

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

WRIT PETITION NO. 8313 OF 2015

SHAHADA TALUKA COOPERATIVE EDUCATION
SOCIETY, THROUGH ITS CHAIRMAN MOTILAL FAKIRA
PATIL
VERSUS
SHAHADA MUNICIPAL COUNCIL THROUGH ITS CHIEF
OFFICER AND OTHERS.

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Advocate for Petitioner : Smt V S Chaudhari
Advocate for Respondent no.1 : Mr J R Shah
AGP for Respondents 2,3 : Mr N B Patil

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CORAM : V.K. JADHAV, J.
Dated: February 24, 2016

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PER COURT :-

1. With the consent of learned counsel for respective parties, heard finally.

2. The petitioner Society being aggrieved by the compensation arrived at by the Special Land Acquisition Officer filed a Land Acquisition Reference before the Court and the learned Civil Judge, S.D. Shahada, was pleased to enhance the rate of acquired land @ Rs.129/- per sq. meters. Being aggrieved by the same, the respondent preferred an appeal before this Court. This court has set aside the award passed by the learned

Civil Judge S.D., Shahada, and remanded the matter for deciding it afresh. Thereafter, the learned Civil Judge S.D. Shahada passed award and fixed the market value of the land @ Rs.215/- per square meter. Aggrieved by the same, respondent no.1 herein had preferred First Appeal No.849/2007 which is admitted by this Court by order dated 21.9.2007. This Court while granting stay to the execution in Civil Application No.3062/2006, directed respondent no.1/appellate therein to deposit the entire amount before this Court. Meanwhile, in the year 2004 the petitioner had filed an application bearing Day Application No.2/2004 for corrections in the calculations. This Court, while passing the order dated 21.9.2007 in Civil Application No.3062/2006 in First Appeal No.849/2007 clarified that admission of this appeal shall not be a bar to the Reference Court to hear the application for correction of award, on merits. This Court has further observed that, it is desirable that such an application shall be disposed of before this Court takes up the appeal for final hearing. The learned Judge of the trial court, by impugned order dated 2.8.2011 dismissed the day application No.2/2004 for

the reason that the counsel representing the applicant has retired and even though, notice issued to the applicant, long back, nobody has turned up. The learned Judge has dismissed the application for want of prosecution. Before that, the learned Judge of the Trial court, by order dated 4.4.2009 also rejected the application Exh.19 filed in the said day application No.2/2004. The petitioner has challenged both the orders by way of this writ petition.

3. The learned counsel for the petitioner submits that, even though, liberty is granted by this Court to hear the application for correction of the award and decide it on its own merits, the trial Court by impugned order dated 2.8.2011 dismissed the said application for want of prosecution. Learned counsel submits that earlier counsel retired from the said matter and returned the papers to the petitioner. Learned counsel further submits that, the trial court without issuing any notice to the petitioner dismissed the said day application for want of prosecution.

4. The learned counsel for respondent submits that day application is rightly rejected by the Trial Court for want of prosecution. Learned counsel submits that, the trial court has issued notice to the petitioner and since nobody has turned up, dismissed the said day application for want of prosecution.

5. This Court, while disposing of the Civil Application No.3062 of 2006 has observed that, the pending appeal before this Court shall not be a bar to the Reference Court to hear the application for correction of award, on merits. This Court has further observed that, it is desirable that such an application shall be disposed of before this Court takes up the appeal for final hearing. Learned counsel for the respondent has accepted that the First Appeal is still pending before this Court. It appears that, there are certain mistakes in the calculations and therefore, the award passed by the Trial Court is required to be corrected. Instead of deciding the said application on merits, the Trial Court has dismissed the said application for want of prosecution. Thus, following order would meet the ends

of justice.

O R D E R

- I. Writ Petition is hereby partly allowed.
- II. The order dated 2.8.2011 passed by the learned Civil Judge S.D, Shahada below day application No.2 of 2004 is hereby quashed and set aside.
- III. Day application No.2 of 2004 is hereby restored to its original number.
- IV. Trial Court shall decide the said day application No.2 of 2004 on its own merits, within a period of **THREE MONTHS (03)** from the date of receipt of this order.
- V. Writ Petition is accordingly disposed of. No costs.

(V.K. JADHAV, J.)

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aaa/-