

(2004) 10 BOM CK 0108
In the Bombay High Court
Case No : First Appeal No. 876 of 988

The State of Maharashtra	Vs	APPELLANT
Bhupendra Thakarsi Parekh		RESPONDENT

Date of Decision : 21-10-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 23(1A), 30(1), 4

Citation : (2005) 2 ALLMR 63 : (2005) 3 BomCR 386 : (2005) 1 MhLj 1183

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : G.P. Mulekar, AGP, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—The Appeal challenges the judgment and order in Land Acquisition Reference No. 24 of 1982 whereby the claimants were awarded additional compensation of Rs. 6,78,355.75 with interest " 12% per annum from the date of the order till realisation and the cost of the Reference. The appeal is limited to the extent as to whether the claimants can be awarded interest on compensation of 12% where the award is made prior to 30.4.1982.

2. The lands in Panvel Taluka, District: Raigad were acquired for the New Bombay project. The land of the claimants was acquired under a notification dated 3.2.2000 issued u/s 4 of the Land Acquisition Act which was published on 4.2.1970. The award was made in respect of acquired lands on 7.9.1981. The claimants claimed enhanced compensation by filing a Reference under the Act. The reference Court has granted compensation " 12% interest per annum as provided u/s 23(1A) of the Land Acquisition Act amounting to Rs. 2,68,965/- apart from the compensation, solatium and interest. Mrs. Mulekar, learned Assistant Government Pleader, submits that the Reference Court was in error in awarding interest " 12% per annum on the compensation u/s 23(1A) when the award was made prior to 30.4.1982. She places reliance on the judgment of the Supreme Court in the case of Kashiben Bhikabai and Others Vs. Special Land

Acquisition Officer and Another, . The Apex Court while deciding this issue has reiterated the view taken by it in Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama, . The Apex Court in the judgment in Filip Tiago's case has held thus:

21. Entitlement of additional amount provided u/s 23(1-A) depends upon pendency of acquisition proceedings as on 30-4-1982 or commencement of acquisition proceedings after that date. Section 30 Sub-section (1)(a) provides that additional amount provided u/s 23(1-A) shall be applicable to acquisition proceedings pending before the Collector as on 30-4-1982 in which he has not made the award before that date. If the Collector has made the award before that date then, that additional amount cannot be awarded. Section 30 Sub-section (1)(b) provides that Section 23(1-A) shall be applicable to every acquisition proceedings commenced after 30-4-1982 irrespective of the fact whether the Collector has made an award or not before 24-9-1984. The final point to note is that Section 30 Sub-section (1) does not refer to court award and the court award is used only in Section 30 Sub-section (2).

3. There is no dispute that the acquisition proceedings were not pending before the Collector on 30.4.1982 since the award was made on 7.4.1981. The submission made by Mrs. Mulekar must be accepted.

4. The First Appeal is allowed. The amount awarded as compensation " 12% per annum u/s 23(1A) of the Land Acquisition Act is set aside. No costs.