

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 97 OF 2015

Parashram Bajirao Gunjal .. Petitioner

Versus

The State of Maharashtra through
Collector, Ahmednagar and others .. Respondents

Shri Mukul S. Kulkarni, Advocate for Petitioner.

Shri D. V. Tele, A.G.P. for Respondent Nos. 1 and 2.

Shri S. T. Shelke, Advocate for the Respondent No. 3.

CORAM : S. V. GANGAPURWALA, J.

DATE : 07TH SEPTEMBER, 2015.

PER COURT :

. Present revision is filed against the order passed by the Reference Court rejecting the reference filed by the present petitioner/claimant U/Sec. 18 of the Land Acquisition Act (for short "L.A. Act").

2. Mr. Kulkarni, the learned counsel for the petitioner submits that, the petitioner had filed examination in chief. Thereafter, the matter was referred to the Lok Adalat in September 2013. The matter could not be settled in the Lok Adalat and subsequently was referred back to the Reference Court. In between 20th April, 2014 and 28th April, 2014 the date

was kept. The advocate for the petitioner could not notice the said dates, as such, no evidence order was passed against the claimant and within three days, the respondents led the evidence. On the same day no cross order was passed and directly judgment is pronounced on the next day. The learned counsel submits that, there is procedural irregularity. The learned counsel further submits that, the land of the claimant is acquired vide the same notification and in some of the references which were filed for acquisition of lands for the same project, the Reference Court has granted enhanced compensation amount and in some of the matters acquiring body had entered into settlement with the claimants, even without filing the references. The learned counsel submits that, the petitioner be given one more opportunity to prosecute the reference on merits.

3. Mr. Shelke, the learned counsel for the respondent No. 3/acquiring body submits that, ample opportunity was given by the Reference Court, but it was negligence on the part of petitioner. For availing the said opportunity no comparable sell instances were filed by the petitioner. No documentary evidence was filed, nor he offered himself for cross examination. Even the petitioner did not cross examine the witness of the present respondent. The learned counsel submits that, the present revision is not maintainable and the petitioner is required to file appeal as required under the provisions of Sec. 54 of the L. A. Act. The said Act is complete Code in itself. The learned counsel

relies on the following judgments of the Apex Court.

- I. Laxmi Chand and others Vs. Gram Panchayat, Kararia and others reported in AIR 1996 SC 523.
- II. State of Rajasthan and others Vs. Raj Singh and another reported in AIR 1996 SC 2812.
- III. Westarly Dkhar and others Vs. Sehekaya Lyngdoh reported in (2015) 4 SCC 292.
- IV. Gurcharan Singh Vs. Surjit Singh (Dead) through L.Rs. reported in (2014) 2 SCC 140.

4. The learned Assistant Government Pleader also supports the arguments canvassed by Mr. Shelke, the learned counsel.

5. With the assistance of learned counsel I have considered the submissions. There cannot be any dispute with the proposition that against a judgment and award passed by the Reference Court U/Sec. 18 of the L. A. Act a remedy of appeal is provided by the statute.

6. The revision can be entertained only, if, it is found that there is procedural irregularity committed by the Reference Court resulting in gross miscarriage of justice as is required U/Sec. 115 of the Code of Civil Procedure or it is a case of non exercise of jurisdiction vested in it.

7. I have gone through the roznama. It appears that, matter was referred to Lok Adalat. Earlier to that the claimant had filed the evidence by way of affidavit in January 2013. The matter was referred for settlement in September 2013, as per the rozanama dated 10th September 2013 i. e. on the said date the pursis was filed for settlement. There is rozanama dated 24.01.2014 which states that settlement could not take place.

8. Thereafter again the matter was placed for cross examination and further evidence of the claimant. The claimant did not appear subsequently.

9. After the order of no cross was passed against the claimant, then the Court was required to give the date for hearing the matter that is for arguments. The said stage did not appear to have been adhered to. There is an irregularity in the procedure while deciding the said reference.

10. It would also be seen that, the petitioner was negligent in prosecuting the matter i. e. after February 2013. No doubt, in the interregnum matter was referred for settlement in the Lok Adalat. The said settlement could not be materialized. However, earlier period will have to be considered while passing an equitable order.

11. In the normal course I would have relegated the petitioner to file appeal as provided U/Sec. 54 of the L. A. Act, but

considering the fact that, there is procedural irregularity committed by the Reference Court while deciding the reference, I have entertained the revision.

12. I have also considered the fact that, in some of the references in respect of lands acquired for the same project and from the same area higher compensation is also awarded. I deem it appropriate to grant one more opportunity to the claimant to adduce evidence, however, the petitioner cannot be allowed to gain on account of delay caused by him and would not be entitled for the interest for the period he was negligent as has been held by the Apex Court in the case of **Ramanlal Deochand Shah and another Vs. State of Maharashtra and others** reported in **2013 AIR SCW 4591**. In the result I pass the following order.

13. The revision application is partly allowed. The impugned judgment and award passed by the Reference Court is quashed and set aside. The reference is restored to its original position. The parties shall appear before the Reference Court on 01st October, 2015. In case the Reference Court eventually comes to the conclusion to enhance the compensation amount, then in such circumstances, the petitioner would not be entitled for the statutory benefits from February 2013 to 30th September, 2015. The civil revision application is accordingly disposed of with aforesaid observations.

14. Considering the fact that, reference is remitted back, the parties are allowed to adduce further evidence. The Reference Court shall endeavour to dispose of the reference expeditiously and preferably within a period of nine (9) months from the date of appearance.

[S. V. GANGAPURWALA, J.]

bsb/Sept. 15