

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

41 FIRST APPEAL NO. 720 OF 2014

**KAUSHALYABAI SHIVAJI HATOLE AND ANOTHER
VERSUS**

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Appellants : Mr. A. P. Avhad h/for Mrs.
Rakh Asha D.

AGP for Respondents State: Mr. D. V. Tele

...

CORAM : S. V. GANGAPURWALA, J.

DATE : 5th October, 2015

PER COURT :

1. The present appellants had filed reference under section 18 of the Land Acquisition Act. The reference is dismissed as the appellants failed to adduce any evidence. Aggrieved thereby, the present appeal.

2. Mr. A. P. Avhad, the learned counsel for the appellants submits that the appellants are agriculturists, residing in remote rural village. They were relying on their advocates, however, there was communication gap between Advocate and the claimants, as such, the applicant could not adduce evidence. According to the learned counsel, agricultural lands of the applicants/claimant are acquired. One more

opportunity may be given to the claimants to prove their case.

3. Learned AGP opposes the appeal and submits that ample opportunity was given to the claimants, however the claimants failed to avail the said opportunity. The claimants did not have any evidence to prove their claim, as such, did not adduce evidence. No error has been committed in this regard. The learned Special Land Acquisition officer, after considering all the relevant aspects of the matter, has rightly passed the award.

4. I have considered the submissions canvassed by the learned counsel for the respective parties so also record and proceedings.

5. It would appear that on the dates fixed for evidence, advocate for the claimant was absent, consistently. The claimants are agriculturists. Their agricultural land, which is source of their livelihood, has been acquired. They are residing in remote rural village and are rustic persons. Naturally, they would rely on the advocates for the communication.

6. Considering the aforesaid aspects of the matter, I am inclined to grant one more opportunity to the claimants. However, considering the fact that the claimants and their advocate were consistently absent since April, 2009, the equities can be adjusted by directing that in case the Reference Court comes to the conclusion to enhance the compensation amount, the claimants would not be entitled for statutory benefit from April, 2009 till this date. In light of that, I pass following order:

O R D E R

- i. The impugned judgment and award is quashed and set aside.
- ii. The Land Acquisition Reference No. 2357 of 2010 is restored to its original position. The reference court shall decide the Reference afresh.
- iii. The parties shall appear before the Reference Court on 4th November, 2015.
- iv. The parties are permitted to adduce

evidence.

v. In case, the Reference Court comes to the conclusion to enhance the amount of compensation, in that case, the applicants/claimants shall not be entitled for the statutory benefits for the period from 1st April, 2009 till 4th November, 2015.

vi. The first appeal is accordingly partly allowed. No costs.

vii. Record and proceedings be sent back immediately.

(S. V. GANGAPURWALA, J.)

JPC