

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2010/2016
IN
FIRST APPEAL NO.848/2016

State of Maharashtra & Ors. ... Applicant

V/s.

Ashraf Abbas Patel & Ors. ... Respondents

Mr. A. Patil, AGP for the Applicant

Mrs. Anita Bhaktwani for Respondent Nos.1 to 4 and 6 to 12.

**CORAM: K.K. TATED &
S. K. SHINDE, JJ.**

DATED : AUGUST 27, 2018

P.C. :

1 Heard.

2 The learned counsel for the Respondents submits that Respondent No.5 Khalida ahmed Hasan Patel expired. She submits that she will provide the name and address of the legal heirs of Respondent No.5 to the learned AGP within four weeks from today. She submits that if the Civil Application is decided on merits, she has no objection.

3 By this Civil Application, the State is seeking the stay of operation and implementation of the judgment and award dated 18.12.2012 passed by the 2nd Jt. Civil Judge, Senior Division, Thane in LAR No.100/2011 (Old LAR No.22/1995).

4 The learned AGP submits that in the present proceedings the Special Land Acquisition Officer had issued Notification u/s.6 of the Land Acquisition Act, 1894 on 27.10.2000 for acquiring the Respondent claimant's land bearing Sy.No.56(1-2) admeasuring 11537 sq.mtr. situated at village Nizampura, Tq. Bhiwandi, District Thane for the purpose of construction of Primary School & play ground site No.43.

5 The learned AGP submits that the Special Land Acquisition Officer has passed award u/s.11 of the Land Acquisition Act, 1894 on 23.03.2004 and awarded compensation of Rs.98,95,356/- to the Respondent claimant.

6 Being aggrieved by the said order, the Respondent claimant had filed Reference u/s.18 of the said Act and claimed compensation of Rs.2 crores. He submits that the Reference Court, by judgment and award dated 18.12.2012 awarded compensation @ Rs.1100/- PSM. He submits that the Reference Court has not considered the sale instances on record. He submits that the Reference Court has awarded the compensation in respect of the acquired land on higher side. He submits that the Applicant has good chance of success in the matter. He submits that in the interest of justice, this Hon'ble Court be pleased to stay the operation and implementation of the impugned judgment and award till hearing and final disposal of the First Appeal. He submits that if stay is not granted and if entire awarded amount is recovered by the Respondent claimant, then in that case, it would be very difficult for the Applicant State to recover the same, if they succeed in this First Appeal.

7 The learned counsel for the Respondent claimant vehemently opposed the Civil Application . She submits that, this being a money decree, the Applicant may be directed to deposit the entire amount in the trial court with liberty to the Respondent claimant to withdraw the same.

8 It is to be noted that at the time of passing the impugned judgment and award dated 18.12.2012, the Reference Court in paragraph 20 mainly relied on sale instance no.4 in respect of the land bearing CTS No.4346 as mentioned in award Exhibit 22 and 27 where the market value was fixed @ Rs.1345/- per sq.mtr. It is to be noted that prima facie no finding is given by the Reference Court, whether the sale instance no.4 was relevant for fixing the market value of the acquired land. Reference Court in paragraph 23 stated that, in facts and circumstances of the case, claimant should get compensation @ Rs.1100/- per sq.mtr. Prima facie, there is no finding on what basis the Reference Court decided to award compensation @ Rs.1100/- per sq.mtr. to the respondents claimants.

9 Considering the submissions made by the learned counsel for the parties and the impugned judgment and award, we are satisfied that the Applicant has made out a case for following order:

- a. The operation and implementation of the judgment and award dated 18.12.2012 passed by the 2nd Jt. Civil Judge, Senior Division, Thane in LAR No.100/2011 (Old LAR No.22/1995) is stayed till hearing and final disposal of the First Appeal, subject to the Applicant depositing the entire awarded amount along with interest, if any, in the Reference Court, within 16 weeks from today.

- b. If the amount is not deposited as stated hereinabove, the Respondent claimants are entitled to execute the award according to law.
- c. If the amount is deposited within stipulated time as stated hereinabove, the Reference Court is directed to invest the said amount in a fixed deposit account of any Nationalized Bank, initially for a period of one year and same shall be continued till hearing and final disposal of the First Appeal.
- d. Liberty granted to the Respondent claimant to make an appropriate Application for withdrawal of the amount which will be decided on merits.
- e. Civil Application stands disposed of accordingly.

(S. K. SHINDE, J.)

(K. K. TATED, J.)