

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3814 OF 2008

Banubai w/o Hyderkhan (died through
L.Rs.)

Miyakhan s/o Hyderkhan Pathan
Age: 35 Yrs., occu. Labourer,
R/o Kazi Part, Parli Vaijnath
Through Next Friend of maternal
Uncle Sk.Abdul Age: 50 Yrs.,
occu. Agril. R/o Parli Vaijnath,
Dist.Beed.

= **APPELLANT**
(orig. Claimant)

VERSUS

- 1) The State of Maharashtra.
- 2/2 Banubee died through L.Rs. -
Rasidbee w/o Shaikh Gani,
Age" 53 Yrs., occu. Labourer,
R/o Khokadpura, Manwat Patil's
House, Manwat.
- 3/3 Hamidabee w/o Layat
Age: 40 Yrs., occu. Labour
R/o Ismalpura, Parli Vaijnath
Dist.Beed.
- 4/4) Ashabee w/o Shaikh Ismail
(Appeal against Resp.No.4/4
stood dismissed, vide order
dt.3.3.2010)

= **RESPONDENTS**
(Resp.Nos. 2 to 4
orig. claimants)

Mr. SS Tope, Advocate for Appellant;

Mr. SP Deshmukh, AGP for Respondent No.1-State;

Resp.No.2/2 duly served;

Mr. MH Shaikh, Adv. h/for Mr. G.R.Syed, Adv. For
Resp.No.3/3;

CORAM : P.R.BORA, J.

DATE : 17th October, 2016.

ORAL JUDGMENT:

1) Heard. The present appeal is filed against Judgment and Order passed by Ad hoc District Judge-1, at Ambejogai on 7th July, 2008 in LAR No.420/196. The aforesaid Reference Application was filed by one Banubi wd/o Hyderkhan claiming enhancement in the amount of compensation awarded by Special Land Acquisition Officer towards acquisition of 17 acres of land belonging to her. She died during pendency of the Reference Application and her legal heirs were brought on record and they have prosecuted the matter further. The Reference Court has dismissed the Reference Application and the said order is impugned in the present appeal.

2) Shri Tope, learned Counsel appearing for appellant, inviting my attention to the observations made by the Reference Court in Para

7 of the impugned judgment, submitted that though all the objections made by the Reference Court are in favour of the appellant, that she is entitled for the enhanced amount of compensation, ultimately, the Reference Court has dismissed the Reference Application on the ground that no positive evidence as about the market rate was adduced by the appellant.

. The learned Counsel further submitted that perusal of the impugned judgment would reveal that the entire material was available before the Reference Court so as to determine the market value of the acquired land and in the circumstances, though no positive evidence was adduced on behalf of the appellant, the Reference Court could not have dismissed the Reference Application. The learned Counsel, therefore, prayed for allowing the appeal and determine the market value @ Rs.3,000/- per acre as was claimed by the appellant in the Reference application. In the alternative, the learned Counsel submitted that the matter may be remanded to the Reference

Court for deciding it afresh on the basis of the available evidence on record. The learned Counsel further prayed that an opportunity needs to be given to the appellant to produce on record the further evidence in support of his claim.

3) Shri Deshmukh, learned AGP, was fair enough in submitting that the Reference Application could not have been dismissed by the Reference Court in view of the observations made by the said Court. The learned AGP, therefore, conceded for remitting back the matter to the Reference Court for deciding it afresh.

4) I have carefully read the impugned judgment. It is surprising that though many of the observations made by the Reference Court in many words suggest that compensation as awarded by the Special Land Acquisition Officer was inadequate, the Reference Court has dismissed the Reference Application filed by the claimants. In the Issues framed, first issue was, - "Does the

petitioner prove that awarded compensation is inadequate?" and the Reference Court has answered the said issue in the affirmative. When the issue was answered in the affirmative, it is not understood as to how the Reference Court has dismissed the Reference Application. The observations made by the Reference Court support the claim of the appellant/claimants that the compensation as awarded by the Special Land Acquisition Officer was inadequate and the market value as was determined by the Special Land Acquisition Officer while determining the amount of compensation was not the real market value of the acquired lands.

. Some such observations need to be reproduced herein below, which are thus, -

- i) That, the Special Land Acquisition Officer has not taken into account the market rate on the date of publication of the notification under Section 4 of the Land Acquisition Act;
- ii) It is difficult to accept that the Special Land Acquisition Officer has followed the proceedings properly and determined the

amount of compensation correctly;

iii) No evidence is placed on record to show that notice under Section 9 of the Act was served on deceased Banubi;

iv) No evidence is existing to show that at the time of joint measurement, Banubi was present;

v) Considering the Award at Exh.17, I am inclined to accept the submissions made on behalf of the petitioner that inadequate compensation is awarded.

These are some of the observations and it has to be stated that there are many more such observations by the Reference Court leading to an inference that the Special Land Acquisition Officer had not determined the market price of the acquired lands correctly.

5) From the observations made in Para 8 of the impugned judgment, it is further clear that the claimants had adduced their oral evidence and had also placed on record one sale instance at

Exh.53. The reasons, for which the Reference Court had refused to rely on the sale instance brought on record by the claimants, are wholly erroneous.

6) After having gone through the impugned judgment, it is apparently revealed that the Reference Court has utterly failed in applying its mind. The entire approach of the Reference Court was incorrect. Even though certain evidence was available on record, the Reference Court has failed in appreciating that evidence.

7) For the aforesaid reasons, the impugned judgment cannot be sustained and deserves to be quashed and set aside and the matter needs to be remitted to the Reference Court for deciding it afresh. It will be open for the claimants to adduce additional evidence, if so desired to substantiate the contentions raised by them in the Reference Application. Needless to state that the State will also have an opportunity to

produce evidence in rebuttal of the contentions raised by the claimants.

8) In the result, the following order, -

ORDER

i) The impugned Judgment and Order is quashed and set aside;

ii) The matter is remitted back to the Reference Court for deciding the same afresh by giving adequate opportunities to the parties to the Reference Application for adducing evidence;

iii) Considering the fact that the subject acquisition is of the year 1983, the Reference Court shall expeditiously decide the Reference Application and preferably within six months from the date of receipt of the writ of this Court;

iv) The R. and P., if received from the trial court, be sent back forthwith.

v) The appeal is disposed of in the aforesaid terms. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/