

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1736 OF 2015

Shivaji S/o Rajaram Telang
Age 46 years, Occu. Agril,
R/o Jakekur, Tq. Omerga,
Dist. Osmanabad.

...APPELLANT
(Ori. Claimant)

VERSUS

1. The State of Maharashtra,
Through, the District Collector,
Osmanabad.
2. The Maharashtra Industrial
Development Corporation
through its Regional Officer,
M.I.D.C. Latur.

...RESPONDENTS

WITH

FIRST APPEAL NO.1738 OF 2015

Chandrakant S/o Rajaram Telang,
Age 58 yrs. Occ. Agril.
R/o Jakekur, Tq. Omerga,
Dist. Osmanabad.

...APPELLANT
(Ori. Claimant)

VERSUS

1. The State of Maharashtra,
Through, the District Collector,
Osmanabad.
2. The Maharashtra Industrial
Development Corporation
through its Regional Officer,
M.I.D.C. Latur.

...RESPONDENTS

WITH

FIRST APPEAL NO.1735 OF 2015

Baswant S/o Rajaram Telang
Age 62 yrs. Occ. Agril.
R/o Jakekur, Tq. Omerga,

Dist. Osmanabad.

...APPELLANT
(Ori. Claimant)

VERSUS

1. The State of Maharashtra,
Through, the Secretary of
Revenue Department,
Mantralaya, Mumbai-32.
2. The District Collector,
Osmanabad.
3. The Maharashtra Industrial
Development Corporation
through its Regional Officer,
M.I.D.C. Latur.

...RESPONDENTS

WITH

FIRST APPEAL NO.1737 OF 2015

Shankar S/o Rajaram Telang,
Age 53 yrs. Occ. Agril.
R/o Jakekur, Tq. Omerga,
Dist. Osmanabad.

...APPELLANT
(Ori. Claimant)

VERSUS

1. The State of Maharashtra,
Through, the District Collector,
Osmanabad.
2. The Maharashtra Industrial
Development Corporation
through its Regional Officer,
M.I.D.C. Latur.

...RESPONDENTS
(Ori. Claimant)

...

Mr. P.G.Sontakke, Advocate, for appellants;
Mr. R.B.Bagul, AGP for Respondent/State;
Mr. S.B.Bhosale, Advocate for Respondent No.2

CORAM : P.R.BORA, J.

DATE : 1st April, 2016.

JUDGMENT:

1) Since all these four appeals are arising out of the common Judgment and Award passed by the Civil Judge, Senior Division on 17th November, 2008 in LAR No.350/2005 with connected matters, I deem it appropriate to decide these appeals by a common reasoning.

2) Heard the learned Counsel appearing for the respective parties. Perused the impugned Judgment and Award. The learned Civil Judge, Senior Division, Omerga has dismissed all the four Land Acquisition References by recording following reasons in Para 15 of the judgment, -

"15. As the claimants did not adduce any oral evidence nor filed any documentary evidence to support their case to get enhanced compensation amount, I am of the opinion that whatever the amount of compensation granted to acquired

land is proper and reasonable according to the market value, therefore, I reject the contention of claimants by rejecting all the claim Reference petitions."

3) The reason for which the learned Reference Court has rejected the References is apparently unsustainable. Time and again, this Court has held that the Land Acquisition Reference cannot be dismissed on the ground that the petitioner did not adduce any evidence or failed to adduce any evidence. This Court, in the case of Kawadu Madhav Bansod Vs. the State of Maharashtra and Anr. - 2004 (2) 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 on the ground of failure of the claimants to adduce evidence.

5) The Hon'ble Apex Court in the case of Khajan Singh Vs. Union of India – 2002 (2) – Mh.L.J. 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 only be at his risk. It is further observed that Reference under Section 18 of the Act cannot be dismissed for default.

6) 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 in

para 15 of the impugned judgment impliedly mean that the Reference applications are dismissed in default. 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.

7) In the above circumstances, in view of the law laid down by the Hon'ble Apex court in the case of Khazan Singh (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 & Anr. - 2012(1) Bom.C.R. 458** and also in the case of **Arjun Shankar Waghmare and Anr. vs. State of Maharashtra - 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.

8) During the course of his arguments it was urged by the learned AGP that in case the matters are remitted back to the Reference Court for their decision on merits, it may be specifically observed that the claimants shall not be entitled to claim interest of the intervening period since for years together the claimants did not proceed with the Reference Applications and failed to adduce evidence on their behalf. The learned AGP is fully justified in making such submission. Needless 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) 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 complete the evidence within three months from the first date

10) For the reasons stated above, I pass the following order, -

ORDER

i) The common impugned Judgment and Award dated 17th November, 2008 in L.A.R.Nos.380/2005; 382/2005; 385/2005 & 245/2005 passed by Civil Judge, Senior Division, Omerga, stands quashed and set aside;

ii) The matter is remanded 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 **8th June, 2016** and shall promptly adduce evidence in support of their contentions raised in the Reference or in the Written Statement, as the case may be;

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;

v) Registry to send back the Record and proceedings to the Reference Court forthwith;

11) The First Appeals stand partly allowed in the aforesaid terms. No order as to costs. Pending Civil Applications, if any, stand disposed of.

Sd/-
(P.R.BORA)
JUDGE

bdv/

fldr 20.4.16