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

**C.A.F. NO.65 OF 2019 IN F.A. ST.NO.12428 OF 2018
(Union of India and another .vs. Sunil s/o. Sudhakar Patil and Ors.)
with
F.A. NO.1338 of 2019
(Union of India and another .vs. Sau.Sunita Suresh Darne and Ors.)
with
F.A. NO.1665 OF 2019
(Union of India and another .vs. Vilas s/o. Sudhakar Patil and Ors.)**

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Mr.V.M.Gadkari, Advocate for the appellants/ applicants.
Mr.Virendra Darane, Advocate for respondent no.1.
Mr.M.A.Kadu, A.G.P. for respondent nos. 2 and 3.

CORAM : N. W. SAMBRE, J.

DATE : 1.10.2019.

Heard.

There is delay of 185 days caused in preferring First Appeal St.No.12428 of 2018. The prayer for condonation of delay is opposed by the learned Counsel Mr.Virendra Darane appearing for the respondent/land owners.

In view of sufficient cause disclosed, the application is allowed. Delay stands condoned.

First Appeal St.No.12428 of 2018 and First Appeal Nos. 1338 of 2019 and 1665 of 2019

Heard Mr.V.M.Gadkari, learned Counsel for the appellant/Acquiring Body. A small track of land owned by respondent no.1 was acquired pursuant to Section 4 notification dt.7.2.2013.

The Reference Court granted enhancement after adjusting 20 % deduction as the land in question was seasonally irrigated and it is located about five fields inside from the National Highway.

While questioning the aforesaid findings recorded by the Reference Court, Mr.Gadkari, learned Counsel for the appellant would urge that 20% deduction is unreasonable even if so prescribed in the Judgment in the case of **Mehrawal Khewaji Trust (Regd.), Faridkot and Others vs. State of Punjab and Others** reported in 2012 (4) ALL MR 470. He would submit that, in L.A.C. No.197 of 2014 which is relied on for grant of enhanced compensation, the date of Section 4 notification even if is subsequent i.e. dt.14.3.2013, the Reference Court could have deducted 50% of the amount from the amount determined in the said case, particularly having regard to location of land therein which is abutting the National Highway.

While countering the aforesaid submissions, Mr.Darane, learned Counsel for the land owner would urge that the Reference to Judgment in L.A.C. No.197 of 2014 is very much justified as land therein was acquired for very same cause for which the land of respondents/land owners is acquired. He would urge that even if land is located abutting Nagpur-Yavatmal Major State Highway, the fact remains that 20% deduction is reasonable considering location of the land. He sought dismissal.

This Court during the course of hearing asked learned Counsel for the respondents/land owners to be reasonable on the issue of deduction. In response to above, Mr.Darane, learned Counsel for the respondents/land owners fairly concedes that deduction can be raised upto 30% and he has every authority to that effect.

Since the statement is made by the learned Counsel for respondents/land owners on instructions, same is accepted.

Acceptance of statement of Mr.Darane for reducing the deduction by 20 % to that of 30% is fairly justified considering the fact that, in L.A.C. No.197 of 2017, the Reference Court has relied on Sale deed Exh.30. The market value as reflected in said sale deed was Rs.25,08,525/- of the field Survey No.22/1 at mouza Shirpur since the said land was abutting major State Highway. The Reference Court in the Judgment impugned has granted deduction of 20% which, in my opinion, could be justified to 30% keeping in mind the fact that the land of Claimants is situated about five fields inside the major State Highway.

The Reference Court, in my opinion, was also justified in granting 10 % rise in view of challenge in the date of Section 4 notification.

As a consequences of above, the First Appeals are partly allowed. Deduction from 20% is raised to 30% in the amount of compensation to be awarded.

The appellant and respondents/land owners, in view of above, shall submit their respective calculations and learned Registrar (Judicial) shall permit withdrawal of entire compensation by the respondents/land owners after adjusting amount of compensation in view of deduction ordered.

Needless to clarify that excess amount, if any, deposited by the appellant shall be permitted to be withdrawn.

JUDGE

jaiswal