

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

CIVIL APPLICATION (CAF) NO. 319 OF 2013

VIDC thr Executive Engineer Medium Project Division Nagpur Vs. Bapurao Yashwant Ghugal & Ors.

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

Court's or Judge's Order

Shri A. V. Palshikar Adv for applicant.
Shri C. R. Najbile Adv for respondent 1.
Smt. M. N. Hiwase AGP for respondents 2 to 4.

CORAM: A. S. CHANDURKAR J.

DATED: MARCH 31, 2015.

By this application the applicant seeks leave to file appeal challenging the judgment dated 30.07.2008 passed by the Reference Court granting compensation in favour of the original claimant. It is stated that the applicant was the acquiring body for whose benefit said land was acquired but it was not a party in the reference proceedings. Reliance is placed on the decision of the Supreme Court in *Abdul Rasak and others Vs. Kerala Water Authority and others AIR 2002 Supreme Court 817*. The legal representatives of respondent

no.1 do not dispute the factual aspect that acquiring body was not a party in the reference proceedings. The learned Assistant Government Pleader appearing for respondent nos. 2 to 4 also does not object to aforesaid submissions.

Hence in view of law laid down in *Abdul Rasak* (supra) the application is allowed and present applicant is granted leave to file appeal. Civil application disposed of.

Civil Application (CAF) No. 320 of 2013: For the reasons mentioned in the order passed in Civil Application No. 319 of 2013 the delay in filing first appeal stands condoned. Civil application is allowed and disposed of.

First Appeal St. No. 20261 of 2012: Considering the limited controversy arising, Admit and heard finally with consent of learned counsel for the parties.

The acquiring body has challenged the judgment dated 30.07.2008 passed in Land Acquisition Case No. 17 of 1986 on the ground that though aforesaid land was acquired for its benefit, it was not joined as a party in reference proceedings.

The following point arises for consideration:

Whether the impugned judgment can be

sustained in absence of the acquiring body being the party to the reference proceedings?

I have heard the respective counsel for the parties. Learned counsel for the appellant submitted that aforesaid question is no longer res-integra in view of the decision of the Supreme Court in *Abdul Rasak and others Vs. Kerala Water Authority and others AIR 2002 Supreme Court 817*. It is submitted that the proceedings therefore deserve to be remanded for fresh consideration after impleading the acquiring body. The learned counsel appearing for legal representatives of the claimant does not dispute the aforesaid legal position. Hence, on this short ground and in view of absence of the acquiring body in the reference proceedings, the impugned judgment dated 30.07.2008 deserves to be set aside. Point as framed stands answered accordingly.

Hence the following order is passed:

- 1] The judgment dated 30.07.2008 passed in Land Acquisition Case No. 17 of 1986 is set aside.
- 2] Land Acquisition Case No. 17 of 1986 is remanded to the Reference Court for fresh decision in accordance with law.

3] The Civil Judge Senior Division shall permit the Vidarbha Irrigation Development Corporation to file written statement since its application for adding it as party has been allowed.

4] The written statement be filed within a period of 60 days from the date the parties appear before the Civil Judge, Senior Division.

5] The parties shall appear before Civil Court on 09/06/2015.

6] If any amount has been withdrawn by the claimants from the amount of compensation as determined, the same shall be adjusted as and when the reference proceeding is finally decided.

JUDGE

svk