

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD.

CIVIL REVISION APPLICATION NO. 10 OF 2016

Tukaram s/o Sadashiv Kendre,  
Age 45 years, occup. Agril.,  
R/o Patoda, Tq. Amhadpur,  
Dist. Latur

.. Applicant / Original  
Claimant

versus

1. The State of Maharashtra,  
Through : The Collector, Latur,
2. The Special Land Acquisition Officer,  
Minor Irrigation Works, Latur,  
District Latur
3. The Executive Engineer,  
Minor Irrigation Division,  
Sinchan Bhavan, Latur,  
District Latur

.. Respondents

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Mr. Amit S. Deshpande, Advocate for applicant  
Mr. D. V. Tele, Asstt. Govt. Pleader for respondents

CORAM : SUNIL P. DESHMUKH, J.  
20TH JANUARY, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, by consent.
2. Having regard to that approach under civil revision application had been a delayed one, learned counsel for applicant

Mr. Deshpande fairly concedes that applicant-claimant would give up his claim for interest in respect of delayed period i.e. from the date of rejection of land acquisition reference to the date of filing of civil revision application.

3. Learned counsel for applicant states that land acquisition reference bearing no. 275 of 2002 is dismissed purportedly on merits by Jt. Civil Judge, Senior Division, Ahmedpur under judgment and order dated 30-11-2009, referring to that the applicant had failed to adduce any documentary evidence in support of his claim in land acquisition reference and had not appeared in the court for last so many dates.

4. The court had further observed that in the absence of evidence, it cannot be said that compensation awarded by special land acquisition officer was grossly inadequate.

5. Learned counsel for the applicant refers to various reasons for applicant not causing appearance before reference court in the land acquisition reference and although veracity of the same is being questioned, it appears, respondents are not in a position to dispute it. Precisely these are the reasons while the matter had been approached under the revision on behalf of the applicant under which it is claimed that delay has been condoned by this court by order dated 08-12-2015.

6. Apart from aforesaid which hints at that the court had been inclined to consider the case of the applicants sympathetically, learned counsel for the applicant places on record and relies on a decision dated 03-04-2013 of the learned single judge of this court in civil revision application (stamp) No. 33595 of 2012 [Yasin s/o Gulab Shaikh and ors. State of Maharashtra and others] rendered under similar circumstances.

7. The court in its order dated 03-04-2013 in above referred case, relying on a decision in the case of *Kawadu Madhav Bansod vs. State of Maharashtra*, reported in 2004 (4) Bom.C.R. 495, has considered following extract from said judgment:

" 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 “ (Emphasis supplied)*

8. Learned single judge while deciding aforesaid civil revision application which was on stamp number, has referred to yet another decision in the case of Kamlakar s/o Laxman Surayawanshi vs. State of Maharashtra [civil revision application No.1965 of 2005] and two other connected matters and relying on the same considered that reference filed by revision applicant could not have been dismissed on the ground of their failure to adduce evidence.

9. Having regard to that aforesaid series of decisions having been given in the similar set of circumstances as are occurring in the present matter, I deem it expedient to follow the suit as in said decisions.

10. Under the circumstances, impugned order by learned Joint Civil Judge, Senior Division, Ahmedpur, passed on 30-11-2009 dismissing land acquisition reference no. 275 of 2002 is set aside with clarification that it is open for revision applicant to adduce evidence before land acquisition reference court. For said purpose, the applicant shall appear before reference court on

05-02-2016 and the court shall decide land acquisition reference as expeditiously as possible and in any event within a period of six months from the date of first hearing. Parties to co-operate the reference court. Applicant shall not claim interest for delayed period as referred to hereinbefore.

11. Rule made absolute in aforesaid terms. Civil revision application stands disposed of accordingly.

SUNIL P. DESHMUKH, J.

pnd