

bdp

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 467 OF 2019
IN
FIRST APPEAL (ST.) NO. 23825 OF 2017**

The State of Maharashtra	... Applicant
V/s.	
Smt. Sitabai Manohar Patil & Anr.	... Respondents

.....

Mrs. Tanaya Goswami, AGP for the Applicant/Appellant-State.
Mr. Hemant Ghadigaonkar for the Respondents.

.....

**CORAM : K.K. TATED, J.
DATE : 25th JUNE, 2019.**

P.C.:

Heard learned Counsel for the parties.

2. By this Civil Application, Applicant-State is seeking stay of the operation and implementation of Judgment and Award dated 28th November 2016 passed by the learned Civil Judge, Senior Judge, Alibag, Dist. Raigad in L.A.R. No. 187 of 2016.

3. The learned AGP for Applicant submits that in the present proceedings Spl. Land Acquisition Officer issued notification under Section 4 of Land Acquisition Act dated 24th September 1986 for acquiring Respondent original claimant land from village Dongri, Taluka Uran, Dist. Raigad for the purpose of “New Bombay Project”.

He submits that after following due process of law, the Special Land Acquisition Officer declared the Award dated 25th September 1989 under Section 11 of the said Act and awarded compensation of Rs.42,915/- for 6,200 sq. meters land @ Rs.500 per square meter.

4. Being aggrieved by the said award, the Respondent original claimant reference under Section 28-A(3) of the Land Acquisition Act and claim the compensation at Rs.5000 per sq. meter.

5. The learned AGP submits that the reference Court awarded the compensation in respect of the acquired land @ Rs.500 per sq. meter that comes to Rs.30,57,085/-. She submits that the reference Court failed to consider the sale instance placed on record at the time of passing the impugned Judgment and Award. She submits that if entire amount is recovered by the claimant in the execution application then nothing will survive in the present First Appeal.

6. Learned AGP for the Applicant submits that they have good chance of success in the present proceedings. She submits that pending the hearing and final disposal of First Appeal, this Hon'ble Court be pleased to stay the operation and implementation of impugned Judgment and Award passed by the reference Court.

7. On the other hand, the learned Counsel appearing on behalf of the Respondent-claimant vehemently opposed the present Civil Application. He submits that the reference Court, awarded compensation on the basis of previous Judgment in respect of the land from same locality. Therefore, no question of any stay. He further submits that in any case the reference Court has passed the money decree, therefore Applicant have to deposit the entire awarded amount with interest.

8. It is to be noted that in the present proceedings the Special Land Acquisition Officer granted only Rs.42,915/- to the Respondent-claimant towards the acquired land, whereas the reference to enhance the said amount to Rs.30,57,085/-.

9. Considering these facts, I am of the opinion that Applicant has made out case for allowing this Civil Application, but at the same time, Applicant have to deposit the entire awarded amount with interest in the reference Court. Hence, following order is passed:-

- i) Civil Application is allowed in terms of prayer clause (b), which reads thus:-

“(b) this Hon'ble Court be pleased to condone the delay of 142 days in filing the above mentioned First Appeal against

the Judgment and Award dated 28.11.2016 passed by the Learned Civil Judge, Senior Division, Alibag, Raigad, in L.A.R. No. 187 of 2016.” on condition that Application to deposit the entire awarded amount with interest in reference Court on or before 30th September 2019 failing which Civil Application shall stand dismissed without further reference to the Court.

- ii) If the amount deposited within stipulated time as stated herein above, reference Court is directed to invest the said amount in fixed deposit of any Nationalized Bank, initially for a period of one year and same to continue till further order.
- iii) Liberty granted to the Respondent-claimant to prefer an appropriate application for withdrawal of the amount, if he so desire, which will be decided on its own merits.
- iv) Civil Application disposed off accordingly.
- v) No order as to costs.

(K.K. TATED, J.)