

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

FIRST APPEAL NO.1006 OF 2013

**Vidarbha Irrigation Development Corporation, thr. its Executive Engineer, Minor
Irrigation Division, Washim**

..vs..

Ashok S/o Premsing Rathod (dead), thr Legal Heirs and ors

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

Court's or Judge's Order

Shri J.B. Kasat, Counsel for the Appellant.
Shri Amol Darekar, Counsel for Legal Heirs of R-1 & R-2.
Mrs. N.M. Hiwase, AGP for R-3 & 4.

CORAM : A. S. CHANDURKAR, J.

DATED : APRIL 20, 2015

1. Heard learned counsel appearing for both the parties.

2. Considering the short controversy arising, the first appeal is taken up for final hearing.

3. On behalf of the appellant it is submitted that the acquiring body was not impleaded as a party in the reference proceedings. It is submitted that the project in question was handed over to the present appellant by Notification dated 13.4.2007. The award in question by the Reference Court is dated 6.8.2008. Relying upon the decision of the Supreme Court in the case of **Abdul Rasak and**

others ...vs... Kerla Water Authority and others reported at **2002 AIR SCW 477**, it is submitted that the proceedings need to be remanded for fresh consideration after impleading the acquiring body.

4. On behalf of respondent Nos.1 and 2, the aforesaid submissions are opposed. It is stated that the appellant should have got itself impleaded before the Reference Court. It is further stated that for land admeasuring 1H 16R, the claimants have received only the amount of Rs.38,211/- though the award was passed in the year 2000. It is, therefore, submitted that if the proceedings are remanded, the claimants be permitted to withdraw the amount of enhanced compensation.

5. The learned Assistant Government Pleader appears on behalf of respondent Nos.3 and 4.

6. The following point that arises for consideration is : Whether the proceedings deserve to be remanded on account of absence of the acquiring body in those proceedings?

7. Having considered the respective submissions and gone through the impugned order, it is clear that the present appellant was the acquiring body and hence, it was necessary for the claimants to have impleaded it in the reference proceedings. In view of the law laid down by the Supreme Court in the case of **Abdul Rasak and ors** (*supra*), the judgment of the Reference Court will have to be set aside

on the ground of absence of necessary party.

8. Hence, this Court makes the following order, thus:

ORDER

1) Judgment dated 6.8.2008, in L.A.C. No.18 of 2005 is set aside on the ground that the acquiring body was not a party to the reference proceedings.

2) The proceedings are remanded to the Reference Court for fresh adjudication in accordance with law.

3) The claimants shall implead the acquiring body and it would be open for the acquiring body to file its written statement.

4) The parties are at liberty to lead their evidence in support of their respective contentions.

5) Considering the fact that the award was passed in the year 2000 and the claimants have received a meagre amount, the acquiring body is directed to deposit with the Reference Court an

amount of *interim* compensation of Rs.3,50,000/- (Rupees Three Lacs Fifty Thousand Only) which the claimants shall be permitted to withdraw. This withdrawal, however, would be subject to final outcome of the reference proceedings.

6) The aforesaid amount shall be deposited within a period of twelve weeks from today.

7) Similarly, the claimants shall furnish an undertaking before the Reference Court that in case the amount of compensation awarded by the Reference Court is lesser than the said amount, the difference shall be re-paid with interest accrued thereupon at such a rate the Court may then direct.

8) As the reference is of the year 2005, the proceedings shall be expeditiously decided by the Reference Court.

9) First Appeal No.1006 of 20013 is partly allowed and disposed of in aforesaid terms. There shall be no order as to costs.

JUDGE

!! BRW !!