

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 772 OF 2016

THE EX ENGINEER N M C DIVISION VAIJAPUR
VERSUS
THE STATE OF MAH ND ORS

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Advocate for Appellant : Mr. V R Sonvalkar
AGP for Respondents: Mr. K.N. Lokhande
Advocate for Respondents : Mr. P.A. Bhosle h/f Mr. A.B.Kale

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CORAM : V. K. JADHAV, J.
DATED : 12th APRIL, 2016

PER COURT:-

1. Heard learned counsel for the respective parties.
2. The present appeal is filed by the acquiring body.
3. The claimants had filed Reference under Section 18 of the Land Acquisition Act (for short 'L.A. Act') being dissatisfied with the amount of compensation awarded by the Special Land Acquisition Officer (for short, 'S.L.A.O.'). The Reference court partly allowed the Reference. Aggrieved thereby the present appeal is filed.
4. The factual matrix can be summed up as under:-

The Notification u/s 4 of L.A. Act was issued on 04.03.1993.

The award was passed on 30.03.1994. The Reference under section 18 of the L.A. Act was filed on 21.9.1994. Accordingly, the evidence was led by the claimants before the Reference court and the Reference Court delivered the judgment and award on 20.4.2000.

5. The present appellant, being the acquiring body, by executive instructions, was constituted on 17.8.1998. As per the Government Resolution, by virtue of which the present appellant was constituted, the appointed date was 1.10.1998.

6. The S.L.A.O. has awarded compensation of the acquired lands @ Rs. 540/- per R. The Reference court enhanced the compensation to Rs.1,250/- (Rupees one thousand two hundred fifty only) per R.

7. Mr. Sonwalkar, learned counsel for the appellant relying on the judgment of the Apex Court in the case of ***U.P. Awas Evam Vikas Parishad vs. Gyan Devi (Dead) by L.Rs. And Anr. reported in AIR 1995 SC 724 (1)*** and another judgment of the Apex Court in the case of ***Agra Development Authority vs. Special Land Acquisition Officer reported in 2001 (2) SCC 646*** submits that the matters be remitted back to the Reference Court and allow the acquiring body to put forth its case.

8. Mr. Bhosle h/f Mr. A.B. Kale, learned counsel for the claimants submits that the Reference Court has considered the sale instances on record and has passed the award. The appellant has been constituted on 17.8.1998 i.e. much after the award is passed by the S.L.A.O. and filing of the Reference under Section 18 of L.A. Act before the Reference Court. As such, they are not necessary parties nor they have any right to agitate. The totality of the evidence has been considered. The State has opposed the References by filing written statement and cross examining the claimants and their witnesses.

9. It is submitted that the objections under Section 28-A of the L.A. Act filed by the other claimants are pending and the same are not being disposed of as the appeal is pending. As such, it was submitted that instead of admitting the appeal, the matter be remitted back or in the alternate the respondents may file on record such evidence which they would like to produce so that the same can be considered in the appeal itself. The learned counsel submits that he has instructed to state that the appellant would like to cross examine the claimants and their witnesses regarding the said sale deed.

10. With the assistance of learned counsel, I have gone through the judgment.

11. It appears that the claimants have withdrawn the amount in the year 2001 itself. They are also not prejudiced by the remand of the matter.

12. In the light of the above, the impugned judgment and award is liable to be quashed and set aside and the matter is to be remitted to the Reference Court.

13. In view of the above, I pass the following order:-

- I. The impugned judgment and award is quashed and set aside.
- II. The matter is remitted to the Reference Court for deciding the same afresh.
- III. The appellant shall be added as respondent in the Reference.
- IV. The parties shall appear before the Reference Court on 29.04.2016.
- V. As all the parties are before this court, no separate notice is necessary to be issued.
- VII. The appellant shall file written statement, if any, by

7.6.2016.

- VIII. The claimants are also entitled to lead additional evidence, if they choose to.
- IX. The acquiring body i.e. the appellant and the State may also adduce evidence if they choose to.
- X. Taking into account the fact that the matter is remitted back to the Reference court and the matter is old, the Reference court shall decide the same expeditiously and preferably within six months from the date of appearance of the parties.
- XI. The record and proceedings, if any, be sent back immediately.
- XII. The amount already withdrawn by the claimants shall be retained by them and the same will be subject to the award that would be passed by the Reference court afresh.
- 14. In the light of the above, the first appeal is accordingly disposed of, however, with no order as to costs.

(V. K. JADHAV, J.)