

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

FIRST APPEAL NO.854/2012

Sheshrao S/o. Kashinath Gore,
Aged about : 60,
Occupation : Agriculturist,
R/o. Nagari, Tal : Babulgaon,
Dist.: Yavatmal.

...APPELLANT.
(On R.A.)

----VERSUS----

1. State of Maharashtra, Through
Collector, Yavatmal.
2. Special Land Acquisition Officer,
Bembala Project, Yavatmal.
3. Executive Engineer, Bembala Project,
Yavatmal.

...RESPONDENTS
(On R.A.)

Mr. P. Chaudhari, Advocate h/f. Mr. Abhay Sambre, Advocate and
Mr. N. P. Lambat, Advocate for Appellant.
Ms. Shamsi Haider, A.G.P. for Respondent Nos.1 & 2.
Mr. A. B. Patil, Advocate for Respondent No.3.

CORAM : M. S. SONAK, J.

DATE : 09.12.2021.

ORAL JUDGMENT :

1. Heard Mr. N. P. Lambat, learned Counsel for the
appellant, Ms. Shamsi Haider, learned Assistant Government
Pleader for respondent Nos.1 & 2, and Mr. A. B. Patil learned
Counsel for respondent No.3.

2. This appeal is taken up for final disposal at the request
of and with the consent of the learned Counsel for the parties.

3. The challenge in this appeal is to the award dated 18.08.2010 made by the Ad-hoc District Judge, Yavatmal (Reference Court) dismissing the appellant's reference under Section 18 of the Land Acquisition Act, 1894 (said Act).

4. At the very outset, Mr. Patil, learned Counsel for respondent No.3 has raised the preliminary objection based on the decision of the Division Bench of this Court in ***Diwakar Prabhakar Chopade vs Sub-Divisional Officer, (Land Acquisition Officer), Aurangabad and Ors.*** reported in ***2019 (6) Mh.L.J. 591*** to submit that since this is not an award on merits, neither a Civil Revision Application under Section 115 of the Civil Procedure Code nor an appeal under Section 54 of the said Act is maintainable. He pointed out that, in this case, the reference was dismissed because the appellants failed to attend the proceedings or lead any evidence therein and therefore, this cannot be regarded as a dismissal on merits.

5. Ms. Shamsi Haider, the learned Assistant Government Pleader for respondents Nos.1 and 2 supports the contentions of Mr. Patil, learned Counsel for respondent No.3 on the aforesaid aspects.

6. Record indicates that at the stage of admission of this appeal in the year 2012, no such objection was raised. Apart from

that, from the perusal of the award, it is seen that the Reference Court had framed two issues.

7. The first issue concerned the entitlement of the enhancement of compensation to the appellant and the second issue concerned the issue as to whether the reference petition was instituted within the prescribed period of limitation.

8. On the first issue, it is true that the Reference Court has held against the appellant primarily because neither the appellant nor his Counsel pursued the matter with diligence. But on the second issue, the Reference Court, on merits, has answered the issue of the limitation in favor of the appellant herein. To that extent, the adjudication by the Reference Court in the facts of this particular case can be regarded as an adjudication on merits. Besides, even the decision in *Diwakar Chopade (supra)* does not non-suit the party where the reference has been rejected otherwise than on merits. All that the said decision holds is that the appropriate remedy would be one under Article 227 of the Constitution of India. Having cumulative regard to all these factors, it will not be appropriate, in the facts of this particular case, to uphold primarily objection and relegate the appellant, at this stage to seek a remedy before this Court itself, but under article 227 of the Constitution of India.

9. Mr. Lambat, learned Counsel for the appellant pointed out that in this case, the appellant has filed a complaint against his Advocate before the Bar Council for its failure to attend the Court proceedings diligently. He also pointed out that under the same notification, the appellant's brother's lands were also acquired and the Reference Court in Land Acquisition Case No.07/2007 has enhanced the compensation to Rs.1,40,000/- per hectare. He pointed out that there is no difference whatsoever between the appellant's acquired land and the lands of his brother. He submits that in fact the two lands are adjacent to each other and were acquired under the same notification and for the same purpose. Mr. Lambat learned Counsel for the appellant, therefore, submits that it will be appropriate if this enhanced compensation is awarded in this appeal itself rather than remand the matter to the Reference Court for fresh adjudication.

10. Mr. Lambat, learned Counsel for the appellant in pursuance of the query of this Court in the context of interest, based on instructions has made a statement that the appellant in the facts of this case, will not claim for any interest on the enhanced compensation amount if awarded, for the period from 2010 to 2021. This query was posed by the Court to Mr. Lambat, learned Counsel for the appellant because the record indicates that from 2007 onwards despite opportunities neither the

appellant nor his Advocate took steps to pursue the matter before the Reference Court by leading any evidence.

11. Although some consideration is being shown to the present appellant because he has alleged that his Advocate did not pursue the matter with due diligence or that for the alleged fault his Advocate, the Appellant must not be made to unduly suffer, such consideration cannot be entirely at the costs and the consequences of the State or the Acquiring Authority which also functions from public funds. For the defaults on the part of the Appellant or his Advocate, surely the State or the Acquiring authority should not be saddled with the liability of paying interest for all this period. Now, that Mr. Lambat, learned Counsel for the appellant has made this statement based on instructions, the equities, to great extent, would stand balanced.

12. Mr. Patil, learned Counsel for the Acquiring Authority, on instruction, submits that compensation at the enhanced rate of Rs.1,40,000/- can be awarded to the appellant's acquired land. He fairly pointed out that the Land Acquisition Officer, in this case, has awarded compensation of Rs.56,000/- per hectare, and in terms of the Government Resolution dated 11.05.2018, there is a general policy that the State or the acquiring bodies will not pursue appeals or will withdraw the appeals where the

enhancement is within four times the rate awarded by the Land Acquisition Officer.

13. Having regard to the aforesaid circumstance, I agree with the learned Counsel for the parties that no useful purpose would be served by simply remanding the matter to the Reference Court for yet another innings. This appeal can be disposed of at this stage itself by accepting the submission of Mr. Lambat, learned Counsel for the appellant, and awarding enhancement of Rs.1,40,000/- per hectare in respect of the appellant's acquired lands.

14. This appeal is, therefore, partly allowed and disposed of by making the following order:-

a] The impugned award to the extent it declines enhancement to the appellant is set aside and it is held that the appellant will be entitled to compensation at the rate of Rs.1,40,000/- per hectare in respect of his acquired lands.

b] The appellant, consistent with his statement, will not be entitled to any interest on the enhanced compensation, whether statutory or otherwise for the period between 18.08.2010 and 09.12.2021. However, to save and accept this window period, the appellant, will be entitled to proportionate interest both statutory as well as otherwise, in terms of the law.

c] The respondent No.3 to deposit the enhanced compensation together with interests as aforesaid within four months from today before the Reference Court and thereafter the appellant will be entitled to withdraw the same.

d] If compensation is not deposited within four months, then, the appellant will be entitled to take out the execution proceedings and such execution proceedings should be disposed of as expeditiously as possible and preferably within six months from the date of the institution.

15. The impugned award is modified to the aforesaid extent.

16. There shall be no order for costs.

17. Pending applications, if any, do not survive and the same are also disposed of.

(M. S. SONAK, J.)

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