

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

CIVIL APPLICATION (F) NO.1759 OF 2017

IN

FIRST APPEAL (STAMP) NO.5276 OF 2016

(Executive Engineer, Lower Wardha Project Division, Wardha ..vs..Chandrakant Sadashiv Sirpurkar
and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Abhijit Parihar, Advocate for the applicant/appellant,
Shri M.A. Kadu, A.G.P. for respondent Nos.3 and 4.

CORAM : N.W. SAMBRE, J.

DATED : 19-04-2017

Heard.

For the reasons disclosed in the application, the
delay of 353 days caused in filing the appeal is
condoned.

The civil application is allowed accordingly.

First Appeal (Stamp) No.5276/2016.

Heard.

The respondents/claimants are the owners of
field Survey No.84, admeasuring 10.51 Hectares of
Mouza Antardoah, Tahsil Arvi, District Wardha, which
was acquired for submergence of the Lower Wardha
Project.

The award under Section 11 of the Land Acquisition Act came to be passed on 29th November, 2001 pursuant to the notification dated 17th September, 1998 under Section 4 of the Land Acquisition Act, awarding total compensation of Rs.4,83,460/- i.e. at the rate of Rs.46,000/- per hectare.

As the compensation awarded is found to be inadequate, Land Acquisition Case No.90/2008 came to be initiated under Section 18 of the Land Acquisition Act in which issues at Exhibit No.10 were framed.

The reference Court having considered the evidence brought before it vide judgment dated 16th December, 2014 awarded compensation at the rate of Rs.1,20,000/- per hectare which was enhanced from Rs.46,000/- per hectare. As such the present appeal under Section 54 of the Land Acquisition Act.

Shri Abhijit Parihar, learned Counsel for the appellant/acquiring body would strenuously urge that the enhancement granted is exorbitant and without any basis. According to him, the land in question is located at Antardoah whereas the sale-deed at Exhibit No.28 is in relation to the land which is located at Borgaon. No material is brought on record so as to demonstrate that the land acquired was of the same quality and deserves

to be awarded same compensation. In addition, he would urge that the appreciation of Index No.II at Exhibit No.26 is without any evidence on record.

Per contra, the learned counsel for the claimants supports the judgment delivered by the reference Court on the count that the claimant is examined at Exhibit No.22 and award at Exhibit No.23, 7/12 Extract at Exhibit No.24, map at Exhibit No.25, certified copy of Index No.II at Exhibit Nos.26 to 28 and certified copy of sale-deed at Exhibit No.29 are the material documents which are formed to be a basis for award of compensation. According to him, neither the acquiring body nor the State Government examined any witness so as to overcome the claim made.

The learned Assistant Government Pleader opposed the claim of the claimants and supported the argument advanced by the learned Counsel for the appellant.

What is required to be gathered from the record is the compensation awarded by the reference Court at the enhanced rate of Rs.1,20,000/- per hectare from Rs.46,000/- per hectare, which is based on sale instance at Exhibit No.28.

It is then to be noted that so as to substantiate the

contention that the document at Exhibit No.28 is in relation to a land which could be relied upon for granting enhancement, the claimant has deposed in support thereof and also placed copy of the map so as to demonstrate the distance between the land as acquired and one referred to in the sale-deed Exhibit No.28.

It is then to be noted that sale-deed at Exhibit No.28 which is executed pursuant to the permission granted by the Collector though there was notification under Section 4 of the Land Acquisition Act issued in relation to the said property. As such the said document at Exhibit No.28, in my opinion, is rightly relied upon by the reference Court. The compensation enhanced since is based on provisions of Section 51-A of the Land Acquisition Act whereby the certified copy of the sale-deed at Exhibit No.28 is accepted. In my opinion, no infirmity could be found. As such the appeal fails and is dismissed.

After the appeal period is over, the respondents/claimants will be entitled to withdraw the entire amount.

JUDGE

adgokar