
(2018) 05 MP CK 0091
In the Madhya Pradesh High Court
Case No : FA No.398 OF 2013

State Of Mp & Another	Vs	APPELLANT
Dula S/O Madiya & Another		RESPONDENT

Date of Decision : 14-05-2018

Acts Referred:

Citation : (2018) 05 MP CK 0091

Hon'ble Judges : PRAKASH SHRIVASTAVA, J

Bench : Single Bench

Advocate : Archana Kher, S.Jain

Final Decision : Disposed Off

Judgement

Heard on IA No.2999/2013 which is an application for condonation of delay in filing the appeal.

There is a delay of 23 days in filing the appeal.

After hearing the learned counsel for appellant and on the perusal of the I.A, it is found that the appellant was prevented from filing the appeal within

time on account of the bona-fide reason. The delay is unintentional and it has not taken place on account of any deliberate lapse on the part of the appellant.

On due consideration, it is found that a good ground is made out for condoning the delay.

Accordingly, IA No.2999/2013 is allowed and delay in filing appeal is condoned.

Heard finally with consent.

It is undisputed by learned counsel for parties that the appeal relates to the award of compensation relating to the land acquisition from village

Hanumantya Signeshwar, Tahsil Sardarpur, District Dhar (MP). The land in question has been acquired for construction of Mahi Project. Similar

notification was issued in respect of village Gondikheda Charan, Tahsil Sardarpur, District Dhar.

The issue regarding grant of compensation to the land-owners of village â?" Gondikheda Charan, Tahsil Sardarpur, District Dhar for acquisition of

land by the State of Madhya Pradesh for public purpose, namely for Mahi Project has been decided on 03.04.2017 by this Court in First Appeal

No.394/2013 The State of Madhya Pradesh, Land Acquisition Officer & another v. Mangu & another, by which cross objection / appeal of the

landowners has been allowed in part.

Both the learned counsel for the parties have submitted that this first appeal be disposed of in the light of order dated 03.04.2017 passed by this Court

in First Appeal No.394/2013 The State of Madhya Pradesh, Land Acquisition Officer & another v. Mangu & another.

Relevant part of order dated 03.04.2017 passed by this Court in First Appeal No.394/2013 The State of Madhya Pradesh, Land Acquisition Officer &

another v. Mangu & another (supra) reads, as under: -

16. As per statement of NAW1 Shailendra Kumar Gupta, the area of Sankalda â?" Command is 30 Kilometers from the present area. The land in

question is situated in Adivasi / tribal area. In respect of village Gondikheda Charan, considering the saledeeds Ex.P/1 and P/2, the Reference Court

has determined that the total acquired land which comes to 2,384 hectares. The reference Court fixed the market value of unirrigated land at the rate

of Rs.3,00 lakhs per hectare and Rs.4.50 lakhs per hectare for irrigated land.

17. It is settled law that while fixing the market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following

factors:

(i) Existing geographical situation of the land.

(ii) Existing use of the land.

(iii) Already available advantages, like proximity to National or State Highway or road and / or developed area.

(iv) Market value of other land situated in the same locality / village / area or adjacent or very near the acquired land.

18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to

offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases

where the owner is in possession and enjoyment of the property and in the cases where he is not.

19. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means

capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having

due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The

question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, uses to which it is put or is reasonably

capable of being put and proximity to residential, commercial or industrial areas or institution. The existing amenities like water, electricity, possibility of

their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. 20. In the case in

hand, the land in question (of village â?" Gondikheda Charan) of the respondents is agricultural land which has been acquired for submergence of area

of main dam of â?"Mahi Projectâ?". 21. The sale transaction was taken place on 13.12.2001 and 24.05.1999 whereas the Notification under Sections

4 and 6 were issued in the year 2002 and 2003. It is also come on record that within the period of 20-25 years very less number of sale-deeds were

executed. In village Gondikheda Charan no sale-deed was executed between the period from 17.05.1999 to 17.05.2002. Ex.P/1 and Ex.P/2 are of

adjoining village Barmandal. It is evident from the record that the acquired land was part of catchment area of dam which was constructed on Mahi

river and the said land was not much fertile.

22. In the cross-objection filed by the respondent / claimants dated 21.08.2014, it has been stated that they paid Rs.600/- as ad valorem Court Fee and

valued the same to Rs.5,000/- only.

23. Noticing the aforesaid evidence and perusing the record, sale-deeds (Ex.P/1 and P/2) as well as the statement of AW1 Mangu, AW2 Patwari â?"

Kalu Singh and NAW â?" Shailendra Kumar Gupta, for the reasons mentioned

above, we dismiss the appeal filed by the State of Madhya Pradesh.

The cross objection filed by the claimants / landowners are allowed in part. The impugned award is modified to the extent that the landowners whose

land were acquired for submergence of area of main dam of Mahi Project are entitled to claim further compensation @ Rs.1.50 lakh per hectare for

irrigated land and @ Rs.1.00 lakh per hectare for unirrigated land. It is made clear that the enhanced compensation, which is now been directed to pay

to the landowners, who are respondents in this appeal i.e. Rs.1.50 lakh per hectare for irrigated land and Rs.1.00 lakh per hectare of un-irrigated land,

the same shall be paid if the land owners shall deposit the requisite Court Fees.

24. In view of the decision of the Apex Court in the case of Chandrashekar & others v. Additional Special Land Acquisition Officer (supra), we allow

the prayer for enhancement of compensation of the land owners who have reduced the valuation of their appeal. The same shall be worked out along

with interest and solatium as awarded by the reference Court in the impugned judgment. It is made clear that the enhanced compensation which is

now been directed to pay to the claimants / land owners who are respondents in this appeal and the same shall be paid if the respondents " land

owners shall deposit the requisite Court Fees on the aforesaid enhanced amount within 3 months from the date of supply of copy of this order to this

Court. It is also made clear that they are entitled for enhanced amount of compensation only after payment of deficit court fees to the High Court. If

the deficit Court Fees is paid within specified time as fixed by this Court, the Registry will issue necessary certificate to them and then only they will

be entitled for the enhanced amount of compensation.

25. In the result, the cross-objection filed by the respondents / claimants / landowners is partly allowed and the appeal filed by the appellants / State is

hereby dismissed. The impugned judgment therein is modified to the extent that the landowners whose land were acquired for submergence of area of

main dam of "Mahi Project" are entitled to claim further compensation @ Rs.1.50 lakh per hectare for irrigated land and @ Rs.1.00 lakh per

hectare for un-irrigated land along with interest as awarded by the reference Court in the impugned judgments.

In view of the aforesaid, the first appeal is disposed of on the same terms and the aforesaid decision of this Court [order dated 03.04.2017 passed by

this Court in First Appeal No.394/2013 The State of Madhya Pradesh, Land Acquisition Officer & another v. Mangu & another] shall apply mutatis

mutandis in this first appeal also, subject to the decision of the Hon'ble Supreme Court in Petition(s) for Special Leave to Appeal, if any, filed by

either party. With the consent of the parties, cross objection are also disposed of in terms of order dated 03.04.2017 passed by this Court in First

Appeal No.394/2013 The State of Madhya Pradesh, Land Acquisition Officer & another v. Mangu & another.