

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

C.A.F. NO.2036 OF 2019 IN F.A. ST.NO.17496 OF 2016
(Executive Engineer, Purna Medium Project, Achalpur vs. Prabhavati
w/o. Yadaorao Kale and Ors.)

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

Court's or Judge's Orders

*Mrs.Pranita Chobe, Advocate h/f. Mrs.Anjali Joshi,
Advocate for the appellant/applicant.
Mr.V.P.Maldhure, Advocate for respondent nos.
2 and 3.*

CORAM : N. W. SAMBRE, J.

DATE : 1.10.2019.

Heard.

L.A.C. No.10 of 2007 was preferred by respondent Prabhavati seeking enhanced compensation, which is allowed by the impugned Judgment dt.30.9.2015 passed by the Reference Court in exercise of powers under Section 18 of the Land Acquisition Act.

Learned Counsel for the appellant/Acquiring Body has invited attention of this Court to the fact that the Original land owner namely Yadavrao Sitaram Kale was claimed to have went missing since 2.4.2002 and according to her, that being so, proceedings should have been initiated by all the legal heirs and not by one of them i.e. deceased's wife. Learned Counsel submits that, in case if the appeal is dismissed, there will be dispute of apportionment amongst legal heirs and there is every likelihood that the appellant/Acquiring body will be financially penalised.

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Next limb of submission of learned Counsel for the appellant is, enhancement in question is based on enhanced compensation awarded in L.A.C. No.28 of 2005. Said Judgment dt.21.11.2011 is relied on in L.A.C. No.29 of 2006 of village Surali from where land of respondent was acquired. According to her, in L.A.C. No.28 of 2005, land was acquired from mouza Brahmanwada Thadi where as land in appeal herein was acquired from village Surali from the very same taluqa and that being so, the Reference Court ought not to have relied on the Judgment in L.A.C. Nos.28 of 2005 and 29 of 2006.

The next limb of submission is, compensation awarded is not reasonable and that being so, the order of enhanced compensation is not sustainable.

Considered submissions. Perused Judgment delivered in L.A.C. No.28 of 2005 in relation to land at mouza Brahmanwada Thadi, which was acquired for very same project. It has come in the said reference that village Brahmanwada is located about one kilometres away from village Surali and that being so, same is relied by the Reference Court while granting enhanced compensation. There is one more aspect of the matter i.e. while granting enhanced compensation certified copy of Index II at Exh.48 was produced. The sale instance of village Brahmanwada Thadi of dt.18.4.1998 i.e. almost four years prior to the date of publication of Section 12 notification was taken into account. The irrigation potential and price fixed prevailed before the Reference Court for grant of enhanced compensation.

Apart from above, sale instance

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dt.20.3.2001 of village Surli of the land block no.74 for a consideration of Rs.57,000/- per hectare was also considered. Section 4 notification in the case in hand was issued on 12.5.2012; whereas the sale instance of village Surali is dt.20.3.2001 i.e. prior to Section 4 notification. In the aforesaid background, enhanced compensation is based on cogent evidence and the Judgment in Reference No.28 of 2005 of adjoining village. That being so, no case for interference in this appeal is made out,.

Civil Application No.2036 of 2019 for condonation of delay so also First Appeal St.No.17496 of 2016, as such, fail. Both of them stand dismissed.

As far as the issue of withdrawal of compensation is concerned, let the amount be relegated back to the Reference Court. The Reference Court be sensitive to the aforesaid objections raised by the Acquiring Body while dealing with the issue of apportionment.

JUDGE