

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

C.A.F. NO. 3712/2016
IN
FIRST APPEAL (ST) NO. 10381/2016

VIDC

..VS..

Manikrao Vithoba Deshmukh Through LR's & anr.

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

Court's or Judge's orders

Shri V.V. Dahat, Advocate for the appellant(s)
Shri K.S. Narwade, Advocate for the respondent nos. 1A to 1D
Ms. G.Tiwari, AGP for the respondent no. 2

CORAM : Z.A.HAQ, J.

DATED : APRIL 11 2018.

For the reasons stated in the application, the applicant/appellant is permitted to file appeal.

The civil application is allowed accordingly. No costs.

C.A.F. NO. 315/2017

Accepting the explanation given in the application, delay of 413 days in filing the appeal is condoned.

The civil application is allowed accordingly. No costs.

FIRST APPEAL (ST) NO. 10381/2016

Taken up for hearing on admission.

Heard.

The acquiring body has filed this appeal to challenge the award passed by the Reference Court by which the amount of compensation receivable by the claimants is enhanced.

By notification issued under Section 4 of the Land Acquisition Act, 1894 (for short “the Act of 1894”) on 08/08/2002, about 1 hectare 15 R land from different field survey numbers owned by the claimants came to be acquired for Khadakpurna Project. The Land Acquisition Officer determined the amount of compensation receivable by the claimants as Rs. 62,500/- per hectare. Being dissatisfied with the amount of compensation, the claimants sought reference under Section 18 of the Act of 1894. The Reference Court, relying on the award passed in L.A.C. No. 143/2006 enhanced the amount of compensation holding that the claimants are entitled for compensation @ Rs. 3,30,000/- per hectare alongwith statutory benefits.

It is not in dispute that the land in respect of which, the L.A.C. No. 143/2006 was filed was acquired by the notification issued under Section 4 of the Act of 1894 on 20/07/2002 i.e. about 18 days before issuance of notification under Section 4 of the Act of 1894 in the present case. It is undisputed that the award passed in L.A.C. No. 143/2006 is accepted by the appellant and the appeal is not filed.

After hearing the learned advocates for the respective parties and considering the facts of the case, I find that the appellant-Corporation has not been able to make out any case for interfering with the impugned award.

This matter was listed on 04/04/2018 for consideration of C.A.F No. 3712/2016 by which the appellant sought leave to file the appeal. At the time of hearing, Shri K.S. Narwade, Advocate for the claimants pointed out that

though the awarded amount was already deposited by the appellant before the Reference Court and was received by the claimants in 2015, an interim order was obtained by the appellant from this Court on 24/11/2016 assuring that the awarded amount would be deposited till 25/11/2016 and accordingly the amount came be deposited. Noticing these facts and the fact that though the appeal was not filed to challenge the award passed in L.A.C. No. 143/2006, the appellant showed undue diligence in prosecuting the present matter, an order was passed on 04/04/2018 directing the Superintending Engineer, Khadakpurna Project Division, Buldhana to file affidavit explaining the reasons for the lapses on the part of the officers of the appellant-Corporation. An affidavit sworn by Nitin S/o Namdeo Supekar, Superintending Engineer, Buldhana Irrigation Project Circle, Buldhana is filed stating that the amount of compensation was deposited before the Reference Court by the Land Acquisition Officer and not by the appellant-Corporation. It is stated that the Land Acquisition Officer had sent joint requisition for the amount of compensation in about 4 cases and had sent joint intimation informing that the amount of compensation was deposited in those cases, and this intimation was placed in the file of some other case. It is further stated that the Law Officer handling the cases of the appellant-Corporation had advised not to file appeal against the award passed in L.A.C. No. 143/2006 however, the other Law Officer handling the cases of the appellant-Corporation subsequently, advised to file appeal in the present case and therefore the appeal is filed. To support the submission, documents are filed.

The explanation given in the affidavit cannot be accepted. Prima facie, it appears that the lapses are not

because of bonafide mistake as the huge amount which is payable from public money cannot be dealt with in such manner without keeping proper accounts. Moreover, when the Reference Court has specifically relied on the award passed in L.A.C. No. 143/2006 and the award passed in L.A.C. No. 143/2006 is not challenged and as no other ground is pointed out for independently challenging the award impugned in this appeal, it is difficult to understand how such advise is given by the Law Officer and how it is acted upon by the Officers-in-charge for handling the legal matters.

In view of the above, the appeal is dismissed. In the facts of the case, the appellant-Corporation is directed to pay costs of Rs. 50,000/- (Rs. Fifty Thousand) to the claimants.

This amount of costs shall be paid to the claimants in equal proportion from the amount deposited by the appellant-Corporation with the Registry of this Court. After paying the amount of costs to the claimants, the balance amount be refunded to the appellant-Corporation.

The appellant-Corporation will be at liberty to conduct an inquiry in the matter and recover this amount of costs from the erring Officers, if so advised.

JUDGE