



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 8098 OF 2024
IN
FIRST APPEAL st. NO. 5715 OF 2024

National Highways Authority of India. ...Applicant/Appellant.

Versus

Vishwas S. Deshmukh and Others. ...Respondents.

Dr. Abhinav Chandrachud and Kajal Gupta i/b M. V. Kini & Co., for the Appellant.
Mr. Sachin Punde for the Respondents.

Coram : Sharmila U. Deshmukh, J.

Date : February 24, 2025.

P. C. :

1. Interim Application has been filed by the National Highways Authority of India [for short "**NHAI**"] for leave to Appeal against the judgment and award dated 2nd March 2022 passed by the District Judge, Alibaug in L.A.R. No. 24 of 2019.

2. Facts of the case are that notifications under Section 4 and 6 of the Land Acquisition Act, 1894 [for short "**LA Act**"] were issued in the year 1987. Award under Section 11 of the LA Act was passed on 25th October 1988. The Respondent-Claimants filed an Application under Section 28A(1) of the LA Act before the Collector seeking enhancement of compensation in view of the judgment and Award dated 20th August 2015 passed in L.A.R. No. 356 of 2000 which was in

respect of the land from the same village for the same project. The Collector passed an Award dated 8th October, 2018 under Section 28A(2) of LA Act. The Claimants being aggrieved, filed another enhancement application in the year 2019 under Section 28A(3) of LA Act before the District Court, which passed the impugned judgment and Award dated 2nd March, 2022.

3. Dr. Chandrachud, learned Counsel appearing for the Applicant would submit that NHAI came to be constituted under the National Highways Authority of India Act, 1988 and by Gazette notification of 1st August 2000, the project of construction of National Highway No.4B and 4C came to be entrusted to the present Applicant. He would further submit that execution proceedings have been taken out by the present Respondents against the present Applicant and therefore now the Respondents cannot oppose leave to file Appeal. He would further submit that issue of *locus* of the Applicant to challenge the Award is no more *res integra* and has been settled by the decision of Apex Court in the case of ***Vidarbha Irrigation Development Corporation v. Santosh Janba Warghane [Civil Appeal Nos. 4262-4263 of 2017 decided on 20th March 2017]***. Pointing out the said decision, he submits that Vidarbha Corporation who was beneficiary of the project and had deposited the amount of compensation, has been held to be entitled to prefer an Appeal against the enhancement made by Reference

Court. He submits that decisions relied upon by the original Claimants were rendered as the decision of Apex Court was not brought to the notice of this Court. He would further submit that in case of present Applicant, by an order of 5th January 2023 passed in Interim Application (st.) No.4459 of 2022 in First Appeal No. 263 of 2015, learned Single Judge of this Court has permitted the impleadment of the Applicant in the said First Appeal which had been preferred by State of Maharashtra.

4. *Per contra*, Mr. Punde, learned Counsel appearing for the Respondent would oppose the Application and would submit that Applicant-NHAI was not the acquiring body at the time when award was passed. He submits that subsequently the project has been allotted to the present Applicant and therefore no right to appeal would enure to the present Applicant. He submits that learned Single Judge of this Court in the decision of ***National Highways Authority of India v. the State of Maharashtra*** rendered on ***5th July 2017 in Civil Application No.3222 of 2013 in First Appeal No.1123 of 2013***, by relying upon the decision of Co-ordinate Bench in the case of ***Vidarbha Irrigation Development Corporation, through its Executive Engineer, Wardha v. Santosh Janba Warghane [2017(2) Mh.L.J. 432]*** has not permitted the impleadment of NHAI in the Appeal. He submits that as such the present Application for leave to file Appeal is required to be

dismissed.

5. I have considered the submissions and perused the records.

6. The Application has been filed seeking leave to file Appeal under Section 54 of the LA Act which provides that an Appeal shall lie to the High Court from award or any part of the award. Provisions of Section 54 of LA Act do not make any reference as to the person who is entitled to file Appeal. However, it is well settled in the context of Section 96 of CPC that a person who is not a party to a decree or order may with the leave of Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it.

7. In the present case, execution Application has been filed against the NHAI which shows that NHAI is bound by the Award as it is required to deposit the compensation and that being so, any enhancement in the amount of compensation would affect NHAI.

8. Though Section 54 of LA Act does not enumerate the class of persons who are entitled to file Appeal, Section 50(2) of LA Act provides that where the acquisition of land is at the cost of a local authority or of any Company, the local authority or Company may appear and adduce evidence for the purpose of determining the amount of compensation but shall not be entitled to demand reference under Section 18 of LA Act. The provisions of Section 50(2)

of LA Act were considered by the Apex Court in the case of ***U.P. Awas Evam Vikas Parishad v. Gyan Devi*** (supra) and the Apex Court held in paragraphs 47 to 58 as under :

"47. Leave granted.

48. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation.

49. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending on the date on which the matter of determination of compensation will be taken up.

50. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.

51. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

52. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

53. The local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

54. In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the court.

55. In an appeal by the person having an interest in land

seeking enhancement of the amount of compensation awarded by the reference court the local authority should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.

56. Since a company for whom land is being acquired has the same right as a local authority under Section 50(2), whatever has been said with regard to a local authority would apply to a company too.

57. The matters which stand finally concluded will, however, not be reopened.

58. We, therefore allow the applications submitted by the Board for being impleaded as a respondent in the appeals filed by the landowners in this Court and direct that the Board be also impleaded as a respondent in the appeals filed by the landowners in the High Court. The judgment of the Allahabad High Court dated 21-12-1990 in First Appeals Nos. 584, 585 and 642 of 1985 and the judgment of the said High Court dated 18-4-1991 in First Appeals Nos. 586, 587 and 641 of 1985 as well as the order dated 20-1-1993 on the review applications filed against the judgment dated 18-4-1991 are set aside and the said appeals are remitted to the High Court for decision in accordance with law. The appeals are disposed of accordingly. There will be no order as to costs."

9. The Apex Court has held that the proviso to Section 50(2) of LA Act precludes the local authority from seeking reference but does not bar the local authority to invoke the remedies available under the LA Act. Following the said decision, the Co-ordinate Bench in Interim Application (st.) No.4459 of 2022 in First Appeal No. 263 of 2015 has directed impleadment of the Applicant.

10. In ***Vidarbha Irrigation Development Corporation v. Santosh Janba Warghane*** (supra), Learned Single Judge of this Court had declined the right to file appeal to Vidharbha Irrigation Development Corporation as it was not party in the proceedings and was not a local

authority nor company and therefore could not participate in the proceedings before the Collector or the Reference Court. In Appeal, the Apex Court held that the Corporation being a beneficiary had deposited the amount of compensation and could prefer an Appeal against the enhancement made by Reference Court.

11. The decision of Apex Court in ***Vidarbha Irrigation Development Corporation v. Santosh Janba Warghane [Civil Appeal Nos. 4262-4263 of 2017 decided on 20th March 2017]*** clinches the issue. The Applicant being the beneficiary of the acquisition and liable to pay compensation, is affected by the enhancement in the amount of compensation and is entitled to prefer an Appeal against the enhancement made by Reference Court.

12. The decision relied upon by learned Counsel appearing for the Claimants in the case of ***National Highways Authority of India v. the State of Maharashtra*** rendered on ***5th July 2017 in Civil Application No.3222 of 2013 in First Appeal No.1123 of 2013*** (supra) does not assist the case of Claimants as the decision of the Apex Court in ***Vidarbha Irrigation Development Corporation v. Santosh Janba Warghane*** (supra) was not brought to the notice of the learned Single Judge.

13. In the light of above, Application stands allowed in terms of prayer Clause (b), which reads thus :

“(b) Leave may be granted to the Applicant to file Appeal against the impugned judgment and order dated 02.03.2022 passed by the Hon’ble District Civil Judge, Alibaug in Land Acquisition Reference No. 22 of 2019.”

[Sharmila U. Deshmukh, J.]