

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

938 CIVIL APPLICATION NO.3311 OF 2016
IN
FAST/2251/2016 WITH CA/3312/2016 IN
FAST/2251/2016 WITH CA/3313/2016 IN
FAST/2251/2016

THE EXECUTIVE ENGINEER, KUKADI DISTRIBUTION AND
CONSTRUCTION, DIVISION KOLWADI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Applicant/s : Mr. Rajale Gulab B.
Mr. AM Phule, AGP for Respondent No.1;
Mr. Karpe Rahul R, Adv. For R/2.

CORAM : P.R.BORA, J.

DATE : 29th September, 2016.

PER COURT :

1) Heard. In view of the fact that the acquiring body was not made a party before the Reference Court, the present application seeking leave to file an appeal is allowed and disposed of.

2) Delay of 1295 days has occurred in filing the present appeal. It is contended that since the acquiring body was not made party to

the reference proceedings, it came to know about passing of the Award in the said reference proceedings much later and that is the reason that the appeal could not be filed within stipulated period of limitation.

3) Shri Karpe, learned Counsel appearing for the respondent No.2 has opposed for condoning the delay stating that the reasons are insufficient for condoning the delay.

4) After having considered the fact that the acquiring body was not party before the Reference court, there appears substance in the contention raised as about receiving the knowledge of passing of the impugned award at some later stage. Even otherwise, the matter needs to be decided on merits. Hence, the delay is condoned. The appeal be registered in accordance with law. CA for condonation of delay stands disposed of.

5) Issue notice in appeal to respondents. Learned AGP and learned Counsel waive service for respective respondents. With the consent of parties, the appeal is taken up for final disposal at admission stage.

6) Shri Rajale, learned Counsel appearing for the acquiring body was fair in submitting that today only some of the connected matters arising out of the same acquisition proceedings from the same village, are decided by this Court and the appeals filed by the acquiring body are dismissed by this Court. The learned Counsel submitted that in such circumstances, in so far as determination of the market value and the proportionate enhancement in the amount of compensation is concerned, he is not pressing the said reliefs in view of the dismissal of the connected appeals by this Court.

. The learned Counsel further submitted that he is objecting to the impugned award on one more ground that the Reference Court has awarded

the interest under Section 34 of the Land Acquisition Act from the date of possession of the acquired lands. The learned Counsel, relying upon the Full Bench Judgment delivered by this Court in the case of State of Maharashtra Vs. Kailash Shiva Rangari reported in 2016 (4) ALL MR. 513, submitted that the aforesaid part of the order cannot be sustained and deserves to be quashed and set aside. The learned Counsel, therefore, prayed for allowing the present appeal to the aforesaid extent.

7) Shri Karpe, learned Counsel appearing for the respondent conceded for the submission so made. In view of the above, I pass the following order, -

ORDER

i) The impugned award, so far as it relates to granting of interest under Section 34 of the Land Acquisition Act, from the date of taking possession of

the land, is quashed and set aside and it is ordered that such interest can be computed and awarded from the date of passing of the Award;

ii) The impugned Award be modified to the aforesaid extent. The other part of the Award shall remain as it is.

iii) The appeal stands disposed of in the aforesaid terms. Pending civil application if any stands disposed of.

(P.R.BORA)
JUDGE

bdv/