

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**932 CIVIL APPLICATION NO. 10860 OF 2014
IN
FAST/25198/2014**

WITH

CA/10114/2014 IN FAST/25201/2014 WITH
CA/10115/2014 IN FAST/25201/2014 WITH
CA/10116/2014 IN FAST/25214/2014 WITH
CA/10117/2014 IN FAST/25214/2014 WITH
CA/10118/2014 IN FAST/25211/2014 WITH
CA/10119/2014 IN FAST/25211/2014 WITH
CA/10120/2014 IN FAST/25217/2014 WITH
CA/10121/2014 IN FAST/25217/2014 WITH
CA/10122/2014 IN FAST/25208/2014 WITH
CA/10123/2014 IN FAST/25208/2014 WITH
CA/10855/2014 IN FAST/25224/2014 WITH
CA/10857/2014 IN FAST/25224/2014 WITH
CA/10858/2014 IN FAST/25220/2014 WITH
CA/10859/2014 IN FAST/25220/2014 WITH
CA/10861/2014 IN FAST/25198/2014 WITH
CA/10862/2014 IN FAST/25228/2014 WITH
CA/10863/2014 IN FAST/25228/2014 WITH
CA/10864/2014 IN FAST/25231/2014 WITH
CA/10865/2014 IN FAST/25231/2014

THE STATE OF MAHARASHTRA AND ANOTHER
VERSUS
BHAGWAN AMBADAS WADANE

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AGP for Applicant State :Mr. S.P.Deshmukh
Advocate for Respondents: Mr.L.C. Patil.

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CORAM : P.R. BORA, J.
Dated: November 18, 2016

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PER COURT :-

1. Issue notice to the respondents. Shri L.C. Patil, learned Counsel, waives service of notice for the

respondents i.e. original claimants. Service complete.

2. In all these matters delay of the period ranging between 1134 to 1219 days has occurred. It is the contention of the appellant State that in making procedural compliances and seeking approval and sanctions at different levels, the time was consumed and that is the reason that the appeals could not be filed within the stipulated period of limitation.

3. Learned A.G.P. appearing for the State submitted that the Reference Court has enhanced the market value to the double as awarded by the Special Land Acquisition Officer without any cogent and sufficient reasons therefor and in such circumstances, the State needs to be given an opportunity to agitate the appeals on merits.

4. The applications are strongly opposed by Shri L.C. Patil, learned Counsel for the respondents. Shri L.C.Patil, Learned Counsel, submitted that no sufficient reasons are assigned for the huge delay of the period more than three years and in absence of any cogent and sufficient reasons, the delay cannot be condoned. He has, therefore, prayed for rejecting the applications. Learned Counsel further submitted that even otherwise, there is no merit in the appeal so filed by the State since the Reference Court has enhanced the amount of

compensation very moderately. Learned Counsel submitted that, in fact, the claimants were claiming much more compensation than awarded by the Reference Court, however, the Reference Court, by considering the sale instances placed on record has determined the market value of the acquired lands at the rate of Rs.33,000/- per acre and same needs no interference. Learned Counsel, in the aforesaid circumstances, submitted that if the appellants are ready to argue the matter forthwith without seeking any further time, the respondents may not have any objection if the delay is condoned and the matters are heard forthwith on merits.

Shri Deshmukh, learned A.G.P., was prompt in submitting that he is ready to argue the matter today itself. In view of the submission so made, I am inclined to allow the present applications for condonation of delay with a direction to the learned A.G.P. to forthwith argue the matters on merits.

5. The Civil Applications for condonation of delay are allowed and disposed of. The delay caused in filing the appeals is condoned. The Appeals be registered in accordance with law.

6. Issue notice to the respondents. Mr.L.C.Patil, learned Counsel, waives service of notice for the respondents i.e. original claimants. Service complete.

With the consent of the learned Counsel for the parties, the matter is finally heard at the admission stage.

7. Shri S.P.Deshmukh, learned A.G.P. for appellant State, submits that relying upon a sale instance, that too of a small piece of land, the Reference Court has determined the market value of the acquired lands. Learned A.G.P. further submitted that in the cross examination of the witness examined by the claimants so as to prove the sale instances brought on record, several such facts have come on record which have not been considered by the Reference Court while determining the market value of the acquired lands. Learned A.G.P., inviting my attention to paragraph no.14 of the impugned judgment, submitted that there was ample material on record showing that the land which was the subject matter of the sale instance relied upon by the claimants could not have been compared with the acquired lands. Learned A.G.P. submitted that, as has been admitted by the witness examined by the claimants, the land which was subject matter of the sale instance relied upon by the claimants was fully irrigated land on the water of canal. Learned A.G.P. further submitted that the acquired lands were not having the same facility and, as such, the sale instance which was relied upon could not have been held as comparable sale instance by the Reference Court and no such compensation could have been awarded to the acquired lands. Learned A.G.P. submitted that, as

against it, the Land Acquisition Officer, while determining the amount of compensation, had taken into account all relevant factors and has adequately fixed the market value of the acquired lands and has accordingly offered adequate compensation which could not have been enhanced by the Reference Court. Learned A.G.P., therefore, prayed for setting aside the impugned judgment and further prayed for re-determination of the amount of compensation considering the contents of the award and the material available on record.

8. Shri L.C.Patil, learned Counsel appearing for the respondents i.e. original claimants, supported the impugned judgment. Learned Counsel submitted that the sale instance which was relied upon by the claimants was of the land situated at village Malumbra and the acquired lands are also situate at village Malumbra. Learned Counsel further submitted that though it is admitted that the acquired lands were not abutting to the canal, the evidence on record and even the discussion made by the Reference Court is sufficient to indicate that the canal water was available for the acquired lands also and as held by the Reference Court, the acquired lands were in the category of semi irrigated lands. Learned Counsel further submitted that considering the aforesaid aspect that the land which was the subject matter of the sale instance was fully irrigated on the water of canal whereas same facility was not available to the acquired

lands, the Reference Court has proportionately deducted the amount and has determined the market value of the acquired lands at the rate of Rs.35,000/- per acre when the land which was the subject matter of the sale instance had received consideration of Rs.50,000/- per acre. Learned Counsel submitted that the Reference Court has objectively assessed the evidence on record and has correctly determined the market value of the acquired lands. Learned Counsel, therefore, prayed for dismissal of the appeals.

9. I have carefully considered the evidence on record in the light of the submissions made by the learned Counsel appearing for the respective parties. Admittedly, no oral evidence was adduced by the State nor any sale instance was placed on record by the State. Thus, the only evidence which was before the Reference Court was the oral testimonies of the respective claimants and one more witness examined by them so as to prove the sale instance dated 23rd February, 1995, namely, PW No.2 Shivaji Gate. On perusal of paragraph no.14 of the judgment it is revealed that the evidence of Shri Shivaji Gate, PW No.2, has been fully and correctly analyzed by the Reference Court. The land which was the subject matter of the sale deed relied upon by the claimants was admeasuring 37 R. and was situated at village Malumbra. The said land was sold by registered sale deed on 23rd February, 1995, for consideration of Rs.50,000/-. As

such, the Reference Court has held the market price of the fully irrigated land in the area at the relevant time to the tune of Rs.50,000/- per acre. Thereafter, considering the minus factors of the acquired lands, comparing to the land which was the subject matter of the sale instance relied upon by the claimants, the Reference Court has determined the market value of the acquired lands at the rate of Rs.35,000/- per acre.

10. After having considered the entire evidence on record and the discussion made by the trial Court, it does not appear to me that any manifest error is committed by the Reference Court in determining the market value of the acquired land. As has come on record, the acquired lands were having facility of irrigation though they cannot be termed as fully irrigated. Admittedly, the acquired lands were situated at Malumbra and the land which was the subject matter of the sale instance was also from the same village. In the circumstances, by considering the minus factors attached to the acquired lands, the value of the land has been proportionately reduced by the Reference Court. The market value so determined, in no case, can be said to be determined arbitrarily or can be held to be on higher side.

11. In the circumstances, I do not see any reason for causing interference in the impugned judgment and award. The present appeals being devoid of any merits,

deserve to be dismissed and are accordingly dismissed, however, without any order as to the costs. Pending Civil Applications, if any, stand disposed of.

(P.R. BORA, J.)

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