

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 472 OF 2019
WITH
FIRST APPEAL STAMP NO. 23838 OF 2017

The State of Maharashtra Applicant
V/s.
Late Shri Kamlya Undir Bhoir
(since deceased through legal heirs
Shri Ghanashyam Kamlya Bhoir & Ors.) Respondents
.....
None for Applicant.
.....

CORAM : K.K.TATED, J.
DATED : 11th October, 2019

P.C.

1. None for the parties.
2. Today, the matter is shown on board for speaking to minutes of order dated 25th June 2019. In cause title instead of 'FIRST APPEAL STAMP No. 23830 of 2017', it should be '**FIRST APPEAL STAMP No.23838 of 2017**'. The said correction to be carried out.
3. Corrected order reads thus :

“ IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 472 OF 2019
IN
FIRST APPEAL (ST.) NO. 23838 OF 2017

The State of Maharashtra ... Applicant
V/s.
Late Shri Kamlya Undir Bhoir
(since deceased through legal heirs)
Shri Ghanashyam Kamlya Bhoir & Ors. ... Respondents

....
Mrs. Tanaya Goswami, AGP for the Applicant.
Mr. Hemant Ghadgoankar for the Respondent Nos. 1 to 7.

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

P.C.:

Heard learned Counsel for the parties.

2. By this Civil Application, Applicant-State of Maharashtra 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. 172 of 2016 till the hearing and final disposal of the First Appeal.

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 Panje, 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 passed Award dated 26th January 1989 under Section 11 of the said Act and awarded sum of Rs.29,009/ by way of compensation in respect of the land acquired land.

4. Being aggrieved by the said order, the Respondents original claimants preferred reference under Section 28A(3) of the Land Acquisition Act on the basis of previous Judgment in respect of the land arising from the same local area. He submits that the reference Court on the basis of the earlier Judgment held that claimants are entitled for sum of Rs.18,80,991/ by way of additional compensation. He submits that at the time of deciding impugned award under Section 28A(3) of the said Act, the reference Court fail to consider the evidence on record brought by the Applicant. He submits that if entire amount is recovered by the respondent by way of executing application, nothing will survive in the present First Appeal. He submits that they are having good chance of success in the present proceeding.

6. Learned AGP 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. The learned Counsel appearing on behalf of the Respondent-claimant vehemently opposed the present Civil Application. He submits that the reference Court after considering the evidence on record, passed the Judgment and Award under Section 28A(3) of the said Act. Therefore, there is no question of granting any stay in favour of Applicant. He further submits that in many cases, the reference Court has passed money decree, therefore if stay is granted, in that case Applicant may be directed to deposit the entire awarded amount with interest in the reference Court.

8. Considering the submissions made by the learned AGP for the Applicant, averments made in this Civil Application and as the reference Court awarded additional compensation of Rs.18,80,991/, I am satisfied that Applicant has made out case for following order:

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

“(b) that this Hon'ble Court be pleased to stay the operation and/or execution and/or implementation of

the Judgment and Award dated 28.11.2016 passed by the Learned Civil Judge, Senior Division, Alibag, District Raigad in L.A.R. No. 172 of 2016, till the hearing and final disposal of the above mentioned First Appeal” on Condition that Applicant has 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 be continued till further order.
- iii) Liberty granted to the Respondentclaimant to prefer an appropriate application for withdrawal of the amount, if they 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.)