

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

911 FIRST APPEAL (ST) NO. 22604/2007

SAYED JALAL SAYED HUSAIN L.RS. ASHADABEE SAYED JALAL AN
L.RS. SAYED SARDARODDIN A
VERSUS
THE STATE OF MAH AND ANR

...

Advocate for Appellant :Mr. B S Kudale
AGP for Respondents State: Mr. A. M. Phule

...

CORAM : S. V. GANGAPURWALA, J.

DATE : 9th October, 2015

PER COURT :

1. Issue notice to the respondents. Learned AGP waives notice.
2. Mr. Kudale the learned counsel for the appellant submits that subsequently the case was transferred to another Court, however, the advocate for the appellant did not disclose the same to the appellant. As such, the evidence is not led. In absence of evidence being led, the the tribunal has dismissed the reference.
3. According to the learned counsel, in the meantime, even the person who had filed reference had died.

4. Learned AGP submits that ample opportunity was given to the appellant to adduce evidence but the claimant did not avail the said opportunity. Since 1994, the matter was adjourned for evidence of the claimant. The reference court did not commit any error in passing the order.

5. I have considered the submissions.

6. Though the case was transferred from one court to another, it is in the same premise. The claimant could not appear before the court to adduce evidence. The Court has observed that issues were framed in the year 1994 and since then the claimant did not remain present to adduce evidence.

7. I have considered the cause title. The cause title would show that the claimant is age old person. Reasons put forth by the claimant are accepted. However, equities can be adjusted by issuing direction that the claimant would not be entitled for statutory benefit since the date the claimant was remaining absent, in case the Reference Court comes to the conclusion to enhance the compensation amount. The same shall be in tune with the judgment of Apex

Court in case of **Ramanlal Deochand Shah v. State of Maharashtra & Anr.**, reported in **AIR 2013 SC 3452**. In light of that, I pass following order:

O R D E R

- i. The impugned judgment and order is quashed and set aside.
- ii. The Land Acquisition Reference No.434 of 1993 is restored to its original position. The reference court shall decide the Reference afresh.
- iii. The parties shall appear before the Reference Court on 15th 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 petitioner/claimant shall not be entitled for the statutory benefits for the delayed period i.e. from 11.07.1994 till 15th November, 2015.
- vi. Copy of the order be sent to the reference court
- vii. First Appeal is accordingly partly allowed. No costs.

(S. V. GANGAPURWALA, J.)

JPC