

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

CIVIL APPLICATION (CAF) NO.3562 OF 2017
IN
FIRST APPEAL ST. NO.7299 OF 2017

Vidarbha Irrigation Development Corporation, through its Executive Engineer, Bembla
Project Division Yavatmal and another

Vs.

Vishweshwar Balkrishna Vidulkar since dead through Lrs.1(A) Atul Vishweshwar
Vidulkar and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Vinay Dahat, Advocate h/f Mr. J. B. Kasat, Advocate for appellants.
Mr. A. B. Nakshane, Advocate for respondent Nos.1A, 1C to 1F
Ms. Shamsi Haider, AGP for respondent Nos.2 and 3.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19/01/2023

By this application, appellants acquiring
body seeking leave to file the appeal.

Leave is granted.

Civil Application is disposed of.

Civil Application (CAF) No.4245 of 2017

1. By this application, the appellants are seeking condonation of delay of 678 days which is caused in preferring the appeal.

2. It is contended by the appellants that appellants are the acquiring body and the officials of the appellants have to obtain the necessary permission prior

to filing of the appeal, therefore delay is caused. Said delay is not deliberate one.

3. The learned Advocate Mr. Nakshane appearing for respondent Nos.1(A) to 1(F) except 1(B) has no objection of condonation of delay.

4. In view of the reasons mentioned in the application, delay of 678 days is condoned.

5. Appeal be numbered.

6. Civil Application is disposed of.

FIRST APPEAL NO. OF

1. Respondent Nos.1(A), 1(C) to 1(F) filed Pursis to the extent that respondent No.1(B) is died on 3.2.2016.

2. Appellants are permitted to delete the name of respondent No.1(B).

3. Heard by consent.

4. **Admit.**

5. Mr. A. B. Nakshane, learned Advocate waives notice for respondent Nos.1(A), 1(C) to 1(F).

6. Ms. Shamsi Haider, learned AGP waives notice for respondent Nos.2 and 3.

7. It is submitted by the learned Advocate for the parties that in view of adjudication in First Appeal Stamp No.189 of 2018 (VIDC and another Vs. Vasant Nanaji Patre and others) decided 19.12.2018 arising from village Pahur, Taluka Babhulgaon, Dist. Yavatmal, the present appeal can be disposed of.

8. In view of the above, the learned Advocate for the appellants submitted that the open plot No.574 admeasuring 59.10 sq. meter and open plot No.576 admeasuring 43.00 sq. meter were owned by the original owner Vishweshwar Balkrishna Vidulkar. After the death of original owner his legal heirs are brought on record. Both the plots are acquired by the Government vide award No.37/47/2000-01. The lands are situated at Pahur and acquired for the Bembla Project. The notification under Section 4(1) was issued on 11.5.2000 and award was notified on 17.10.2003. The Land Acquisition Officer had awarded the compensation at the rate of Rs.80 per sq. meter which is not accepted by the land owner.

9. Being aggrieved and dissatisfied with the award of the Land Acquisition Officer original owner had preferred land reference bearing Land Acquisition Case

No.351 of 2007. Said land reference was decided by the 2nd Joint Civil Judge Senior Division, Yavatmal and had awarded the compensation at the rate of Rs.900 per sq. meter.

10. Being aggrieved with the said award the acquiring body Vidarbha Irrigation Development Corporation (VIDC) preferred this appeal on the grounds that the compensation amount awarded by the reference Court is exorbitant one and liable to be set aside.

11. However, the rate which was awarded by the land reference Court was challenged in another First Appeal No.215 of 2010 wherein this Court has considered the judgment passed in First Appeal Stamp No.189 of 2018 decided on 19.12.2018 by which the compensation rate awarded was 750 per square meter. It is contended that the both the lands and the land involved in the First Appeal No.189 of 2018 and First Appeal No.215 of 2010 of similar quality and having similar potential therefore, the award passed by the reference Court is excessive and exorbitant one. The original claimants have not filed any cross-objection and agreed to the rate which was decided in the earlier appeal.

12. In First Appeal Stamp No.189 of 2018 this Court has held that an amount of Rs.750 per square

meter for an open plot of land acquired from village Pahur, Taluka Bhhulgaon, Dist. Yavatmal would be fair compensation. The notification under Section 4 of the Land Acquisition Act, 1894 in this appeal is dated 11.5.2000 which was the same notification in the appeal mentioned above.

13. Hence, for the reason assigned in First Appeal Stamp No.189 of 2018 (VIDC and another VS. Vasant Nanaji Patre and others) decided on 19.12.2018, this appeal is partly allowed as under:

(i) The judgment of the Reference Court in Land Acquisition Case No.351 of 2007 dated 20/02/2015 is partly modified.

(ii) The claimants are held entitled to receive an amount of Rs.750/- per square meter for Plot Nos. No.574 which was the open plot admeasuring 59.10 sq. meter and open plot No.576 admeasuring 43.00 sq. meter.

(iii) Other directions in the award are confirmed.

(iv) The appellants to deposit the balance amount of compensation with accrued interest thereon, if not already deposited, within a period of eight weeks from the date of the judgment.

(v) Thereafter, the claimants are at liberty to withdraw

(6)

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the amount of compensation in terms of this judgment.

(vi) The appellants have to file the calculation sheet within four weeks.

14. First Appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate