

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 1373 OF 2015
WITH
CIVIL APPLICATION NO. 4309 OF 2015 IN F.A. NO. 1373 OF 2015**

The State of Maharashtra	...	Appellant
Vs.		
Atul Gangadhar Puranik	...	Respondent

Mr. A.R. Patil, AGP for the appellant/State.
Mr. Hemant Ghadigaonkar, Advocate for the respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **4th March, 2016.**

P.C.:

Admit. The learned counsel for the respondent waives service. By consent, the Appeal is heard finally and decided at the stage of admission.

2. This appeal is directed against the judgment and award dated 27th March, 2014 passed by the learned Civil Judge Senior Division, Raigad-Alibag in L.A.R. No. 80 of 2004 in respect of 1/3rd share in the land admeasuring 11,626.70 sq. mtrs from Survey No. 161 thereby fixing the compensation @ 30/- per sq. mtr. This land was acquired for New Mumbai Project by a notification dated 3rd February, 1970 under section 4 of the Land Acquisition Act. A notice under section 9(3)(4) was issued to the applicant and while replying to the notice, the original claimant demanded a compensation at the rate of Rs.50/- per sq. mtr. However, the Special Land Acquisition Officer fixed the compensation @ Rs.4.50

and Rs.5.50 per sq. mtrs. and passed the award under section 11 of the Act on 18th March, 1976. The said award was accepted under protest by the claimant and therefore, he approached the Collector as was agreed by the order of Special Land Acquisition Officer. Thereafter, a reference was referred by the applicant before the Civil Court under section 28A(3) of the Land Acquisition Act. The learned Civil Judge Senior Division, Alibag considered the evidence tendered by the applicant and accepted that the said land is located near Pune Mumbai Highway. It has good potential as Non-Agricultural land and also considered the other industrial development and increased the rate of compensation to Rs.30/- per sq. mtr.

3. Being aggrieved by the said order, this Appeal was filed by the State of Maharashtra mainly on the ground that the learned Judge has not considered the distance of the land from the Highway and also the ratio laid down by the judgment of the Division Bench in **State of Maharashtra vs. Prakash Vasudeo Deodhar, reported in (2008) 5 BCR 708**. As per the ratio laid down in the said judgment, if the land falling within 750 meters of the National Highway, then rate is Rs.25/- per sq. mtr.; if the land is falling within 750 to 1500 metres of the National Highway, then rate is Rs.23/- per sq. mtr. and if the land is falling beyond 1500 metres of National Highway, then rate is Rs.21/- per sq. mtr. The learned AGP submitted that the land is falling within 750 metres and therefore the rate

should have been fixed at Rs.25/- per sq. mtrs. The second challenge given was that the award passed by the Special Land Acquisition officer on 18th March, 1976 under section 23(1A) by which the additional compensation of 12% can be given was amended in the year 1982. He submitted that the said additional compensation of 12% of the award by the learned Judge of the Reference Court is illegal. In support of his submission, the learned AGP relied on the judgment of Hon'ble Supreme Court in the case of **Kashiben Bhikabai & Ors. vs. Special Land Acquisition Officer & Anr., reported in (2002) 2 SCC 605** where the Supreme Court has held that the fact of additional compensation is not available to the claimant when the award is made by the Collector prior to 30th April, 1982.

4. In reply, the learned counsel for the respondent submitted that he is the owner of 1/3rd portion of the land bearing Survey No. 161. He relied on the memorandum issued by the State of Maharashtra **on 11th February, 2016 in L.A.R. No. 155 of 2004 in Gangadhar Vishnu Puranik vs. S.L.A.O. No. 1, Panvel.** He submitted that by this memorandum, the Government has accepted the judgment and award passed by the Civil Judge Senior Division, Alibag wherein the learned Judge has fixed the compensation @Rs.30/- per sq. m. This judgment is passed in respect of 2/3rd share of same land, i.e., Survey No. 161 situated at Panvel which has fallen to the share of the respondent's brothers Anand Puranik and Ashok

Puranik.

5. Considered the submissions of learned AGP in respect of the award passed by the Special Land Acquisition officer on 18th March, 1976 under section 23(1A) by which the additional compensation of 12% can be given was amended in the year 1982. In view of the submissions of the learned counsel for both the parties and the memorandum dated 11th February, 2016 issued by the State of Maharashtra, I am of the view that as the land is the same portion of Survey No. 161 situated at Panvel, the rate of compensation of Rs.30/- per sq. mtr. is to confirmed, as the Government is ready to pay compensation to the respondent's brothers @ Rs.30/- per sq. mtr. Under such circumstances, the judgment and award passed by the Reference Court is confirmed, however, the amount of additional compensation under section 23(1-A) cannot be granted, as the award is passed prior to 30th April, 1982 and to that extent, the judgment and award passed by the Reference Court is set aside.

6. First Appeal is partly allowed. In view of this, Civil Application does not survive and the same is accordingly disposed of.

(MRIDULA BHATKAR, J.)