

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

FIRST APPEAL NO. 1962 OF 2015

BHIMRAO KERBA TAKKAMPALLE DIED THR LEGAL
HEIRS SARASWATIBAI BHIMRAO TAKKAMPALLE AND
OTHERS.

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Appellant : Mr G N Chincholkar

AGP for Respondents 1,2 : Mr K. N Lokhande.

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CORAM : V.K. JADHAV, J.

Dated: March 10, 2016

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PER COURT :-

1. Heard. Leave to correct the petition.
2. Being aggrieved by the Judgment and order passed by the learned Civil Judge Senior Division, Link Court, Mukhed, District Nanded dated 24.12.2014 in LAR No.398/2004 (new) (LAR 3/2004 old), the original claimants has preferred this appeal.
3. Brief facts giving rise to the present appeal are as under :-

The appellants are the owner in possession of the land Survey No.27/A admeasuring 3H 92R situated at village Hasnal (P.M.), Tq. Mukhed, Dist. Nanded and

said land is acquired by the Respondent-State. Being aggrieved by the award passed on 3.4.2002 the appellants/original claimants filed Reference Petition No.398/2004 (LAR 3/2004 old) and claimed compensation of Rs.2.00 lacs per hector. The Reference Court, by its judgment and Award dated 24.12.2014 dismissed the claim on the ground that the acquired land is gat No.27/A, but it was wrongly typed as 27/C. Hence, this first appeal.

4. Learned counsel for the appellant submits that, the Reference court has dismissed the reference only on the ground that, even though land bearing 27/A is acquired by the Respondent-State, in the reference petition inadvertently, the land S.No.27/C is shown. Consequently, the Reference Court has dismissed the reference on that ground alone. Learned counsel submits that, in fact, respondent-state has also not disputed that land S.No.27/A is acquired by the government and, said land is owned and possessed by the appellants/claimants. Even their names are also mentioned in the award and statement 'E' and they have

received the payment of the acquisition of their land.

5. I have also heard the learned AGP for the Respondent State.

6. Following points arise for my determination and I have recorded my findings to those points as under for the reasons given below :-

<u>POINTS</u>	<u>FINDINGS.</u>
1. Whether the matter is fit to be remanded to the trial court ?	In the affirmative.
2. Do claimants prove that the award passed by the respondent no.2 is inadequate ?	Redundant.
3. Do claimants are entitled for enhancement in amount of compensation? If yes, at what rate?	Redundant
4. Whether the claim is within limitation ?	Redundant.
5. What order ?	As per final order.

REASONS

7. It appears that inadvertently, the land survey no.27/C is mentioned in the Reference Petition instead of land survey no.27/A. Respondent-state has also not disputed that the land bearing Survey No.27/A is

acquired by the Government which was owned and possessed by the appellants/claimants. Even the names of appellants-claimants are mentioned in the award and they have also received the compensation as worked out by the Special Land Acquisition Officer. In fact, the appellants-claimants should have carried out the amendment in the Claim Petition, however, it appears that, the appellants-claimants have also failed to file any application for carrying out the amendment in the pleadings. However, the appellants/original claimants filed reference under Section 18 of the Land Acquisition Act, 1894 for reasonable compensation of their and. In view of this, matter is fit to be remanded before the Reference Court. I accordingly, answer the point no.1 in the affirmative and proceed to pass the following order with certain directions.

ORDER

- I. The appeal is hereby allowed.
- II. The Judgment and order dated 24.12.2014 passed by the learned Civil Judge S.D., Link Court, Mukhed in LAR No.398 of 2004 is hereby quashed and set aside.

III. L.A.R.No.398 of 2004 shall be restored to its original number.

IV. The appellants/original claimants shall appear before the Reference Court on **4th of April, 2016.**

V. The appellants/original claimants are at liberty to file an application for carrying out amendment in the L.A.R No. 398 of 2004 and, the Reference Court, may pass an appropriate order on the said application.

VI. The reference court shall decide the L.A.R No.398 of 2004 on its own merits in accordance with law.

VII. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

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aaa/-