take benefit of Section 51-A of the Land Acquisition Act by stretching the provision to the extent that the sale-deeds are binding on the parties to the reference proceedings. In support of his contention, he has relied upon the judgment of this Court in the matter of **State of Maharashtra Vs. Bhagwan Vaijinath Bhujbal**, reported in, **BCR-2001-3-172**.

- (b) In addition to above, Mr.Arora, learned counsel would urge that the date of notification under Section 4 in the present appeal is 19th November, 1998, whereas the date of notification in First Appeal No.68 of 2014 is 3rd May, 1999.

6 It is required to be noted here that the difference in between these two notifications under Section 4 is hardly six months.

7 Apart from above, notification under Section 4 in this
appeal is prior in time then that of notification in First Appeal No.68 of
2015.

8 So far as six months difference in Section 4 notification is
concerned, it is not established as to how the enhancement order by
the Reference Court has caused financial loss to the Appellant.

9 So far as other contention of the learned counsel for the
Appellant is concerned, in my opinion, once this Court in other appeals
have already appreciated the sale instance, location of land and has
upheld the judgment delivered by the Reference Court under Section
18 and unless the said judgment delivered in First Appeal No.68 of
2014 on 11th February 2015, is not upset, judicial discipline warrants
that this Court should follow the said judgment, which is delivered in
similar set of facts arising out of same acquisition proceedings.

10 In view of above, in my opinion, the present appeal is also
governed by the judgment of this Court in First Appeal No.68 of 2014,
delivered on 11th February, 2015.

11 As such, the present appeal stands dismissed in terms of
the judgment delivered in First Appeal No.68 of 2014 on 11th February,

2015.

12 In view of dismissal of first appeal, pending civil application for withdrawal of amount, does not survive and the same stands disposed of.

[N. W. SAMBRE, J.]

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