

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

27 FIRST APPEAL NO. 2446 OF 2009

NAMDEO MANGU JADHAV AND ORS

VERSUS

THE ZILLA PARISHAD AURANGABAD THR CEO AND ANR

...

Advocate for Appellants : Mr. N J Pahune Patil

AGP for Respondents-State: Mr. P. N.Kutti

**Advocate for Respondent No.1 : Mr. D. R.Kale and Mr. D.
B.Pawar.**

27 FIRST APPEAL NO. 151 OF 2007

THE ZILLA PARISHAD AURANGABAD THR CEO AND ANR

VERSUS

NAMDEO MANGU JADHAV AND ORS

...

**Advocate for Appellant : Mr. D. R.Kale and Mr. D.
B.Pawar.**

AGP for Respondents-State: Mr. P. N.Kutti

Advocate for Respondent No.1 : Mr. N J Pahune Patil

CORAM : S. V. GANGAPURWALA, J.

DATE : 21th October, 2015

PER COURT :

1. Both these appeals are filed against the same judgment and award passed by the reference court under section 18 of the land Acquisition Act. First appeal No. 2446 is filed by claimants whose lands have been acquired and First Appeal No.151/2007 is filed by the acquiring body . The claimant has filed first appeal for enhancement of compensation, whereas the acquiring body has filed appeal for setting aside the said judgment and award on the ground that opportunity was not given to the

appellant acquiring body.

2. Mr. Pawar, the learned counsel for the appellant submits that the suit summons were not properly served on the present appellant acquiring body and the matter proceeded ex-parte against the acquiring body. Learned counsel submits that opportunity be given to the acquiring body to put forth its case.

3. Mr. Pahune Patil, the learned counsel for the claimants submits that respondent no.2 i.e. the acquiring body was served with the summons, however remained absent. No plausible reason are coming forth for the acquiring body remaining absent.

4. I have considered the order. The court has observed that the matter has proceeded ex-parte against respondent no.2 vide order below Exhibit 1 dated 31.1.2005.

5. The acquiring body has deposited the amount under the award. 50% of the amount has been withdrawn by the claimant without any security and 50% is allowed to be withdrawn on bank guarantee. Considering the fact that the acquiring body could not appear before the reference

court and defend the matter, I am inclined to grant an opportunity to the acquiring body. As such I pass following order:

O R D E R

- i. Impugned judgment and award is quashed set aside.
- ii. The LAR No. 258/2001 is restored to its original position. Parties shall appear before the reference court on 25th November, 2015.
- iii. The acquiring body- Zilla Parishad, Aurangabad shall file its written statement within a period of one month from the date of appearance. The reference court shall thereafter decide the matter expeditiously and preferably within nine months.
- iv. The parties are entitled to adduce further evidence.
- v. The amount already withdrawn by the claimant shall be retained by the claimants. However, the same shall be subject to the decision of the reference court.
- vi. The first appeals are accordingly disposed of. No costs.
- vii. Record and proceeding be sent forthwith.

(S. V. GANGAPURWALA, J.)

JPC