

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

First Appeal No.556/2019

Bhojraj Gaikwad Vs. State of Mah. Through Collector Yavatmal & Ors.

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

Court's or Judge's orders

Mr. N.P. Lambat, Advocate for appellant.
Mrs. M.S. Naik, AGP for respondents.

CORAM : MANISH PITALE, J.

DATED : SEPTEMBER 03, 2019

By this appeal, the appellant (original land owner and claimant), has challenged Judgment and Award dated 15/09/2017, passed by the Court of Civil Judge (Senior Division), Yavatmal (Reference Court), whereby application filed by the appellant under Section 18 of the Land Acquisition Act, 1894, for enhancement of compensation numbered as LAC No.517/2007, was dismissed.

2. In the present case, 0.36 H.R. Land belonging to the appellant from field survey No.203 of Mouza Mangrul Tah. and District Yavatmal, was acquired for construction of road by the respondents. On 23/03/2005, the Land Acquisition Officer pronounced Award granting compensation of Rs.33,120/- to the appellant for acquisition of the said land. Aggrieved by the same, the appellant preferred

the said application under Section 18 of the said Act, seeking enhancement of compensation, claiming enhanced compensation of about Rs.2,00,000/- per hectare.

3. A perusal of the impugned Judgment and order shows that the appellant failed to appear before the Court below and to produce any evidence in support of the claim made in the reference application. The Reference Court has recorded that opportunity was granted to the appellant but he failed to avail of the same. Thereafter, the Reference Court dismissed the application, although holding that the reference application was indeed made within a period of limitation, but, since the appellant failed to adduce any evidence in support of the application, the same is deserved to be dismissed.

4. The learned counsel for the appellant submits that the appellant is 85 years old person and that due to his old age he was unable to pursue the application in the Reference Court in the proper perspective. It is submitted that even before this Court there was delay in filing the appeal, but, the delay was condoned considering the peculiar facts of the case and old age of the appellant that led to the situation in which the appellant found himself. It is submitted that if opportunity is granted to the appellant before the Reference Court he would be able to produce material

in support of his claim of enhanced compensation and appellant would be able to produce material showing quantum of compensation granted to the claimants in similarly situated cases of acquisition. It is also submitted that the respondents will not suffer any prejudice because the thrust of the Land Acquisition Act is to ensure that fair and just compensation is awarded to the claimants.

5. On the other hand, the learned AGP opposed the present appeal, contending that the record demonstrated that the notice regarding hearing on the application before the Reference Court was indeed served on the son of the appellant and that the appellant could not feign ignorance regarding listing of the application before the Reference Court for disposal. It is also contended that the medical grounds raised on behalf of the appellant were not supported by cogent material on record.

6. Heard learned counsel for rival parties and perused the material on record. The only point that arises for consideration in this appeal is, as to whether opportunity needs to be granted to the appellant to support his claim for enhancement of compensation before the Reference Court considering his old age and difficulty expressed by him in pursuing the application before the Reference Court.

7. The material on record shows that the appellant in the present case is about 85 years of age and he is an agriculturist. The record also shows that the reference application moved by him before the Reference court was within limitation and that it did deserve consideration on merits. The reasons given by the appellant for failure to pursue the application on merits before the Reference Court appear to be supported by material on record. In any case, no prejudice would be suffered by the respondents if opportunity is granted to the appellant to support his claim for enhancement of compensation. The object of the aforesaid Act is to pay just and fair compensation to the claimants and to ensure that such compensation is as per the market value of the acquired land. In the present case if opportunity is granted to the appellant to demonstrate that the actual market value of the land in question was much higher than the amount of compensation granted by the Land Acquisition Officer, it would be in the interest of justice and in consonance with the object of the aforesaid Act.

8. Hence, in view of the above, the present appeal is allowed. The impugned Judgment and order passed by the Reference Court is quashed and set aside and the matter is remanded to the Reference Court for consideration afresh. The appellant is directed to remain present before the Reference Court on **16/09/2019**. The appellant is directed to pursue his

application for enhanced compensation before the Reference Court with diligence so that the proceedings before the Reference Court can be disposed of at the earliest.

9. It is made clear that this Court has not expressed any opinion regarding the merits of the claim of the appellant herein.

10. By order dated 25/04/2019, while admitting appeal, this Court had called for record and proceedings. Since the matter has been remanded to the Reference Court, there is no need to call record and proceedings.

11. Considering the age of the appellant, the Reference Court is directed to give priority to disposing of his case.

JUDGE