

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAF) NO. 2654/2018
IN
FIRST APPEAL STAMP NO. 9648/2017

The Executive Engineer, Minor Irrigation Division, Pusad, Dist. Yavatmal.

..Vs..

Madhukar Gobrya @ Govardhan Rathod 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 N.M. Gaidhane, Advocate for the applicant.
Shri S.V. Ingole, Advocate for the non-applicant No.1.
Ms. A.R. Kulkarni, A.G.P. for the non-applicant No.2.

CORAM : Z.A. HAQ, J.

DATE : 19.9.2018.

1] The applicant / appellant has filed appeal to challenge the award passed by the reference Court under Section 18 of the Land Acquisition Act, 1894 (for short “the Act of 1894”)

2] Pursuant to the notification under Section 4 of the Act of 1894 published in the Official Gazette dated 29th July 1999, 0.88 Hectare land owned by the claimant was acquired. There is no dispute that at the time of the acquisition there were 241 Orange trees in the acquired land, the average age of the Orange trees being five years. The Land Acquisition Officer determined the amount of compensation receivable by the claimant @ Rs. 40,000/- per hectare for the land and for the Orange trees @ Rs. 1,157/- per Orange tree, alongwith statutory benefits.

Being dissatisfied with the amount of compensation determined by the Land Acquisition Officer, the claimant requested for reference under Section 18 of the Act of 1894. By the impugned award, the Reference Court has held that the claimant is entitled for amount of compensation @ Rs. 1,50,000/- per hectare and for 241 Orange trees @ Rs. 3,500/- per tree, alongwith statutory benefits.

3] The learned advocate for the claimant has submitted that as per the policy of the State Government incorporated in the Government Resolution / Circular dated 23rd February 2017 as modified on 13th August, 2018, the acquiring body should not file the appeal to challenge the award if the amount of compensation for the land granted by the reference Court is not more than four times the amount of compensation determined by the Land Acquisition Officer, and in the present case the amount of compensation determined by the reference Court is not more than four times the amount of compensation determined by the Land Acquisition Officer and therefore challenge on behalf of the appellant to the award for grant in respect of compensation for the land need not be considered.

4] As far as the compensation for 241 Orange trees is concerned, the learned advocate for the claimant has pointed out that the reference Court has determined the amount of compensation for the Orange trees relying

on the valuation report (Exhibit No.29) placed on record by the claimant, and the award passed in other proceedings (Exhibit No. 36).

5] Be that as it may, I find that the explanation given by the applicant / appellant to explain the inordinate delay of 450 days in filing the appeal is not sufficient. The explanation is found in paragraph Nos. 2 and 3 of the application as follows:-

“2. That the above judgment and award came to be passed on 30-10-2015. The application for the certified copy of the same was made on - -2015 and the same was received on .It is submitted that thereafter the appellant Executive Engineer submitted all the relevant documents pertaining to the present case in the office of the V.I.D.C. for seeking its approval to file instant first appeal. It is submitted that after seeking necessary legal advice, the V.I.D.C. directed the appellant to file the first appeal in this Hon'ble Court.

3. Under the aforementioned circumstances, the appellant sent all the required documents on 6-6-2016 to the panel advocate for drafting and filing the first appeal in this Hon'ble Court. The panel advocate after examining the relevant documents, asked the appellant to arrange for the Court fees to be paid. The appellant after receiving the court fee amount from the V.I.D.C. sent the same to the panel advocate on 15-11-2016.”

6] As I am not satisfied with the explanation given by the applicant / appellant, the prayer for condoning the delay is dismissed.

The civil application is dismissed. Consequently the first appeal is rejected. In the circumstances, the parties to bear their own costs.

7] The impugned award is dated 30th October 2015. The first appeal alongwith the application praying for condonation of delay was filed on 26th April 2017. The appellant has not deposited the awarded amount. As per the impugned award, the appellant has to pay interest @ 15% per annum.

The Executive Director, Vidharbha Irrigation Development Corporation shall cause an inquiry to ascertain who is responsible for the lapses in depositing the amount of compensation and recover the amount from that official.

8] The action taken report shall be placed on the record of this appeal within three months.

JUDGE