

(2011) 01 BOM CK 0019

In the Bombay High Court

Case No : Civil Application (F) No. 2752 of 2010 in F.A. St. No. 14507 of 2010

Vidarbha Irrigation Development Corporation

APPELLANT

Vs

Ajabrao Gulabrao Deshmukh, Subhashrao Gulabrao
Deshmukh and State of Maharashtra

RESPONDENT

Date of Decision : 17-01-2011

Acts Referred:

Citation : (2011) 5 ALLMR 99

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.M. Savant, J.—The above applications and the Appeals were on board on 13.01.2011 when none had appeared on behalf of the Respondent/Respondents/claimants, and hence the matters were adjourned for today. When the matters are called out today, the same position continues and none appears for the contesting Respondent/Respondents/claimants, hence this Court is constrained to proceed with the matters in their absence. By order dated 29.10.2010 the Respondents in the above matters were put to notice that the appeals may be heard and decided finally at the stage of dmission, in view of the connected issues that arises in all the above Appeals.

2. By the above Civil Applications, the applicants i.e. the acquiring body seeks condonation of delay caused in filing the First Appeals. The lands in question has been acquired for "Pentakli Minor Irrigation Project". No affidavit in reply has been filed on behalf of the Respondents/claimants, hence the case put up by the applicants for condonation of delay, has gone 7 uncontroverted and would therefore, have to be accepted, resultantly, the delay in filing the above appeals would therefore, have to be condoned. Civil Applications are accordingly allowed and disposed of.

ON MERITS.

3. By consent of Shri A.B. Patil, the learned Counsel appearing on behalf of the Appellants - acquiring body and Ms. S. Jachak and Shri S. Bhagade, learned A.G.Ps. appearing in the respective matters, the appeals are take up for hearing. Admit. Heard forthwith.

4. The above First Appeals arise out of Awards of the Reference Court granting enhancement to the Respondent/Respondents/claimants. It is an undisputed position that the Appellant was not a party before the Reference Court. In the light of the authoritative pronouncement of the Hon''ble Apex Court in U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., , as also the judgment of this Court in Vidarbha Irrigation Development Corporation, Buldhana v. Sadanand Damodhar Mawale and Ors. reported at 2010 [3] Mh.L.J. 581, concerning the same acquiring body. The impugned Awards in each of the First Appeals are unsustainable and are therefore, required to be set aside and are accordingly set aside. The matters are 8 remanded back to the Reference Court for a denovo consideration by allowing the Appellant to be impleaded as party in the reference proceedings and permitting the parties to lead fresh evidence. The above appeals are accordingly allowed, with no orders as to costs.