

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 309 OF 2001

Haibatrao S/o Govinda Dhole,
 Age : Major, Occu.: Agriculture,
 R/o. Tembhapuri, Taluka Gangapur
 Dist. Aurangabad
 died through legal heirs

1] Jayabai W/o Haibatrao Dhole,
 Age : 70 years, Occu.: Housewife,
 R/o. Tembhapuri, Taluka : Paithan,
 Dist. Aurangabad

2] Sheshrao S/o Haibatrao Dhole,
 Age : 40 years, Occu.: Agril.,
 R/o. As above

3] Ramesh S/o Haibatrao Dhole,
 Age : 35 years, Occu.: Agril.,
 R/o. As above

4] Ramesh S/o Haibatrao Dhole,
 Age : 32 years, Occu.: Agril.,
 R/o As above

.. Appellants
 (Orig. Petitioners)

VERSUS

The State of Maharashtra

.. Respondent

Mr. A.P. Bhandari, Advocate for the appellants
 Mr. S.P. Daund, AGP for the respondent/State

CORAM : M.T. JOSHI, J.
DATE : 23/02/2015

ORAL JUDGMENT :

1. Heard both sides.

2. During hearing, Mr. Bhandari places reliance on the copy of the judgment passed in L.A.R. No. 381/1996 and other land acquisition reference applications decided by the Joint Civil Judge Senior Division, Aurangabad on 10/01/2000. The same is placed at page no. 72 of the paperbook. Mr. Bhandari submits that in the said group of reference applications, the lands were acquired for the same project from Limbe Jalgaon, however, only the date of publishing notification under section 4 of the Land Acquisition Act was 25/06/1984. He further submits that in the said judgment, reliance was placed on the sale instance of village Mehendipur and the reasons forwarded by the learned reference Court in paragraph no.16 of the judgment.

3. Aggrieved by the said awards, First Appeal (St.) no. 1751 of 2001 and other connected first appeals were preferred, wherein civil applications for condonation of delay were filed. This Court has dismissed those applications for condonation of delay vide order dated 19/3/2008. Today, he files on record the true copy of the said order. The same is marked as

"X" for the purpose of identification. It would show that this Court has refused to condone the delay and, thereafter cursorily examined the impugned judgment and came to the conclusion that the enhancement awarded is proper.

4. Upon hearing both sides, it has come on record that no other legally admissible evidence was placed on record. In the circumstances, on the request of Mr. Bhandari to have a fresh consideration of the facts on the basis of the material that now would be available to the present appellant/claimant, the matter deserves to be remanded back to the learned trial Court.

5. However, as the State cannot be blamed for the delay, in case any enhancement is granted by the reference Court after remand, the appellant/claimant would not be entitled for any statutory interest for the delayed period.

6. In the circumstances, the following order:-

I) The appeal is hereby allowed without any order as to costs.

II) The award of the learned reference Court is hereby quashed and set aside.

III) The case is remanded back to the learned reference Court. The learned reference Court shall grant opportunity to the appellant to lead oral as well as documentary evidence within a period of four months from the date of appearance and, thereafter, the learned reference Court to make efforts for early disposal of the reference proceedings.

(IV) In case of enhancement of compensation, the appellant would not be entitled for statutory interest over the same from the date of earlier award till the date of present order.

(V) Parties are directed to appear before the reference Court on 7th April, 2015.

7. Appeal is accordingly disposed of.

[M.T. JOSHI]
JUDGE

arp/