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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1916 OF 2013**

The Executive Engineer, M.S.E.B., Pune ... Appellant

Vs.

Jaywant Balkrishna Pataskar and Ors. ... Respondents

**WITH
CIVIL APPLICATION NO.1013 OF 2015
WITH
CIVIL APPLICATION NO.1422 OF 2014**

Jaywant Balkrishna Pataskar and Ors. ... Applicants

In the matter between

The Executive Engineer, M.S.E.B., Pune & Ors. ... Appellants

Vs.

The Executive Engineer, M.S.E.B., Pune & Ors. ... Respondents

**WITH
FIRST APPEAL NO.1918 OF 2013 WITH
CIVIL APPLICATION NO.1020 OF 2015 WITH
CIVIL APPLICATION NO.1423 OF 2014**

The Executive Engineer, M.S.E.B., Pune ... Appellant

Vs.

Tanaji Shivaji Kekan and Ors. ... Respondents

Mrs. Anjali Raghunath Shiledar Baxi, for the Appellant in Appeals and for Respondents in Civil Applications.

Mr. Sanjeev Prataprao Kadam, for the Respondents and for Applicants in CAs.

**CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ.**

DATE : 30th JUNE, 2015

P.C.

. By consent of the parties, the Appeals are taken up for final hearing. The challenge in these two Appeals is to the common Judgment and Award dated 27th January, 2012 passed by the learned Extra-Joint (Ad-hoc) District Judge, Baramati in Land Acquisition Reference Nos.18 and 19 of 2005.

2. The references were under Section 18 of the Land Acquisition Act, 1894 (for short “the said Act”). Notification under Section 4 of the said Act was issued on 28th December, 2000 and Award under Section 11 was made on 31st August, 2003.

3. It is not in dispute that the acquisition of the lands subject matter of both the Appeals was for the benefit of the Maharashtra State Electricity Board (now the Maharashtra State Electricity Distribution Company Limited).

4. The contention of the Appellant (Executive Engineer of the Maharashtra State Electricity Distribution Company Limited) is that

though the Appellant was added as a party Respondent in both the references, notices of the references were not served to the Appellant. Therefore, the contention is that the Appellant was entitled to participate in the proceedings of the references and to adduce evidence.

5. We have perused the record of the references. Even, both the learned counsel representing the Appellant and the Original Claimants have perused the record of the references. Though under the order of the Reference Court, the Appellant was added as a party Opponent in both the references, admittedly there is nothing on record to show that notices of the references was served to the Appellant.

6. The Appellant being admittedly a person interested as far as payment of compensation is concerned, was required to be given an opportunity to contest references by filing written statement and by adducing evidence. In view of the settled law, the Appellant was required to be heard by the Reference Court.

7. Hence, there is no option but to set aside the impugned Award and to remand the references to the Reference Court for fresh consideration.

8. The learned counsel appearing for the Original Claimants submits that the Original Claimants may be permitted to withdraw certain amount considering the advanced age of some of the Claimants.

9. The learned counsel appearing for the Appellant states that the entire compensation amount has been deposited with the Reference Court. The submission of the learned counsel appearing for the original Claimants is that some part of the amount has not been deposited.

10. In the event, the Claimants succeed on remand, the Appellant will incur a liability of payment of statutory interest. Therefore, we propose to direct that the amounts deposited by the Appellant shall be retained and invested by the Reference Court which can carry interest.

11. We propose to permit the Claimants to withdraw a sum of Rs.2 Lakhs in Land Acquisition Reference No.19 of 2005 and a sum of Rs.8 Lakhs in Land Acquisition Reference No.18 of 2005 subject to furnishing security. Hence, the Appeals are disposed of by passing the following order :-

ORDER

- (i) The impugned Judgment dated 27th January, 2012 is hereby quashed and set aside and the Land Acquisition Reference Nos.18 and 19 of 2005 are remanded to the Court of the learned District Judge – I, Baramati, Pune;
- (ii) We direct the Appellant and the Original Claimants in the references to appear before the learned District Judge – I , Baramati, Pune on 3rd August, 2015 at 11.00 am for fixing the schedule of hearing. It will be open for the Appellant to file written statement in both the references on or before 31st August, 2015. No further time shall be granted to the Appellant to file written statement;
- (iii) It will be open for the Claimants to lead further evidence, if any, in the light of the written statement which may be filed by the Appellant. If written statement is filed as aforesaid, the Reference Court shall recall the witnesses already examined to enable the Appellant to cross-examine the said witnesses;
- (iv) It is obvious that even the Appellant will be entitled to adduce evidence;

- (v) The Reference Court shall decide the references afresh after taking into consideration the evidence adduced which is already on record and the evidence which will be adduced after remand. The reference shall be decided finally as expeditiously as possible and preferably by 30th April, 2016;
- (vi) Out of the amount deposited by the Appellant with the Reference Court, the Claimants in Land Acquisition Reference No.19 of 2005 shall be entitled to withdraw a sum of Rs.2 lakhs subject to final outcome of the reference and subject to furnishing adequate security for the said amount to the satisfaction of the Reference Court;
- (vii) Claimants in Land Acquisition Reference No.18 of 2005 shall be permitted to withdraw a sum of Rs.8 Lakhs subject to final outcome of the reference and subject to furnishing adequate security for the said amount to the satisfaction of the Reference Court;
- (viii) Rest of the amounts shall be invested by the Reference Court in Fixed Deposit in any Nationalised Bank till the disposal of the references. It is obvious that while passing final Award in the references, the Reference Court shall

pass order regarding withdrawal/ refund of the amounts deposited by the Appellant with interest accrued thereon. While passing the final Award, the interest accrued on the Fixed Deposit shall be also taken into consideration by the Reference Court;

- (ix) All contentions on merits of the references are kept open. The Appeals are partly allowed on above terms. Pending Civil Applications do not survive and the same are disposed of;
- (x) Writ be sent along with R & P to the District Court along with a special messenger.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)