

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

CIVIL APPLICATION NO.3925 OF 2014
IN
FIRST APPEAL NO.205 OF 2014

Smt. Shaheda Shahanwaz Vinchu	...Applicant
Bhivandi Nizampur City Municipal Corporation V/s.	...Appellant
State of Maharashtra & Anr.	...Respondents

WITH
CIVIL APPLICATION NO.3926 OF 2014
IN
FIRST APPEAL NO.206 OF 2014

WITH
CIVIL APPLICATION NO.3927 OF 2014
IN
FIRST APPEAL NO.207 OF 2014

WITH
CIVIL APPLICATION NO.3928 OF 2014
IN
FIRST APPEAL NO.208 OF 2014

WITH
CIVIL APPLICATION NO.3929 OF 2014
IN
FIRST APPEAL NO.210 OF 2014

WITH
CIVIL APPLICATION NO.3930 OF 2014
IN
FIRST APPEAL NO.213 OF 2014

WITH
CIVIL APPLICATION NO.3932 OF 2014
IN
FIRST APPEAL NO.215 OF 2014

WITH

CIVIL APPLICATION NO.3933 OF 2014
IN
FIRST APPEAL NO.221 OF 2014
WITH
CIVIL APPLICATION NO.3934 OF 2014
IN
FIRST APPEAL NO.224 OF 2014
WITH
CIVIL APPLICATION NO.3935 OF 2014
IN
FIRST APPEAL NO.228 OF 2014
WITH
CIVIL APPLICATION NO.3936 OF 2014
IN
FIRST APPEAL NO.233 OF 2014
WITH
CIVIL APPLICATION NO.3937 OF 2014
IN
FIRST APPEAL NO.315 OF 2014
WITH
CIVIL APPLICATION NO.3939 OF 2014
IN
FIRST APPEAL NO.320 OF 2014
WITH
CIVIL APPLICATION NO.3940 OF 2014
IN
FIRST APPEAL NO.365 OF 2014
WITH
CIVIL APPLICATION NO.3941 OF 2014
IN
FIRST APPEAL NO.366 OF 2014

Mr. R. S. Datar for the Applicants.

Mr. A. R. Patil, AGP for State.

Mr. N. R. Bubna for Respondent No.2.

CORAM: K.K. TATED, J.

DATED : FEBRUARY 12, 2015

P.C. :

1. Heard the learned counsel for the parties. These Applications are

preferred by the claimants for withdrawal of the amount deposited by the Appellants in Reference Court.

2. In the present proceedings, the Special Land Acquisition Officer (SLO) issued Notification dated 08/08/2000 under section 4 of the Land Acquisition Act (the said Act) for acquiring Applicants'/claimants' land situated at Nizampura – Bhiwandi, Tq. Bhiwandi, Dist. Thane for the purpose of primary school and play ground site No.43. After following due process of law, the SLO declared the Award dated 31/03/2001 and awarded compensation in respect of the acquired land @ Rs.1345/- per sq.mtr. upto 1000 sq.mtr and thereafter @ Rs.807/- per sq.mtr.

3. Being aggrieved by the said award, the Applicants-claimants preferred Reference under section 18 of the said Act claiming compensation in respect of the acquired land @ Rs.2000/- per sq.mtr. The Reference Court relying on Exhibit 80, 94, 97 in LAR No.111/2011 and also the ready reckoner for the year 2000 held that the Applicants-claimants are entitled to compensation of acquired land @ Rs.1400/- per sq.mtr. i.e. Reference Court has granted additional compensation @ Rs.55/- per sq.mtr. The Reference Court awarded the interest @ 9% p.a. for the first year from 17/02/1990 i.e. the date of possession and thereafter @ 15% p.a. till the payment.

4. Being aggrieved by the said judgment and award dated 26/03/2013 passed by the Jt. Civil Judge, Senior Division Thane, the acquired body - Bhiwandi City Municipal Corporation preferred these

First Appeals. In these First Appeals, they preferred Civil Applications for stay wherein, pursuant to the order passed by this court, they deposited entire decretal amount in the Reference Court. The Appellants filed First Appeals mainly on the ground that the Applicants/claimants have not placed on record any evidence for claiming enhanced compensation in respect of the acquired land. The acquiring body also raised objection about the payment of interest from the date of possession i.e. 17/02/1990. It is the contention of the acquiring body that at the most the claimants are entitled to interest as per the amended provisions of the said Act from the date of Notification under section 4 of the said Act i.e. 08/08/2000 @ 12% p.a. for the first year and thereafter @ 15% p.a. on compensation.

5. The learned counsel for the Applicants-claimants submits that the Reference Court has awarded enhanced compensation only to the tune of Rs.55/- per sq.mtr. He further submits that the Reference Court mainly relied on Exhibit 94 and 97 along with ready reckoner for the year 2000 for coming to the conclusion that the claimants are entitled to additional compensation @ Rs.55/- per sq.mtr. He submits that in the present proceedings, admittedly, the possession of the acquired land was handed over to the acquiring body on 17/02/1990. Hence, they are entitled interest as per the amended provisions of the said Act from the date of taking possession i.e. 17/02/1990. He further submits that the Reference Court has awarded meager amount in respect of the acquired land in Reference under section 18 of the said Act. Hence, this Hon'ble Court be pleased to allow the Applicants to withdraw the said amount without furnishing any security.

6. On the other hand, the learned counsel for the acquiring body vehemently opposed the present Applications. He submits that the Applicants-claimants failed and neglected to place on record any documents in the form of sale deeds to show that they are entitled enhanced compensation in respect of the acquired land. He further submits that the Reference Court mainly relied on the ready reckoner for the year 2000 for coming to the conclusion that the claimants are entitled to compensation which is not permissible. He further submits that the Reference Court erred in coming to the conclusion that the claimants are entitled to the interest as per the amended provisions of the said Act from the date of possession i.e. 17/02/1990. He submits that in any case, the claimants are entitled interest @ 12% p.a. for the first year from the date of Notification under section 4 of the said Act and @ 15% p.a. for subsequent years till payment. He submits that if the entire amount is withdrawn by the claimants without furnishing any security and in case the acquiring body succeeds in the appeal, it would be very difficult for them to recover the same from the claimants. He further submits that if the claimants are allowed to withdraw the amount of compensation, they must furnish solvent security to the satisfaction of the Trial Court and/or bank guarantee of any Nationalized Bank.

7. The learned AGP also vehemently opposed the Civil Applications. He submits that the Reference Court erred in coming to the conclusion that the claimants are entitled interest as per the amended provisions of the said Act from the date of possession i.e. 17/02/1990. He

submits that the claimants are not entitled to interest as per said Act from the date of possession if Notification under section 4 of the said Act is issued subsequently in view of the Apex Court judgment in the matter of *R. L. Jain (D) By Lrs. Vs. DDA and Ors. (2004) 4 SCC 79*. He further submits that if the entire amount is withdrawn by the claimants without furnishing any security, it would be very difficult for them to recover the same from the claimants in case the First Appeals are allowed. Hence there is no substance in the appeals. Same may be dismissed.

8. Heard the learned counsel for the parties at length. It is to be noted that in the present proceedings, the Reference Court awarded additional compensation @ Rs.55/- per sq.mtr. on the basis of Exhibit 94 and 97 filed in the LAR No.111/2011 and Exhibit 80. In those exhibits the price for the year 2000 shows @ Rs.1400/-, Rs.2745/- and Rs.2045/- per sq.mtr. In any case, the Reference Court has awarded additional meager amount of @ Rs.55/- per sq. mtr. Hence, the Applicants are entitled to withdraw amount of compensation without furnishing any security. The question is about withdrawal of interest part. In the present proceedings, the Reference Court has awarded interest @ 12% p.a. for the first year from the date of possession i.e. 17/02/1990 and @ 15% p.a. for subsequent year.

9. In view of the Apex Court judgment in the matter of *R. L. Jain (supra)*, the claimants are entitled interest from the date of Notification under section 4 of the said Act. The claimants have not made any Application for fixing the compensation for the period 17/02/1990 i.e.

possession date to the date of Notification under section 4 of the said Act i.e. 08/08/2000. The claimants are entitled interest @ 12% p.a. for the first year from the date of Notification under section 4 of the said Act i.e. 08/08/2000 and @ 15% p.a. for subsequent period.

10. Considering these facts, the Applicants can withdraw the additional compensation @ Rs.55/- p.m. with interest as per the said Act from the date of Notification under section 4 i.e. @ 12% p.a. for the first year and @ 15% for the subsequent period without furnishing any security. Rest of the amount be invested in a Fixed Deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the appeals. Hence, the final order.

a) The Applicants-claimants are entitled to withdraw the amount @ Rs.55/- per sq.mtr. with interest @ 12% p.a. for the first year from 08/08/2000 i.e. date of Notification under section 4 of the said Act and @ 15% p.a. for subsequent years with additional benefits as per the amended provisions of the said Act, without furnishing any security, subject to outcome of the appeals.

b) Reference Court is directed to invest remaining amount in a Fixed Deposit account of any Nationalized Bank, initially for a period of one year and same shall be renewed from time to time till hearing and final disposal of the First Appeals.

c) The Applicants-claimants to file private paper book within two weeks from today with copy to other side, in main matter only.

d) Liberty granted to the Applicants-claimants to prefer an appropriate Application, if they so desire for prayer clause (b) of these Civil Applications.

- e) Liberty granted to the parties to move for fixing First Appeals for final hearing, if the paper book is filed within stipulated time as stated hereinabove.
- f) The Civil Applications stand disposed off accordingly.

(K.K. TATED, J.)