

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3772 OF 2016

Minaxi d/o Lingram Dudde
 Age. Major, Occ. Agril/Household,
 R/o Kamkheda, Tq. Renapur,
 Dist. Latur. ... Appellant

Vs.

1. The State of Maharashtra,
Through the Collector, Latur.
2. The Executive Engineer,
Minor Irrigaton Division at Latur ... Respondents

with

FIRST APPEAL NO. 3765 OF 2016

Prayagbai w/o Eknath Dudde (died)
 Through Lrs.
 Dhondiba s/o Eknath Dudde
 Age. 68 yrs. Occ. Agril,
 R/o Kamkheda, Tq. Renapur,
 Dist. Latur. ... Appellant

Vs.

1. The State of Maharashtra,
Through the Collector, Latur.
2. The Executive Engineer,
Minor Irrigaton Division at Latur. ... Respondents

with

FIRST APPEAL NO. 3766 OF 2016

Surajkanya Vishnudas Bajaj,
 Age. 44 yrs, Occ. Agril,
 R/o Kamkheda, Tq. Renapur,
 Dist. Latur. ... Appellant

Vs.

1. The State of Maharashtra,
Through the Collector, Latur.
2. The Executive Engineer,
Minor Irrigaton Division at Latur ... Respondents

with
FIRST APPEAL NO. 3767 OF 2016

Bhagirthisbai w/o Harichandra Haridas,
Age. 70 yrs, Occ. Agril. Household,
R/o Kamkheda, Tq. Renapur,
Dist. Latur. ... Appellant

Vs.

1. The State of Maharashtra,
Through the Collector, Latur.
2. The Executive Engineer,
Minor Irrigation Division at Latur ... Respondents

with
FIRST APPEAL NO. 3768 OF 2016

Janabai w/o Bhanudas Walekar,
Age. Major, Occ. Agril. Household,
R/o Pangaon (Kamkheda), Tq. Renapur,
Dist. Latur. ... Appellant

Vs.

1. The State of Maharashtra,
Through the Collector, Latur.
2. The Executive Engineer,
Minor Irrigation Division at Latur ... Respondents

with
FIRST APPEAL NO. 3769 OF 2016

Jagannath s/o Vithal Bhinge (died)
Through Lrs.
Kalubai w/o Jagannath Bhinge
Age. 80 yrs, Occ. Agril.,
R/o Kamkheda, Tq. Renapur,
Dist. Latur. ... Appellant

Vs.

1. The State of Maharashtra,
Through the Collector, Latur.
2. The Executive Engineer,
Minor Irrigation Division at Latur ... Respondents

with
FIRST APPEAL NO. 3770 OF 2016

Anjali d/o Shridhar Gude,

Age. Major, Occ. Agril. Household,
R/o Pangaon (Kamkheda), Tq. Renapur,
Dist. Latur. ... Appellant

Vs.

1. The State of Maharashtra,
Through the Collector, Latur.
2. The Executive Engineer,
Minor Irrigaton Division at Latur ... Respondents

**with
FIRST APPEAL NO. 3771 OF 2016**

Mathurabai w/o Ganpati Barule,
Age. Major, Occ. Agril. Household,
R/o Kamkheda, Tq. Renapur,
Dist. Latur. ... Appellant

Vs.

1. The State of Maharashtra,
Through the Collector, Latur.
2. The Executive Engineer,
Minor Irrigaton Division at Latur ... Respondents

Mr. Sontakke Gajanan K. Advocate for the Appellant.
Mr. G.O. Wattamwar, AGP for respondent-state.

**CORAM : P.R. BORA, J.
DATE : 15-10-2016.**

ORAL JUDGMENT :

1. Since all these eight appeals are arising out of the common judgment and award passed by the 3rd Joint Civil Judge Senior Division, Latur on 10.02.2012 in L.A.R. Nos. 706/2000, 707/2000, 708/2000, 709/2000, 710/2000, 712/2000, 713/2000 and 714/2000. I deem it appropriate to decide these appeals by common judgment.

2. Heard the learned counsel appearing for the appellants and the learned A.G.P. appearing for the state. Perused the

impugned judgment and award. The reference court has dismissed all the aforesaid references vide impugned judgment mainly on the ground that the claimants did not adduce any evidence in support of their claim.

3. The reason which has been assigned by the learned reference court while dismissing the reference applications is apparently unsustainable. Time and again, this court has held that, the land acquisition references cannot be rejected or dismissed on the ground that the petitioner or the claimant did not adduce any evidence in support of his claim. This court in the case of **Kawadu Madhav Bansod and V/s. State of Maharashtra & Anr.** reported in **2004 (02) Mh.L.J. 503** in para 7 thereof has observed thus:

7. It is true that the adjudication made by the Civil Court on the reference has to be regarded as an award, whether an enhanced compensation is given or not. But in that event the Court should consider the material on record, even if the party is absent and has failed to adduce evidence. Unless the material on record is considered the order cannot be said to be an adjudication. In the instant case the ground given for the dismissal of reference by the Civil Court is that the applicant (present revision petitioner) remained absent and did not adduce any evidence to show that a proper compensation was not paid to him and that he is entitled to more compensation than paid. The above order clearly shows that the reference was dismissed only for the reason of failure of the applicant (present revision petitioner) to adduce evidence. Thus the material on record is not considered by the Civil Court. It is not considered as to how the compensation awarded by the Land Acquisition Officer was correct. So the order cannot be taken to be an adjudication and therefore the same cannot be treated to be an award. The order passed by the Civil judge, Senior Division, Yavatmal also cannot be treated to be a dismissal of the reference in default. The learned Counsel for revision petitioner submitted that the case could not be dismissed in default also.

4. In view of the observations made by this court as

above, the court below should not have rejected the reference applications on the ground of failure of the claimants to adduce evidence. The Hon'ble Apex Court in the case of **Khajan Singh Vs. Union of India** reported in **2002 (2) MLJ 259** has held that Sections 18 and 26 of the Act make it clear that the civil court has to pass an award in answer to the Reference made by the Collector under Section 18 of the Act and if any party, to whom notice has been served by the Civil Court, did not participate in the inquiry, it would be only be at his risk. It is further observed that Reference under Section 18 of the Act cannot be dismissed for default.

5. In the instant matters, while rejecting the Reference applications under Section 18 of the Act, though the Reference Court has not used the words "dismissed in default", observations made by the reference court in the impugned judgment impliedly mean that the Reference applications are dismissed in default i.e. for want of evidence from the side of the claimants. The reference court has not made any discussion or provided any reason as to how the amount of compensation determined by the Special Land Acquisition Officer is proper and reasonable and is the real market value of the lands under acquisition.

6. In the above circumstances, in view of the law laid down by the apex court in the case of Khajan Singh cited (cited supra) and by this court in the case of Kawadu Madhav Bansod

(cited supra) the impugned judgment and award cannot be sustained. In the similar fact situation this court in the case of **Appasaheb Mohanrao Chede Vs. State of Maharashtra and Anr.** reported in **2012 (1) Bom.C.R. 458** and also in the case of **Arjun Shankar Waghmare and Anr. V/s. State of Maharashtra** reported in **2011 (2) Bom. C.R. 866**, deemed it proper to remit back the matters to the reference court for their decision on merits by setting aside the awards impugned in the said petitions. The same course needs to be followed in the instant matters.

7. During the course of his arguments it was urged by the learned A.G.P. Shri Wattamwar that despite availing ample opportunities before the reference court, the claimants did not adduce any evidence in support of their claim and in such circumstances the reference court was constrained to deliver the impugned judgment. The learned A.G.P. submitted that, even in case of remand certain observations are required to be made by this court as about conduct of the claimants in conducting the reference applications before the reference court. The learned A.G.P. submitted that, in no case the claimants can be made entitled for the statutory benefits or interest of the period which has been consumed by them in not proceeding with the matter. Learned A.G.P., therefore, prayed for dis-entitling the petitioner from claiming statutory benefits and interest of the aforesaid

period.

8. From the material on record it appears that, the learned A.G.P. is fully justified in making such submission. Needles to state that the Reference Court will definitely take into account the circumstances and decide whether to award interest to the claimants of the entire period or otherwise, if it reaches to the conclusion that the hearing of the Reference applications was prolonged only at the instance of and because of the lapses on the part of the claimants and will take appropriate decision on the said issue while passing the final award.

9. The learned counsel appearing for the appellants makes a statement that on the first date of hearing, which may be fixed by the Reference Court, the appellants/claimants will file all necessary documents including the relevant sale instances and would also adduce the necessary evidence within three months from the first date of appearance before the Reference Court after remand.

10. It has to be further stated that, while condoning the delay of 1367 days which has occurred in filing the present appeals by the claimants an undertaking has been submitted by the claimants to the effect that they will not claim any statutory benefit or interest for the period of delay.

11. For the reasons stated above I pass the following order.

ORDER

- i) The common judgment and award impugned in the present appeals in L.A.R. nos. 706/2000, 707/2000, 708/2000, 709/2000, 710/2000, 712/2000, 713/2000 and 714/2000 is quashed and set aside.
- ii) The matter is remitted back to the learned Reference Court for its disposal afresh in accordance with law;
- iii) The parties are directed to appear before the learned reference court on 15.11.2016 and shall promptly adduce evidence in support of their claim in the application or in the written statement both will be at liberty.
- iv) The Reference Court by recording necessary evidence and hearing the parties shall decide the Reference Applications as expeditiously as possible and preferably within a period of nine months thereafter; It is clarified that as undertaken by the appellants they will not claim any statutory benefit for the interest of period of delay as undertaken by them in the civil applications filed by them before this court.
- v) The First Appeals stand partly allowed in the

aforesaid terms. No order as to costs. Pending Civil Application, if any, stand disposed of.

(P.R. BORA)
JUDGE

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