

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Civil Application (C.A.O.) No.664 of 2014
in Misc. Civil Application St. No.984 of 2014 in
First Appeal No.852 of 1991

Haribhau Narayanrao Kharat .vs. The Collector, Yavatmal and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.
DATE : 27.01.2015.

Civil Application (C.A.O.) No.664 of 2014

Heard Mr.D.G.Patil, learned Advocate for the applicants and Mrs.B.P.Maldhure, learned A.G.P. for the respondents.

This is an application praying for condonation of delay of 1616 days in filing the application for restoration of First Appeal. As the respondents in the appeal were represented by the learned A.G.P., when the application came up for consideration, it transpired that the First Appeal being of 1991, it can be heard on merits.

Considering the reasons given in the application, the delay in filing the restoration application is condoned. The Civil Application is allowed.

Misc. Civil Application St. No.984 of 2014

Heard.

For the reasons stated in Misc. Civil Application St. No.984 of 2014, it is allowed. The appeal is restored.

Civil Application St. No.986 of 2014

Heard.

For the reasons stated in the application, it is allowed. The appellant is permitted to delete the names of appellant nos. 2 and 3 at his risk.

First Appeal No.852 of 1991

Heard Mr.D.G.Patil, learned Advocate for the appellant and Mrs.B.P.Maldhure, learned A.G.P. for the respondents.

This appeal is filed by the land owner claiming enhanced compensation for the acquired land.

Notification under Section 4 of the Land Acquisition Act was issued on 13th December, 1976, pursuant to which agricultural land admeasuring 1 H, 11 R owned by the original appellants was acquired. The Award was passed on 30.3.1981. The Land Acquisition Officer granted compensation @ Rs.8,000/- per hectare along with statutory benefits. The original appellants being aggrieved in the matter had filed reference under Section 18 of the Land Acquisition Act which came to be decided by the impugned order. The reference Court granted compensation @

Rs.15,000/- per hectare along with statutory benefits. The appellants being dissatisfied in the matter have filed this appeal claiming enhanced compensation at Rs.25,000/- per hectare along with other statutory benefits.

Mr.D.G.Patil, learned Advocate for the appellant has submitted that the Land Acquisition Officer granted Rs.6,000/- per hectare for fallow land and Rs.6,500/- per hectare for agricultural land i.e. cultivable land and the fact that the Land Acquisition Officer granted compensation @ Rs.8,000/- per hectare to the appellant, it is clear that the land of the appellant was cultivable land. It is submitted that the Civil Judge (Sr.Dn.), Yavatmal in other proceedings have granted compensation @ Rs.22,500/- per hectare in case of cultivable land and copy of order passed by the Civil Court is produced on record at Exh.33. It is submitted that the Reference Court in the present case, has not considered this aspect. However, after examining the record, I find that the submission made on behalf of the appellant cannot be accepted. In paragraph 20 of the impugned order, the Reference Court has recorded that the land of the appellant which was acquired was dry land and therefore, compensation @ Rs.15,000/- per hectare was justified. It appears that grant of compensation @ Rs.22,500/- per hectare as per order passed in other case is in respect of irrigated land.

Learned Advocate for the appellant made alternative submission that the appellant was getting income of Rs.5,000/- per annum per acre and considering this factor and applying multiplier of 15, the amount of compensation should have been worked out. In paragraph no.17 of the impugned order, the reference Court has recorded that the income per

year per acre can be considered as Rs.1,000/- and after deducting expenses of Rs.300/-, the net income comes to Rs.700/- per acre per year and accordingly, applying multiplier of 15 years benefit, the amount of compensation is worked out. Mr.D.G.Patil, learned Advocate for the appellant submits that, in view of the findings recorded by the Reference Court, the appellant is entitled for compensation @ Rs.26,250/- per hectare and the Reference Court has committed an error by granting compensation @ Rs.15,000/- per hectare only. In support of his submission, learned Advocate for the appellant has relied on the Judgment given by this Court in the case of State of Goa and another vs. Yashodi Y. Dessai (D) through L.Rs. and Others reported in 2013 (5) Mh.L.J. 133.

Mrs.B.P.Maldhure, learned A.G.P. has not been able to support the conclusions of the Reference Court that the appellant is entitled for compensation @ Rs.15,000/- per hectare, overlooking the calculations made by the Reference Court relying on the presumed annual income of the appellant from the acquired land.

In view of the above, I hold that the appellant is entitled for compensation @ Rs.26,250/- per hectare. The appellant is entitled for compensation of Rs.29,137/- for 1 H, 11 R of acquired land. The appellant has already received Rs.16,650/- as per the order passed by the Reference Court. The appellant is entitled for balance amount of Rs.12,487/-. The appellant is entitled for the statutory benefits under the Land Acquisition Act, 1894 on the amount of Rs.12,487/-. The appeal is allowed in the above terms.

In the circumstances, the parties to bear their own costs.

JUDGE

jaiswal