

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

Civil Application (CAF) No.2376/2019 in First Appeal Stamp No.9728/2019
Tandurakhatun & Others Vs. State of Mah. & Others

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

Court's or Judge's orders

Mr. Amol Darekar, Advocate for appellants
Mr. M.A. Kadu, Advocate for respondent No.3

CORAM : MANISH PITALE, J.

DATED : OCTOBER 04, 2019

This is an application filed on behalf of the original claimants seeking condonation of delay of 4588 days in filing the accompanying appeal. Notice was issued in this application on 21/08/2019. The respondents were served and they have entered appearance through counsel.

2. The applicants / appellants are ready to waive interest for the period of delay in the event the quantum of compensation is enhanced. While making the said submission, the learned counsel appearing on behalf of the applicants / appellants relied upon the Judgment of the Hon'ble Supreme Court in the case of **Imratlal and others Vs. Land Acquisition Officer 2014(9) Scale 446**, wherein considerable delay was condoned by imposing some conditions.

3. In view of the above, the present application

is allowed and the delay is condoned subject to the applicants / appellants not being entitled to interest on the enhanced compensation for the period of delay 4588 days.

4. Application is disposed of.

First Appeal No. _____/2019.

While issuing notice on the application for condonation of delay, this Court had also issued notice on this appeal.

2. The learned counsel for the appellants pointed out that by the impugned Judgment and Award, the Reference Court dismissed the reference made on behalf of the appellants for default, by recording that the reference application was not pursued on various dates. It is submitted that in such a situation the matter could be remanded to the Reference Court for fresh consideration.

3. It was also submitted that by the Judgment and Award dated 30/4/2014, the Reference Court had granted enhanced compensation @Rs.1,49,157/- to identically situated claimants whose land has been acquired from the very same village Pimpalshenda Tah. Barshitakli Dist. Akola. Therefore, it was submitted that instead of remanding the matter back to the Reference Court, enhanced compensation at the same rate could

be granted to the appellants herein because the acquisition in the present case was also from the same village and pursuant to the same Notification issued under Section 4 of the Land Acquisition Act, 1894.

4. When the learned counsel appearing for the respondents were asked to respond to the said submission, it was pointed out that even in a case concerning grant of compensation concerning adjoining village i.e. Atkali, for the same project, this Court had held in First Appeal No.312/2008 that the claimants therein were entitled to compensation at the rate of Rs.1,25,000/- per hectare.

5. Considering the aforesaid material, this Court is of the opinion that no useful purpose would be served by remanding the matter back to the Reference Court, in view of admitted position that enhanced compensation was granted to claimants whose lands were acquired from the same village and also from the adjoining village. It is informed by the learned counsel for the rival parties that the judgment and Award of the Reference Court dated 30/04/2014, passed in L.A.C. No.1/2003 (Afrojkhatun Sanaullakha and one Vs. State and others), was not made subject matter of challenge and that it attained finality. It is informed that the acquiring body in the said case, in fact, deposited the entire amount of compensation so granted by the Reference Court in the aforesaid case.

6. In view of the above, this Court is of the opinion that the present appeal deserves to be allowed.

7. Accordingly, the impugned judgment and Award passed by the Reference Court is quashed and set aside.

8. It is held that the appellants in the present case are entitled to grant of compensation at the rate of Rs.1,49,157/- per hectare with all statutory benefits, as was granted in the aforesaid case by the Reference Court, pertaining to acquisition of land from the very same village.

9. Accordingly, the respondents shall deposit the aforesaid amount of compensation before the Reference Court within a period of 6 months from today. Upon such deposit of the amount, the appellants shall be entitled to withdraw the same immediately.

10. It is made clear that the appellants shall not be entitled to interest on the enhanced compensation for the period of delay of 4588 days in approaching this Court.

11. Appeal is disposed of.

JUDGE