

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.57 OF 2016
IN
CROSS OBJECTION (ST) NO.17123 OF 2010**

Dnyanoba Pandurang Gaikwad
Since Deceased through his
Legal Representatives

1. Harishchandra D. Gaikwad & Ors. ..Applicants

IN THE MATTER BETWEEN :

The State of Maharashtra
(Through the Special Land Acquisition
Officer)

..Appellant

V/s.

Dnyanoba Pandurang Gaikwad
Since Deceased through his
Legal Representatives

1. Harishchandra D. Gaikwad & Ors. ..Respondents

**WITH
CIVIL APPLICATION NO.3546 OF 2008
IN
FIRST APPEAL NO.730 OF 2010**

The State of Maharashtra

..Applicant/Appellant

V/s.

Dnyanoba Pandurang Gaikwad
Since Deceased through his
Legal Representatives

1. Harishchandra D. Gaikwad & Ors. ..Respondents

And

City Industrial Development Corporation

..Proposed
Respondent

Mr.Sachin Punde for the Applicant in CAO No.57 of 2016 and
Original Respondent Nos.1 to 11.

Mr.Ameet Palkar, AGP for Original Appellant and Applicant in CAF No.3546 of 2008.

CORAM : M. S. SONAK, J.

DATE : 06 MARCH 2017.

P.C.

1. By this Civil Application, the applicant seeks leave to amend the claim petition seeking compensation at the rate of Rs.2,000/- per sq. mt. instead of Rs.1,000/- per sq.meter.

2. The reasons as to why such application has been made at this stage have been set out in the Civil Application. In particular, such reasons appear at paragraph Nos.4 to 10 of the Civil application. The full Bench of this Court, in the case of *State of Maharashtra Vs Sitaram Narayan Patil (2010-2-Mh.L.J.-387)* has held that an application for amendment of the claim can be allowed even at the appellate stage. This view has been approved by the Hon'ble Supreme Court in the case of *Ambya Kalya Mhatre Vs State of Maharashtra (2011-9-SCC-325)*.

3. The learned counsel for the applicant also points out that the compensation in respect of the land acquired in the same notification has already been determined by this Court at Rs.1,725/-

per sq. meter in First Appeal No.1301 of 2005 and connected matters. In this case, the applicant has already lodged cross objection. Taking into consideration the aforesaid, the Civil Application No.57/2016 is allowed in terms of prayer clause (a). Amendment to be carried out forthwith.

4. With the consent of the parties and at the request of the learned counsel for the parties First Appeal No.730/2010 and Cross Objection Stamp No.17123 of 2010 are taken up for final disposal, in view of the detailed judgment and order dated July 2 and 6, 2015 made by the Division Bench of this Court in First Appeal No.1310 of 2005 and connected matters.

5. The acquired land, which is subject matter of this appeal is in the village of Wadghar, which was acquired for the project of setting up Navi Mumbai. Section 4 notification in this regard was issued on 24 September 1986.

6. The Division Bench of this Court, in its judgment and order dated July 2 and 6, 2015 in First Appeal No.1310 of 2005 and connected matters was dealing with the acquired properties as in the same village Wadghar, in pursuance of the very same notification

dated 24 September 1986. The appeals and cross objections filed by the State and the land losers were disposed of and the market value determined was Rs.1,725/- per sq.meter. The operative portion of the judgment and order at page No.35 reads as follows :-

“35 Hence, the appeals/cross objections are disposed of by passing the following order:

(I) The civil applications made by the original claimants for enhancement of the claim in Appeals/Cross Objections/Original References are hereby allowed;

(II) The amendment shall be carried out within a period of eight weeks from today. Deficit the Court fees on Appeals/Cross Objections, as the case may be, shall be paid within a period of eight weeks from today;

(III) We make it clear that unless deficit court fees are paid within stipulated period of eight weeks from today, the decree in the concerned appeals/cross objections shall not be drawn and the Reference Court shall not implement the directions given in this Judgment and order relation to the lands subject matter thereof;

(IV) The Civil Applications made by the CIDCO for intervention are hereby rejected;

(V) The Civil Applications for restoration of the Appeals/Cross Objections are allowed;

(VI) The appeals preferred by the State Government are hereby dismissed with no order as to costs;

(VII) The appeals and the cross objections preferred by the original claimants are partly allowed. The impugned Judgment and Awards are modified by directing the the claimants will be entitled to the market value in respect of the lands at village Wadghar at the rate of Rs.1725/per sq meter. In addition to the

market value, the claimants will be entitled to statutory benefits under sections 23(1A), 23(2) and section 28 of the Land Acquisition Act, 1894;

(VIII) The claimants will be entitled to proportionate costs throughout of their appeals or cross objections;

(IX) The Reference Court shall carry out the exercise of computing the amount of compensation payable in terms of modified Awards within a period of four months from the date on which the writ of this Judgment is received by the Reference Court along with the Record and Proceedings;

(X) Before arriving at the final computation of the compensation amount payable in terms of the modified Judgment and Award, the Reference Court shall give an adequate opportunity of being heard to the State of Maharashtra;

(XI) Within a period of four months from the date of adjudication of the amounts payable, the State Government shall deposit the excess amount with the Reference Court;

(XII) The writ of this Judgment along with Record and Proceedings be forwarded to the Reference Court;

(XIII) All other pending Civil Applications are disposed of accordingly.”

7. Since, this appeal is concerned with the lands at Wadghar which was acquired by the very said notification dated 24 September 1986. It is obvious that the market value will have to be determined at Rs.1,725/- sq.meters by following the reasoning in the judgment and order dated July 2 and 6, 2015. The appeal instituted by the State will accordingly have to be dismissed and the

cross objections of the respondent, will have to be allowed partly.

8. The appeal is accordingly disposed of by determining the rate of compensation at Rs.1,725/- sq.meter. In addition to the market value, the claimants will be entitled to statutory benefits under Section 23(1a), Section 23(2) and Section 24 of the Land Acquisition Act, 1984. The amounts already paid to the claimants will have to be deducted while making the computation. This additional compensation shall however be payable subject to the claimants i.e. respondent therein depositing the proportionate and deficit Court Fee, if any, in this Court, within a period of six weeks from today. The executing Court to ascertain whether, such deficit Court Fee, if any, is paid before proceeding with the execution in the matter. The First Appeal and the Cross Objection are disposed of in the aforesaid terms. There shall be no order as to costs.

(M. S. SONAK, J.)