

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

CAF NO. 976/2018
IN
FIRST APPEAL (ST.) NO. 16629/2017

The EE, Chandrapur

..VS..

Motiram S/o Rambhau Devade & ors.

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

Court's or Judge's orders

Ms. J.J. Alkari, Advocate for the applicant/appellant
Shri P.R. Karekar, Advocate for the non-applicant/respondent nos. 1 to 4
Ms. Mrunal Naik, AGP for the non-applicant/respondent nos. 5 and 6

CORAM : Z.A.HAQ, J.
DATED : 17/09/2018

Though the delay in filing the appeal is inordinate (of 2203 days), considering the peculiar facts of the case, it has to be condoned.

Pursuant to the notification under Section 4 of the Land Acquisition Act, 1894 (for short "the Act of 1894") published on 13/11/1997, out of 6.76 hectare land owned by the non-applicant/respondent nos. 1 to 4 (claimants), 3.76 hectare land was acquired. The Land Acquisition Officer determined the amount of compensation but being dissatisfied with it, the claimants had requested for reference under Section 18 of the Act of 1894. By the impugned award, the Reference Court has held that though only 3.76 hectare land of the claimants is acquired, remaining 3 hectare land cannot be utilized by the claimants and therefore they are entitled for compensation for the acquired land at enhanced rate. According to the claimants, remaining 3 hectare land which is not acquired became inaccessible and uncultivable.

The learned advocate for the appellant has pointed out that 7/12 extract (copies of which are placed on record) show that the unacquired 3 hectare land is being cultivated by the claimants.

The learned advocate for the claimants has submitted that 7/12 extract were not placed before the Reference Court and they are being relied upon at the appellate stage. Though this submission carries force, the advocate for the claimants has not been able to point out that while claiming compensation for the acquired land at the enhanced rate on the ground that they are not able to cultivate 3 hectare unacquired land, the claimants have led sufficient evidence to establish their claim.

In the facts of the case, the delay in filing the appeal is condoned.

The civil application is **allowed** accordingly. No costs.

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Taken up for hearing on admission.

ADMIT.

Shri P.R. Karekar, Advocate waives notice for the respondent nos. 1 to 4 and Ms. Mrunal Naik, AGP waives notice for the respondent nos. 5 and 6.

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By the order passed on C.A.F. No. 978/2018 on 03/07/2018, this Court has stayed the execution proceedings.

The advocate for the claimants has made a grievance that even according to the appellant the amount of compensation which the appellant is required to pay/deposit as per the impugned award is Rs. 62,18,099/-, but the appellant has deposited only Rs. 17,39,687/-.

In the facts of the case as recorded above, the execution proceedings shall stand stayed till disposal of the appeal.

JUDGE

Ansari