

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

First Appeal Stamp No.10048 of 2019

VIDC, thr. its Executive Engineer Vs. Gayabai Shreeram Mahalle (Dead) thr. L.Rs. & Ors.

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

Court's or Judge's Orders

Shri K.P. Mahalle, Advocate for the Applicant.
Shri M.M. Agnihotri, Advocate for Respondent No.1.
Shri M.A. Kadu, A.G.P for Respondent Nos.2 and 3.

CORAM : S.M. MODAK, J.
DATE : 6th NOVEMBER, 2020.

Civil Application (F) No.2592/2019

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

Heard learned Advocate Shri K.P. Mahalle for the applicant, learned Advocate Shri M.M. Agnihotri for respondent No.1 and learned A.G.P for respondent Nos.2 and 3.

The reference Court/Civil Judge (Senior Division), Akola has enhanced the compensation as per the award dated 31st March, 2018. The present appellant through its Executive Engineer, Minor Irrigation wants to contest the matter. They could not prefer an appeal in time. The condonation of delay application is opposed on behalf of the claimant/respondent No.1. The delay was caused due to the procedural compliances at their office level. It is acceptable. Hence, the order:-

- a) The delay caused in preferring an appeal is condoned.

b) The civil application is disposed of.

First Appeal Stamp No.10048/2019

The award dated 31st march, 2018 passed by the Civil Judge (Senior Division), Akola is challenged by the original non-applicant No.3 acquiring body.

Heard.

Admit.

Call for record and proceedings.

Learned Advocate Shri M.M. Agnihotri waives notice on behalf of respondent No.1. Learned A.G.P Shri M.A. Kadu waives notice on behalf of respondent Nos.2 and 3.

Civil Application (F) No.1339/2020

Heard learned Advocate Shri K.P. Mahalle for the applicant, learned Advocate Shri M.M. Agnihotri for respondent No.1 and learned A.G.P for respondent Nos.2 and 3.

It is true that the original claimant/respondent No.1 is certainly entitled to withdraw the amount of compensation. The issue is, he is entitled to withdraw how much amount? Whether it is 100% 75%, 50% or any other per cent.

Learned Advocate Shri M.M. Agnihotri prayed for withdrawal of the 100% amount. He submitted that the reference

Court has not considered the evidence of the engineer and valuer. According to him, once the claimant has given evidence on the point of market value, onus shifts on the Government to prove the market value. In order to buttress his submission regarding the manner of appreciation of evidence in such matters, he relied upon the judgment in case of **Mahesh Dattatray Thirthkar Vs. State of Maharashtra** reported in **(2009) 11 SCC 141**. The test of balance of probability (and not that of beyond reasonable doubt) is to be followed. It is also true that burden is casted on the State to prove the true value of the acquired property. Learned Advocate Shri M.M. Agnihotri also relied upon some of the instances wherein the Court has permitted 100% withdrawal of the amount.

In the judgment impugned in this appeal, the reference Court has enhanced the compensation from Rs.62,000/- per hectare to Rs.2,50,000/- per hectare. So also, there is some variation in the amount of compensation for trees. Whereas, claimant has asked for compensation of Rs.3,12,500/- per hectare.

The reference Court has considered the rate fixed by this Court in First Appeal No.691/2005. It was Rs.1,00,000/- per acre accordingly granted Rs.2,50,000/- per hectare. The appellant is entitled to argue that the rate fixed in that appeal is not applicable to the land in question. The appellant is also entitled to argue that there is wrong appreciation of the evidence.

I am not inclined to allow 100% withdrawal of the amount. The claimant may be interested to file cross objection for

getting more amount than given by the reference Court. It is also true that the claimant wants withdrawal for the purpose of acquiring agricultural land. But, I think 75% withdrawal of the amount will meet the ends of justice. Ultimately, the Court has to balance the rights of both the parties. At this stage, the Court is not supposed to express opinion on merits.

Even though, total 100% withdrawal of the amount is not allowed, remaining 25% will remain in Court in deposit account. If the claimant will succeed, he will get benefits. The orders passed by this Court which are cited before me are on the basis of facts of that case. Ultimately, it is discretion of the Court to be exercised judiciously. So I am inclined to pass the following order:-

- a) The application is **allowed**.
- b) The Office is directed to pay 75% of the deposited amount of Rs.1,46,24,044/- to respondent No.1 by transferring the amount in his bank account after personal identification.
- c) Respondent No.1 is directed to give an undertaking within 30 days to return that amount along with 6% interest in case the decision will go against him and in favour of the appellant.
- d) The civil application is disposed of.