

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

**FIRST APPEAL NO. 1241 OF 2006
WITH
CA/1643/2010 IN FA/1241/2006**

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Keshav Nagnath Pawar,
age 56 years, Occ. Agriculture,
R/o Naichakur, Tq. Omerga,
Dist. Osmanabad. .Appellant..

VERSUS

1. The State of Maharashtra,
Through Collector, Osmanabad.
2. Godawari Marathwada Irrigation,
Development Corporation, Through
It's Executive Engineer Minor
Irrigation Division, Osmanabad
Tq. & Dist Osmanabad. .Respondents.

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Advocate for Appellant : Mr V G Sakolkar
AGP for Respondent 1 : Mr K N Lokhande
Advocate for Respondent 2 : Mr S S Thombre

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CORAM : V.K. JADHAV, J.

Dated: April 04, 2016

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ORAL JUDGMENT :-

1. Mr. Mukhedkar, the learned counsel, submits that since Advocate Mr. Sakolkar is appearing for the appellant, his appearance may be discharged. Appearance of Advocate Mr. Mukhedkar stands

discharged.

2. Being aggrieved by the Judgment and Award passed in L.A.R No.475/2004 with connected matters as mentioned therein, the original claimant in L.A.R No.475/2004 has preferred this appeal for enhancement of the compensation. The learned Civil Judge S.D. Omerga, by its impugned judgment and award dated 15.7.2006 awarded the enhanced compensation to the claimants in L.A.R No.475/2004 @ Rs.29,250/- per hector. The learned Civil Judge S.D., Omerga has awarded the total compensation of Rs.49,140/-. Being aggrieved by the same, the original claimant in L.A.R No.475/2004 preferred this appeal for enhancement of compensation.

3. Before entering into the merits of the case, the learned counsel for respondent no.2-acquiring body submits that, the Acquiring Body was not impleaded as party in the original proceeding and in view of the authoritative pronouncement of the Supreme Court in case of Abdul Rasak and others Vs. Kerala Water

Authority and others, reported in **(2002) 3 Supreme Court Cases 228**, the matter needs to be remanded to the Reference Court with a directions to implead the respondent no.2 Acquiring Body as party to the reference and then dispose of the land Acquisition Reference in accordance with law.

3. Learned counsel appearing for the appellant/original claimant has also not disputed this legal position.

4. I have also heard the learned AGP for the respondent no.1 State.

5. The Supreme Court by relying upon the case in U.P. Awas Evam Vikas Parishad Vs. Gyan Devi, reported in (1995) 2 SCC page 326, in a case Abdul Rasak and others (supra), in paragraph No.11 has made following observations :-

“11. Keeping in view the fact that the Constitution Bench judgment of this Court was delivered during the pendency of appeals before the High Court and the manner in which K.W.A. also came to be constituted after commencement of

land acquisition proceedings and the delay which has already taken place in the conclusion of the proceedings for finalizing compensation which delay is not attributable to the claimants though, we maintain the order of remand made by the High Court but make the following directions :

1. The Kerala Water Authority shall be deemed to have been brought on record in the reference cases as defendant. The cause title of the reference cases shall be amended accordingly. The K.W.A. may file its written statement to the claim petition filed by the claimants;
2. The Civil Court shall expeditiously proceed to try the reference cases in compliance with the order of remand made by the High Court;
3. The statement of the witnesses already recorded on behalf of the claimants need not be recorded afresh;
4. The Kerala Water Authority shall be allowed an opportunity of cross- examining the witnesses which have already been examined. However, such of the witnesses as are not available, and, therefore, cannot be called before the Court, their statements shall not be excluded from consideration and shall be read in evidence;
5. The claimants may adduce such other evidence as they may propose to do and both the State of Kerala and Kerala Water Authority shall have the liberty of cross-examining such witnesses who are now examined by the claimants;
6. The Kerala Water Authority shall have the liberty of adducing such evidence as it may propose to do.”

6. In view of this, following order is passed.

O R D E R

- I. First appeal is hereby partly allowed.
- II. The impugned Judgment and Award dated 15.7.2006 passed by the learned Civil Judge S.D. Omerga in L.A.R.No.475/2004 Keshav Nagnath Pawar Vs. State of Maharashtra is hereby quashed and set aside.
- III. Matter is remanded to the Reference Court with the following directions:-

The Respondent Acquiring Body 'Godawari Marathwada Irrigation' shall be deemed to have been brought on record in the Reference case as the respondent. The cause title of the Reference Case shall be amended accordingly.
- IV The Respondent Acquiring Body 'Godawari Marathwada Irrigation' is permitted to file its written statement to the claim petition.
- V. The learned Civil Judge S.D., Omerga Shall dispose of the Reference case, as expeditiously as possible, preferably within a period of SIX MONTHS from the date of this order.

VI. The evidence (if any) recorded during the original trial shall, subject to all just exception be read in evidence during the trial after remand.

VII. The Respondent Acquiring Body 'Godawari Marathwada Irrigation' if submits the written statement before the Reference Court, the claimant as well as the respondent No.1 State are hereby permitted to lead the additional evidence before the Reference Court. Needless to say that the Respondent Acquiring Body 'Godawari Marathwada Irrigation' is at liberty to lead oral as well as documentary evidence in support of its case as per the pleadings.

VIII. First Appeal is accordingly disposed of.
Pending civil application also stands disposed of.

(V.K. JADHAV, J.)

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aaa/-