

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

CIVIL APPLICATION (CAF) NO. 170 OF 2015
in

FIRST APPEAL ST. NO. 20899 OF 2013

(V.I.D.C. through its Exe. Engineer, Lower Wardha Project Divn., Wardha Vs. Suresh Bansidhar
Sharma and ors.)

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

Court's or Judge's Order

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Shri A. V. Palshikar, Adv. for applicant
Shri D. S. Lambat, Adv for respondent 1, 3 to 6
Shri H. D. Dubey, AGP for respondent nos. 8 to 10

CORAM: A. S. CHANDURKAR J.

DATED: 7-4-2015.

Prayer is to condone delay in filing the first appeal. It is stated that though the applicant is the acquiring body, it was not joined as a party before the Reference Court. Only after receiving information from the Land Acquisition Officer, the applicant got knowledge of impugned judgment.

The application is opposed by the learned counsel for respondent no. 1 and 3 to 6. The learned counsel has relied on the reply filed in that regard.

Considering the undisputed fact that the applicant was not joined as a party before the Reference Court though it was the acquiring body, the delay in filing the first appeal stands

condoned.

The civil application is allowed and disposed of.

FIRST APPEAL ST. NO. 20899 OF 2013

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 19-1-2012 passed in Land Acquisition Case No. 108 of 2005 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 respondent no. 1 and 3 to 6 opposed the aforesaid submissions and stated that the District Re-settlement Officer, Wardha had been joined as a party in the reference proceedings. He further submitted that though the amount of compensation was enhanced, said claimants have not yet received any amount whatsoever.

Considering the law as laid down by the Supreme Court in *Abdul Rasak and others* (supra), as there is failure on the part of the claimants to impleade the acquiring body, the impugned judgment cannot be sustained. Hence, on this short ground and in view of absence of the acquiring body in the reference proceedings, the impugned judgment dated 19-1-2012 deserves to be set aside. Point as framed stands answered accordingly.

Hence the following order is passed:

- 1] The judgment dated 19-1-2012 passed in Land Acquisition Case No. 108 of 2005 is set aside.
- 2] Land Acquisition Case No. 108 of 2005 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] The amount of enhanced compensation that has been deposited by the appellant in this Court shall be transferred to the reference Court at Wardha. If the claimants seek permission to withdraw the amount of compensation, such request shall be considered by the reference Court on its own merits and after securing interest of the appellant.

First appeal is partly allowed in aforesaid terms with no order as to costs.

Pending civil applications stand disposed of.

JUDGE