

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

First Appeal No. 2624 of 2015

Manohar s/o. Janardhan Dahifale,
Age : 41 years,
Occupation : Agriculture,
R/o. Molwan, Taluka : Ahmedpur,
District : Latur.

.. Appellant
(Original claimant)

versus

1. The State of Maharashtra,
Through the Government Pleader,
High Court of Bombay,
Bench at Aurangabad.

2. The Executive Engineer,
Irrigation Division, Latur,
District : Latur.

.. Respondents.

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Mr. Subhash V. Mundhe, Advocate, for the appellant.

*Mr. S.B. Yawalkar, Assistant Government Pleader, for
respondent nos.1 and 2.*

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CORAM : A.M. BADAR, J.

DATE : 27TH NOVEMBER 2015

ORAL JUDGMENT :

1. Heard the learned Counsel appearing for appellant as well as the learned Assistant Government Pleader appearing for respondents.

2. Admit. By consent of the learned Counsel appearing for the parties, taken up for final hearing.

3. This is an appeal under Section 54 of the Land Acquisition Act, 1894, by claimant. Reference petition under Section 18 of the Land Acquisition Act filed by the appellant / claimant was answered in negative by the impugned judgment and award dated 22-8-2008, passed by the learned Joint Civil Judge (Senior Division), Ahmedpur, in Land Acquisition Reference No. 95/2002.

4. Perused the impugned judgment and award. For the sake of convenience, parties shall be referred to in the original capacity.

5. Shri Mundhe, the learned Counsel appearing for the appellant / claimant, submitted that meagre amount of compensation was awarded by the Land Acquisition Officer and therefore claimant who is an agriculturist was constrained to file reference petition under Section 18 of the Land Acquisition Act. In submission of Shri Mundhe, the learned Counsel, mother of the claimant had also preferred a reference and it was tagged with the reference petition of the appellant / claimant. As such, appellant / claimant was under impression that his reference petition will be decided along with the reference petition of his mother. However, ultimately it was found that on 22-8-2008, the learned Civil Judge (S.D.) had answered the reference in negative on account of failure on the part of the claimant to adduce evidence. Shri Mundhe, the learned Counsel, submitted that because of inadvertence on the part of claimant, he could

not attend the reference Court in order to adduce evidence. He submitted that a reference petition arising out of the same notification filed by mother of the appellant is allowed and there is enhancement of compensation.

6. As against this, the learned Assistant Government Pleader appearing for respondents, submitted that despite several chances, the claimant failed to avail the same and has not adduced evidence in support of his claim before the reference Court. As such, according to the learned Assistant Government Pleader, no fault can be attributed in rejecting the reference for want of evidence.

7. Having heard the rival submissions and on perusal of the impugned judgment and award, it needs to mention here that even under Section 28A of the Land Acquisition Act, if no reference petition has been filed by the appellant / claimant, then also he would have been entitled for enhanced compensation; as it is reported that reference petition filed by the mother of the claimant arising out of the same acquisition is allowed by enhancing the compensation. Therefore, appellant / claimant is certainly entitled for one more opportunity to establish his claim by adducing evidence particularly in context with submission of Shri Mundhe, the learned Counsel appearing for the appellant, that the claimant would not claim any statutory benefit in respect of the intervening period from 22-8-2008 i.e. when the reference petition was rejected, till today. Shri Mundhe, the learned Counsel submitted that the appellant / claimant will file necessary undertaking before the learned Civil Judge (Senior Division), Ahmedpur, in L.A.R. No. 95/2002 upon remand.

8. Primary function of the Court is to adjudicate the dispute on its own merits rather than adhering to the technicalities of law. Considering this aspect, appellant / claimant has certainly made out a case for remand of matter to the learned reference Court for fresh adjudication.

9. Hence, I pass the following order :-

ORDER

- (a) The Appeal is partly allowed.
- (b) Impugned judgment and award passed by the learned Civil Judge (Senior Division), Ahmedpur, in Land Acquisition Reference No. 95/2002, between the parties, is quashed and set aside.
- (c) L.A.R. No. 95/2002 is restored to the file of the reference Court and the reference Court is directed to give opportunity of adducing evidence to the appellant / claimant as well as respondents and then to decide the reference petition according to law, preferably within a period of eight months from the date of communication of this order.
- (d) Parties are directed to appear before the learned reference Court on 16th December 2015 and the learned reference Court need not issue fresh notice of hearing to the parties as they are in appearance before this Court.
- (e) Appellant / claimant shall submit undertaking regarding waiver of

statutory benefit from 22-8-2008 till 27-11-2015 before the reference Court on the date of appearance.

10. The Appeal is disposed of in the aforesaid terms with no order as to costs.

(A.M. BADAR)
JUDGE

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