

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 1245 OF 2022
IN /WITH
FIRST APPEAL NO. 61 OF 1998**

The State Of Maharashtra (Thr. The Special Land Acquisition Officer No.11, Kolhapur. And Anr. ...Applicants/
Appellants

Versus

Sou.Madhuri Prakash Nale (Since deceased ...Respondents
through Legal Heirs)
1.Shri. Prakash Jagannath Nale and ors.

Ms. Tanaya Goswami, AGP for Applicants/State.

None for the Respondents.

CORAM : M.M. SATHAYE, J.

DATE : 18th DECEMBER, 2023

P.C. :

IN INTERIM APPLICATION NO. 1245 OF 2022

1. Heard learned AGP for the Applicant/State. None for the Respondents. This is an Application for bringing legal heirs of deceased sole Respondent on record. There is a delay of 7 years and 242 days in filing the Application. Office note shows that notices issued to the legal heirs of sole Respondent are duly served. None present for the Respondents, despite due service.

2. Case pleaded by the Applicant/State is that of lack of

knowledge about death of sole Respondent. It is submitted that in November-2021, it was learnt that the notice issued to the sole Respondent has returned unserved with bailiff's remark as "Dead". It is submitted that the office of the Government Pleader thereafter started correspondence with the concerned Deputy Collector (Land Acquisition) No. 11, Kolhapur, and finally in January-2022, necessary information about the proposed legal heirs of sole Respondent was received.

3. In view of the said averments in the Application, which are uncontroverted and further considering that this matter is arising out of land acquisition and involves payment of compensation, sufficient cause is made out. The Interim Application is allowed in terms of prayer clauses (b) to (d). Delay is condoned. Abatement of the Appeal is set aside. The Applicant/State is permitted to bring proposed legal heirs of sole Respondent on record. The Interim Application is disposed of in the aforesaid terms.

IN FIRST APPEAL NO. 61 OF 1998

1. Heard learned AGP for the Appellant/State. None for the Respondents.

2. By this Appeal filed u/s. 54 of the Land Acquisition Act, 1894 (for short "the said Act"), the State is challenging Judgment and Order dated 07.04.1997 passed by 2nd Additional District Judge, Kolhapur, in Land Reference No. 90 of 1988.

3. Few facts necessary for disposal of this appeal are as

under. The Respondent/Original Claimant was owner of CTS No. 19 situated at on the main road, Kagal in Kolhapur District. Notification u/s. 6 of the said Act r/w 126 of the Maharashtra Regional and Town Planning Act, 1966, was issued in the Government Gazette on 20.11.1986, declaring intention to acquire 6.73 sq.m. portion out of the said property of the Respondent. The Concerned Special Land Acquisition Officer ("SLAO" for short), awarded a meagre amount of Rs. 9,005/- including additional component, Solatium etc to the Respondent/Claimant.

4. Being aggrieved and dissatisfied by this award, the original Respondent/Claimant filed the aforesaid Land Reference u/s. 18 of the said Act. After hearing both sides and after considering the evidence on record, the Reference Court has partly allowed the reference. By the impugned Order in addition to the compensation already awarded by concerned SLAO, the original Respondent/Claimant is held entitled to additional compensation of Rs. 34,796/- with further interest @ 15% p.a. from 23.04.1988 till the amount is fully satisfied.

5. Learned AGP for the Appellant/State has assailed the impugned Judgment and Order as per grounds raised in the appeal memo. Nobody appears for the Respondents.

6. I have carefully considered the reasons given in the impugned Judgment and Order by the Reference Court. The reasons on which the reference is partly allowed and additional compensation is granted are well founded. The Learned Reference Court has

considered sale instances comparable with acquired lands and has arrived at enhanced rate. Enhanced compensation payable to the Respondent/Claimant is calculated at Rs. 26,436/- from which the amount of compensation already granted by the SLAO, is deducted. Thereafter the statutory benefits of 12% additional component as well as 30% solatium has been calculated and added. The Reference Court has also calculated 9% interest for the first year because the property was already taken in possession on 23.04.1987 itself. Considering all this, final figure of compensation has been arrived at.

7. In view of the aforesaid facts and circumstances, considering that the amount granted by SLAO (Rs. 9,005/-) and additional amount awarded by Reference Court (Rs. 34,796/-) are both meagre amounts based on valid reasons, I find that there is no reason to interfere. There is no merit in this Appeal.

8. Facts of this case are more or less similar to a group of First Appeals disposed of by another Single Bench of this Court with lead First Appeal No. 208 of 1992 along with others under Order dated 03.04.2017 (Coram : M.S. Sonak, J.). I am completely in agreement with the view taken by my brother Judge in the said Order. It has to be noted that state compulsorily acquires lands of the citizens like Respondent/Claimant and despite the compensation amount being so paltry / meagre, the State carries the matters in appeal. In many cases, it is found that on account of pendency of the Appeal (primarily because no steps are taken by the State to effect service or bring legal heirs on record or reasons alike), the Respondent/Claimant remains deprived of even meagre amounts of

compensation awarded to them. It is also sadly noted that the State Government in such Appeals, spends amounts on Court fees, typing and other filing expenses and legal fees which are either comparable to the existing amounts of compensation involved or more. In many cases it is found that the AGPs express their helplessness because despite communication/s the concerned Government officers do not come forward and take responsibility by clearly stating whether a particular Land Reference case is falling under relevant GRs (including G.R. dated 03.11.2016 with Corrigendum dated 23.02.2017, 04.05.2017 and 11.05.2018) and whether the Appeal should be prosecuted or not in view thereof. It is further sadly noted that the general perception seems to be, *firstly* that the claims which are held against Government or Statutory Authority must be viewed as illegal and therefore should be resisted and fought up to the highest Courts and *secondly*, that if a decision on the issue could be avoided or is to be avoided, then it is simply not taken so that aggrieved party can approach the Court and let the Court take the decision. This results in clogging of the judicial system and also eats into the valuable judicial time. In view thereof I find that this is a fit case for dismissal.

9. Hence the Appeal is dismissed. No order as to costs. In view of the dismissal of Appeal, the Respondent/Claimant's legal heirs, who are permitted to be brought on record, are at liberty to withdraw the amount of compensation, if deposited by the State in the Reference Court along with accrued interest, if not already withdrawn. Needless to mention that the impugned order becomes executable.

10. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)