

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

CAF NO. 1602/2012 AND CAF NO. 1311 OF 2015

IN
FIRST APPEAL NO. 832 OF 2012

(Executive Engineer, Lower Wardha Project Division, Wardha vs. Mohan s/o Maluramji Agrawal & Ors.)

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

Court's or Judge's orders

**CORAM : B.P. DHARMADHIKARI &
P.N. DESHMUKH, JJ.
OCTOBER 06, 2015.**

Heard Shri Palshikar, learned counsel for the appellant, Shri Bhangde, learned counsel for respondent Nos. 1 & 2 and Shri Hiwase, learned AGP for respondent No. 3.

The matter is considered in the backdrop of earlier order dated 02.09.2015 passed on Civil Application No. 1311 of 2015.

The land owners state that the direction to deposit 50% of the amount as awarded by the Reference Court should be modified if stay is to be confirmed. They seek a direction to deposit entire amount. They state that after considering the facts, the non-agriculture potential is accepted and the Reference Court has accordingly increased compensation roughly only by 50% of what was granted by the Land Acquisition Officer. The owners had claimed compensation @ Rs.50/- per square feet and accordingly they also filed proceedings before this Court seeking further enhancement. An agreement for sale dated 05.12.1995 just prior to Section 4 notification is relied on to state that there rate of

Rs.7.50 per square feet was agreed. It is further stated that in the vicinity, the other sale instances for non agricultural purposes show rate of Rs.50/- per square feet.

Shri Palshikar, learned counsel states that Reference Court has relied upon the judgment delivered by the Reference Court in LAC No. 280 of 2001. That judgment does not reveal consideration of any material to support the rise granted therein and this has been assailed before this court in First Appeal No. 760 of 2011. He further states that the rate granted by the Land Acquisition Officer is after considering all relevant material and could not have been interfered with.

The learned AGP supports the arguments of Shri Palshikar, learned counsel.

After hearing the respective counsel, we find that the Land Acquisition Officer in the witness box accepted non-agriculture potential. The enhancement granted by the Reference Court is only 50% of the rate awarded by the Land Acquisition Officer. The Land Acquisition Officer granted Rs.3,83,500/- per Hectare and it has been increased to Rs.5,75,408/- per Hectare. The land owners have already furnished solvent security for the amount allowed to be withdrawn.

In this situation, considering the facts, we direct the acquiring body viz., the appellant in First Appeal No. 832 of 2015 to deposit the entire amount as awarded by the Reference Court. 50% of the amount is already deposited. The balance amount shall be deposited within next six months calculating interest

and other benefits till the date of deposit.

Subject to such deposit, interim orders passed by this Court are confirmed and Civil Application No. 1602 of 2012 is allowed.

CIVIL APPLICATION NO. 1311 OF 2015

We grant leave to respondent Nos. 1 & 2 to withdraw the amount as deposited, subject to their furnishing solvent surety and an undertaking to the satisfaction of the Registrar (Judicial) of this Court. The solvent surety for the amount already in deposit shall be furnished while effecting withdrawal and for balance amount also solvent surety shall be furnished while effecting withdrawal.

The undertaking shall carry the terms indicating an obligation taken jointly and severally by respondent Nos. 1 & 2 to keep the solvent surety valid and unencumbered till adjudication of appeal by this Court. They will also undertake to refund the amount in case the appeal is allowed with such interest as this Court in that event may direct, within a period of 60 days of such direction. The undertaking be filed within a period of four weeks from today.

Subject to filing of such an undertaking and solvent surety, Civil Application No. 1311 of 2015 is also allowed and disposed of.

JUDGE

JUDGE