

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.6504 OF 2016
in
FIRST APPEAL ST.NO.13142 OF 2016
WITH
CA/6505/2016 IN FAST/13142/2016

THE STATE OF MAHARASHTRA THR. THE COLLECTOR,
OSMANABAD AND ANOTHER
VERSUS
BHAGWAN APPARAO RANDIV

...

Shri. S.P. Deshmukh, AGP for APPELLANT-State;
Shri. D.A. Madke, Advocate for Respondent

CORAM : P.R.BORA, J.

DATE : 27th September, 2016.

PER COURT :

1) Heard. Delay of 921 days has occurred in filing the present Appeal by the State. It is the contention raised in the application for condonation of delay that in making the procedural compliances; seeking approvals and arranging for Court Fees etc. time was consumed and that is the reason the appeal could not be filed within the period of stipulated limitation.

2) The learned counsel for the original claimant has opposed for condoning the delay stating that the reasons assigned are insufficient for condoning the delay.

3) Considering the contentions raised in the application, the delay is condoned. The appeal be registered in accordance with law. Civil application stands disposed of.

4) Issue notice to the Respondent in the appeal. learned counsel waives service for the Respondent. With the consent of the parties, the matter is taken up for final disposal at admission stage. Heard the learned counsel for the respective parties.

5) The appellant-State has challenged the Judgment and Award passed by Joint Civil Judge Senior Division at Osmanabad on 12th July, 2013 in L.A.R. No.853 of 2010.

6) The subject land was acquired for construction of Percolation Tank at village Borgaon. Notification under Section 4 of the Land Acquisition Act, 1894 (for short the "Act"), in that regard was published on 24th June 2003 and the Award under Section 11 of the Act came to be passed on 4-11-2006.

. The Special Land Acquisition Officer (for short S.L.A.O.) has assessed the market value of the acquired land at the rate of Rs.64,000/- per hectare and accordingly determined the amount of the compensation to be offered to the present Respondent (hereinafter referred to as claimant).

. Dis-satisfied with the amount of compensation so offered, the claimant had filed an application under Section 18 of the Act to Collector, Osmanabad, who in turn, forwarded the said application for adjudication to the Civil Court at Osmanabad (for short "Reference Court"). Before the Reference Court, the claimant had claimed compensation at the rate of Rs.1,00,000/-

per acre.

. In order to substantiate the claim so raised, the claimant himself has deposed before the Court and has also placed on record one sale instance at Exhibit 29. No evidence, either oral or documentary, was adduced on behalf of the State.

7) The Reference Court, after having assessed the evidence brought before it, determined the market value of the acquired land at the rate of Rs.76,000/- per hectare and accordingly enhanced the amount of compensation. Aggrieved by, the State has filed the present Appeal.

8) Shri Deshmukh, learned AGP appearing for the State, has assailed the impugned Judgment on several grounds. The learned AGP submitted that the sale instance, which has been relied upon by the Reference Court, was admittedly of village Gaurgaon whereas the acquired land is from

village Borgaon.

. The learned AGP further submitted that the Reference Court ought to have insisted the claimant for bringing on record the sale instance from the same village where the acquired land was situated. It is nowhere discussed that during the relevant period no sale transaction had taken place of the land situated at village Borgaon. In such circumstances according to the learned AGP, the Reference Court should not have relied upon the said sale instance so placed on record by the claimant.

. The learned AGP further submitted that the Reference Court has also not considered the plus and minus factors attached to the acquired land while determining the market value thereof on the basis of the sale instance brought on record by the claimant. The learned AGP submitted that the Reference Court has apparently determined the market value on higher side and the impugned award, therefore, needs to be interfered with and deserves to be quashed and

set aside. The learned AGP therefore, prayed for quashment of the impugned award and further prayed for determination of the amount of compensation as was determined by the S.L.A.O.

9) Shri Madke, learned counsel appearing for the Respondent - claimant, has supported the impugned Judgment. The learned counsel submitted that village Gaurgaon and village Borgaon are adjacent to each other. The learned Counsel submitted that since the sale instance, which is placed on record, was the only sale instance occurred in the relevant period, the same was placed on record by the claimant. The learned Counsel further submitted that in all respect, it was a comparable sale instance and no mistake has been committed by the Reference Court in relying upon the said sale instance for determination of the market value of the acquired land. The leaned counsel, therefore, prayed for dismissal of the appeal

10) I have carefully considered the submissions advanced by the learned AGP and learned counsel appearing for the claimant. I have also perused the impugned judgment and the other material placed on record. The only sale instance, which was placed on record to be considered by the Reference Court, was the sale instance at Exh.29. The land, which was the subject matter of the said sale deed, was admeasuring 77 Ares and was sold vide the registered sale deed executed on 20th April, 2001 for the consideration of Rs.1,50,000/- . As has been observed by the learned Reference Court, the said land was Jirayat land. Admittedly, the acquired land is also Jirayat land. As has been further discussed by the Reference Court, village Borgaon and village Gaurgaon are adjacent to each other and the boundaries of both the villages touch to each other. The learned Reference Court has further observed that the sale instance relied upon by the claimant had occurred prior to issuance of the notification under section 4 of

the Act. It is further observed that considering the location of the acquired land and the land under sale deed at Exh.29, it was indeed a comparable sale instance. The Reference Court has therefore relied upon the said sale instance to determine the market value of the acquired land.

11) From the discussion made by the Reference Court, it is quite evident that the Reference Court has objectively assessed the evidence which was brought on record. Admittedly, no evidence was adduced by the State. In the circumstances, the only option before the Reference Court court was to determine the market value on the basis of the oral evidence of the claimant and the sale instance brought on record by him.

12) After having considered the entire material on record, it does not appear to me that the Reference Court has committed any error in determining the market value @ Rs.1,76,000/- per

hectare. The appeal is devoid of any substance and deserves to be dismissed and is accordingly dismissed. Pending Civil Application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/