

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL (ST) NO.31795/2010

WITH

**CIVIL APPLICATIONS NOS.14736/2010 AND
14737/2010**

The Executive Engineer,
Beed Irrigation Division, Beed.

...Appellant..
(Org.deft.no.2)

Versus

1] Santoba s/o Manda @ Mahadeo Sarwade,
age 50 yrs., occu.agri.,
r/o Wadgaon Dadahari
Tq.Ambajogai Dist.Beed.

2] The State of Maharashtra,
through Collector, Beed.

...Respondents...
(No.2 org.deft.no.1)

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Smt.Geeta L. Deshpande, Advocate for appellant.

Appeal is dismissed against respondent no.1 as per Court
order dated 4.2.2014.

Shri A.M. Phule, AGP for respondent no.2.

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CORAM: M.S. SONAK, J.

DATE: 06.02.2018

ORAL JUDGMENT :

1] Heard learned counsel appearing for the parties.

2] In this case, the First Appeal has been filed to

question the judgment and award made by the Reference Court on 21.3.2006 in Land Acquisition Reference No.72/1992 in which the Reference Court has enhanced the compensation from Rs.120/- and Rs.130/- per Are to Rs.375/- per Are. The area of acquired land is about 28 Ares and, therefore, the quantum of the enhanced compensation is by no means substantial. This appeal was instituted after delay of 1499 days i.e. after delay of over four years or thereabout.

3] After the institution of the appeal, it was noticed that the respondent no.1, who is the claimant, was in fact dead. Therefore, by order dated 4.2.2014, opportunity was given to the appellant to take steps to bring on record the legal representatives of deceased respondent no.1 and it was made clear that the failure to take steps would result in automatic dismissal of the appeal against the said respondent. Since the respondent no.1 was the only contesting respondent, the other respondent being the State of Maharashtra, the order would mean and imply dismissal of the entire appeal itself. In the order dated 4.2.2014 at paragraph no.1, it was also noted that the delay in preferring the appeal

is sufficiently explained and, therefore, it is condoned. Obviously, the observation and direction in paragraph no.1 of this order will not apply to the present appeal, as on the date of making of the said order, the sole contesting respondent was dead and his heirs were not brought on record. Obviously, therefore, there was no question of condonation of delay as against a dead person and that too without any notice to the legal representatives.

4] Be that as it may, since no steps were taken on 3.4.2014, the appeal stood dismissed. However, at the request of the learned counsel for the appellant, six weeks time was granted to take steps regarding the dismissal order. This means that six weeks time was granted to apply for recall of the dismissal order. Learned counsel for the appellant states that within six weeks, an application was filed for recall of the order dated 4.2.2014. However, it appears that the said application was not moved and, therefore, for three years, no orders were made on the said application. On 17.11.2017, however, notice was issued to the respondents returnable on 18.12.2017. When this order was made, none

appeared for the appellant and, therefore, this Court was not apprised of the position that the respondent no.1 had already expired or that an application was made for service by paper publication.

5] On 18.12.2017, this Court took cognizance of the Bailiff's report that the respondent no.1 has already expired. In fact, this was a fact well-known to the appellant, but was not brought to the notice of this Court. On 18.12.2017, learned counsel for the appellant submitted that the appellant has taken efforts to collect the information about the L.Rs. of the respondent no.1, but the efforts did not bring out any result. As a last resort, paper publication was ordered calling upon the L.Rs. of the deceased respondent no.1 to appear in the matter.

6] Thereafter, the matter was adjourned from time to time as no copy of the paper publication was placed on record. Today, when the matter is called out, a paper is handed over, which indicates that a huge advertisement has been published in the daily newspaper "Reporter" dated 20.1.2018. The advertisement only gives the name of the deceased respondent and there is no name of the

legal representatives. It is stated that an amount of Rs.1300/- has been spent for this advertisement. Upon this Court Court expressing surprise as to how the charges in respect of such a huge advertisement is only Rs.1300/-, the response is that this is a local newspaper having circulation only at Ambajogai. If this is correct, obviously this is not some valid paper publication because the law mandates publication in a newspaper having sufficient circulation.

7] Be that as it may, such publication without even stating the names of the legal representatives is obviously no compliance with the procedure under the law.

8] The only purpose for setting out all these details is to record the attitude of the appellant in a matter of this nature. Land admeasuring hardly 28 Ares has been acquired from the respondent no.1, who has long ago expired. The land acquisition reference determined compensation at Rs.120/- to Rs.130/- per Are. This was enhanced by the Reference Court way back in the year 2006 to Rs.270/- per Are. The State Government has issued Government resolution in which it has recorded its policy statement not to pursue the matters in which enhancement

is less than four times the rate prescribed in the ready reckoner on the date of issuance of Section 4 notification. Normally, the rate determined by the Land Acquisition Officer corresponds to the ready reckoner rate on the date of issuance of Section 4 notification. Clearly, therefore, enhancement in the present case is well within the limits prescribed by the Government resolution dated 3.11.2016. The policy decision applies also to the acquiring bodies, which are expected not to pursue such matters. Besides, as noted earlier, taking into consideration the enhancement granted and the area of the land acquired, the entire quantum of compensation payable is also quite paltry.

9] Despite all this, the matter is being pursued, that too half-heartedly. The matter has consumed the attention of this Court on no less than 15 to 20 dates. The matter has consumed the attention of the Advocate appearing for the appellant and possibly the Department officials also for considerable time. Considerable expenses have been incurred towards legal fees, processing fees, publication etc. All these amounts are very likely to exceed the amount of compensation, which

has been ordered to be paid to the land loser way back in the year 2006. There is no categorical information as to whether the enhanced compensation has till date been paid to the legal representatives of the deceased respondent no.1 or not. In all probability, no such payment has been made. Luxury litigation, however, goes on notwithstanding the policy decision of the Government itself not to pursue such matters.

10] Learned counsel for the appellant very rightly submits that she is not authorized to withdraw this matter. If the matter is to be adjourned in order to enable her to take instructions, as it was done on the earlier occasion, the instructions are not forthcoming because the Government officials, despite the Government resolution dated 3.11.2016, as amended from time to time, are not willing to take any decision in the matter. As noted earlier, the delay in the institution of the original appeal itself was 1499 days. If the application is perused, it is hardly giving any explanation worth the name explaining the delay of this magnitude. The matter of this nature has to end somewhere and cannot continue merely because the learned counsel appearing for the

appellant or the officers instructing her are unable to take any decision in the matter and, therefore, are under the impression that it is safe to simply continue with the matter.

11] Accordingly, the application, seeking to recall the order of dismissal of appeal against respondent no.1, is hereby dismissed. Even if the application were to be granted, taking into consideration the absence of any sufficient cause shown in the Civil Application No.14736/2010 seeking condonation of delay of 1499 days, the application would have to be rejected, as a result of which, the first appeal also would stand rejected. Again there was issue of institution of the appeal against a dead person, which was followed by the absence of time steps to bring on record the legal representatives. Mere publication in newspaper without even stating the names of the legal representatives or taking out application without giving even details of legal representatives or their whereabouts is hardly compliance with the procedure prescribed by law.

12] For all the aforesaid reasons, pending Civil Applications Nos.14736/2010 and 14737/2010 are hereby

dismissed. Ordinarily, this is a matter where costs should have been imposed upon the appellant. However, since the appellant is aware that it never has to pay the costs personally, but the costs is nothing but a burden upon the tax payer, this Court quite reluctantly refrains from imposition of any costs.

13] Copy of this order be sent to the Chief Secretary of the State, not because this particular case involves any point of law, which requires his attention, but because this case is an example of several similar matters, which take up the time not only of this Court, but also perhaps of the officials in the Departments, which institute and pursue such kind of litigation. In matters where the amount of compensation is quite paltry, it is always possible to take a policy decision not to institute appeal on this ground, clarifying non-institution of appeal ought not to be treated as precedent or ought not to be treated as acceptance of the rate granted by the Reference Court. This Court also invariably clarifies the position, however, it is not at all appropriate to spend public funds as well as public time in order to purportedly save a small amount, which

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according to the Department, has been improperly awarded to a farmer or an agriculturist whose land has been acquired for public project.

14] Consequently, First Appeal (St) No.31795/2010 is dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)