

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

CIVIL APPLICATION NO.416 OF 2023

IN

FIRST APPEAL NO.469 OF 2022

(Bagsing Madansingh Shekhawat (dead) thr. L.R's, Naarayansingh s/o Bagsing Shekhawat (dead)
thr. L.R's and ors. Vs. The State of Maharashtra & anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.J. Shinde, Advocate for the appellants.
Shri M.A. Kadu, Advocate for the intervenor.
Shri K.L. Dharmadhikari, AGP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- MARCH 23, 2023.

Heard.

2. Present application is filed by the VID.C. to intervene as an intervenor for adding as a party.

3. As per the contention of the applicant – Intervenor that the appellant has filed the appeal against respondent Nos.1 and 2, the State of Maharashtra and the Special Land Acquisition Officer, Benefited Zone, Yavatmal.

4. Initially the State of Maharashtra through Irrigation department used to acquire the land for the construction of irrigation projects however, subsequently irrigation development corporation was established for various regions including the Vidarbha region and allotted the said work to the corporation. The intervenor is the VI.D.C. who is the acquiring body for the acquisition of

the land for various irrigation project of government of Maharashtra which includes the Arunawati project also. Therefore, the applicant-intervenor is the necessary party to the said proceeding for the determination of the legal matter in issue.

5. Said application is strongly opposed by the appellant on the ground that when the reference was pending before the Reference Court, the State Government has already represented the acquiring body. Now the appeal is filed in the year 2017. The grounds mentioned in the application are vague in nature without referring to any provision. The Land Acquisition Officer who has passed the award was already party to the proceeding and present appeal is filed by the claimants for the enhancement of the compensation. There is no reason for the appellant to made the VI.D.C as party as it was not in existence at the time of acquisition. Hence, application deserves to be rejected.

6. Heard Shri M.A. Kadu, learned Counsel for the intervenor. He submitted that the appeal is the continuation of the reference proceeding. Admittedly at the time of decision of the reference, the VI.D.C. was not in existence. It was established subsequent to the decision in the reference petition. But now the question will arise who will pay the compensation amount, if appeal is allowed and enhancement was granted. Therefore, in view of the judgment of *Abdul Rasak and ors. Vs. Kerala Water Authority and ors. 2002 AIR SCW 477*, the acquiring body

is the necessary party and hence the appellants be directed to add the acquiring body as party-respondent.

7. Per contra, Shri Shinde, learned Counsel for the appellants submitted that the absence of VI.D.C. is of no consequence as the State was very well represented before the reference Court. The VI.D.C. also comes under the control of the State, and therefore, application deserves to be rejected.

8. It is not in dispute that the land owned by the appellants-original claimants is acquired by the Government for submergence of Arunawati river project under land acquisition proceeding No.8/65/81-82 of Deurwada, Taluka Digras.

9. Respondent No.2 - Special Land Acquisition Officer awarded inadequate compensation amount, and therefore, reference was filed bearing LAC No.450/1990. At the time of initiation of the proceeding in the year 1990 the VI.D.C. was not in existence, the VI.D.C. was established in the year 1997. The land references filed by the present appellants/claimants were decided on 16/03/1993. Thus at the time of decision of the land reference by the reference Court, the VI.D.C. was not in existence, therefore, VI.D.C. was not party in the reference petition.

10. Shri Kadu, learned Counsel placed reliance on Abdul Rasak (*supra*) wherein it was observed that :

“Shri T. L. V. Iyer, the learned senior counsel for the claimant-appellants has submitted

that Kerala Water Authority is successor of Public Health Engineering Department of the State Government, and bound by the proceedings conducted by or against the State Government and, therefore, the Constitution Bench decision does not have any applicability to the facts of the present case and the High Court ought not to have set aside the awards and remanded the cases to the reference Court. We find it difficult to subscribe to the view so forcefully canvassed by the learned senior counsel for the appellants. K. W. A. came into existence as a statutory Corporation on 1st April, 1984. It may be said to have succeeded to the liability incurred by the State Government so far as the quantum of compensation awarded by the Collector is concerned but so far as the enhancement in the quantum of compensation is concerned, it will be a liability of the K. W. A. incurred by it after its coming into existence and, therefore, to the extent of enhancement, the Authority was certainly entitled to notice and right to participate in the proceedings before the reference Court leading to enhancement of compensation.”

11. The facts in the case of Abdul Rasak (*supra*) are almost identical with the case in hand as already observed that the V.I.D.C. was not a party in the reference before the reference Court as it was not in existence. Admittedly, the liability would be on acquiring body, and therefore, to the extent of enhancement also the authority was certainly entitled for the notice and right to participate in the proceeding before the reference Court.

This Court has already considered this aspect on the basis of the judgment of the Hon'ble Apex Court.

12. This Court further observed that the Hon'ble Apex Court has in fact conduct with the decision of ***U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (dead) by LRs. and ors. (1995) 2 SCC 326*** and it is for this reason also it must be said that the Hon'ble Apex Court has refused to grant leave in the facts and circumstances of that case. The decision in the case of *Abdul Rasak (supra)* cannot be said to be per *curiam* and held that the acquiring body is entitled to be added as a party and was in fact entitled to notice.

13. In view of the reasons aforesaid mentioned, the application deserves to be allowed. The appellants/claimants shall add the V.I.D.C. as a necessary party, in the appeal memo.

14. In the above facts, the civil application is allowed and disposed of.

15. The appellant to carry out amendment within stipulated period.

(URMILA JOSHI-PHALKE, J.)

**Divya*