

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10381 OF 2015

BABARAO BABASAHEB NIRVAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

Mr. Deepak M. Kakade, Advocate for the Petitioner
Mr. S. N. Kendre, AGP for Respondent Nos. 1 and 2
Mr. B. R. Surwase, Advocate for Respondent No. 3

.....

WITH
WRIT PETITION NO. 10387 OF 2015

BHUJANG RAMBHAU NIRVAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

Mr. Deepak M. Kakade, Advocate for the Petitioner
Mr. B. A. Shinde, AGP for Respondent Nos. 1 and 2
Mr. S. C. Arora, Advocate for Respondent No. 3

.....

WITH
WRIT PETITION NO. 10401 OF 2015

JAYAKU NANABHAU NIRVAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

Mr. Deepak M. Kakade, Advocate for the Petitioner
Mr. G. O. Wattamwar, AGP for Respondent Nos. 1 and 2
Mr. Rururaj Patil, Advocate for Respondent No. 3

.....

WITH
WRIT PETITION NO. 10407 OF 2015

ASARAM BABURAO NIRVAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

Mr. Deepak M. Kakade, Advocate for the Petitioner
Mr. N. B. Patil, AGP for Respondent Nos. 1 and 2
Mr. Ruturaj Patil, Advocate for Respondent No. 3

.....

WITH
WRIT PETITION NO. 10415 OF 2015

PRALHAD ANNA NIRVAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Mr. Deepak M. Kakade, Advocate for the Petitioner
Mr. G. O. Wattamwar, AGP for Respondent Nos. 1 and 2
Mr. S. C. Arora, Advocate for Respondent No. 3
.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Order : 15.01.2016**

**Date of pronouncing
the Order: 19.01.2016**

ORDER:-

1. By consent of learned counsel for the parties, heard finally at admission stage.
2. The petitioners in these writ petitions had filed separate Land Acquisition References under Section 18 of the Land Acquisition Act 1894, for enhancement of compensation in respect of their respective lands acquired for the Nimna Dudhna Project against the State of Maharashtra, Special Land Acquisition Officer and the Executive Engineer, Minor Irrigation Division, Jalna. The learned 3rd Joint Civil Judge, Senior Division, Jalna, by judgment and award dated 1.3.2013 in L.A.R. No. 521 of 2010, dated 18.01.2013 in L.A.R. No. 265 of 2010, dated 13.08.2012 in L.A.R. No. 1069 of 2010, dated

19.03.2013 in L.A.R. No. 1156 of 2010 and dated 20.09.2012 in L.A.R. No. 322 of 2010, allowed the references with proportionate costs and thereby directed the respondents to pay additional compensation to the petitioners/claimants alongwith all statutory benefits with interest.

3. According to the petitioners, respondent No.3, who is not at all concerned with the said acquisition, was mistakenly joined as respondent No.3 in the said reference petitions. In fact, the Executive Engineer, Nimna Dudhna project, Selu Division, Selu, District Parbhani, is the acquiring body and the petitioners should have impleaded him as party to the Land Acquisition proceedings. Consequently, the petitioners filed applications for recalling of the judgment and awards and for permission to amend Reference petitions as per the provisions of Section 151 of the Code of Civil Procedure. The learned Judge of the Reference Court has rejected the said applications with observation that there is no provision in C.P.C. to recall its judgment and award and substitute the acquiring body as respondents in the matter, which is already decided. Being aggrieved by the same, the petitioners are approaching this Court by filing these separate writ petitions.

4. The learned counsel for the petitioners submits that the

acquiring body was necessary party and mistakenly, respondent No.3 was made as party to the reference petitions. Consequently, the judgment and award passed in those reference petitions are not executable. The petitioners are agriculturists and their lands have been acquired for the said project long back. They had received very inadequate amount of compensation and though the compensation amount was enhanced by the court, they are not able to enjoy the fruits of the said award. Learned counsel places his reliance on the judgment in the case of ***Vidharbha Irrigation Development Corporation vs. Sadanand Damodhar Mawale and others, reported in 2010 (3) Mh.L.J. 581*** wherein this court relied upon the judgment of the Supreme Court in the case of ***U.P. Awasthi vs. Vikas Parishad vs. Gyan Devi (Dead) by L.Rs. and another, reported in 1995 (2) SCC 326***. In the said case, the Apex Court has observed that section 50(2) of Land Acquisition Act confers right on local authority for whom the land is being acquired, right to appear in the acquisition proceeding before the Collector and the Reference court and adduce the evidence for the purpose of determining amount of compensation. The Apex Court has further observed that the local authority is proper party in the proceedings before the Reference Court and is entitled to be impleaded as party in those proceedings.

5. Learned counsel for the petitioners submits that if the acquiring body is entitled to be impleaded in reference proceedings, it is necessary to set aside the award by invoking inherent powers and to refer the References back to the Reference Court with directions that the acquiring body be impleaded as party.

6. Learned A.G.P. submits that the reference court has rightly rejected the applications submitted by the petitioners by invoking inherent power as provided under Section 151 of C.P.C. The judgment and award passed by the reference court cannot be set aside by recalling the order. Learned A.G.P. thus submits that there is no substance in the writ petitions and the petitions are liable to be dismissed.

7. There is no dispute that the acquiring body was not party to the proceedings under Section 18 of the Land Acquisition Act filed by the present petitioners before the Reference Court. Thus, the acquiring body did not get any opportunity to defend the claim for enhancement of compensation. Though in the cases in hand, the acquiring body has not approached this court, but the claimants approached this Court when they find it difficult to execute the award which came to be passed in the Reference petitions where the acquiring body was not impleaded as party. Since the petitioners

themselves approached this Court, there is no occasion or possibility of causing any prejudice to them if the matter is remanded back. In fact, it was the duty of the respondents to disclose the correct title of the acquiring body in the Reference Court whilst making reference. Consequently, the judgment and award dated 1.3.2013 passed in L.A.R. No. 521 of 2010, dated 18.01.2013 passed in L.A.R. No. 265 of 2010, dated 13.08.2012 passed in L.A.R. No. 1069 of 2010, dated 19.03.2013 passed in L.A.R. No. 1156 of 2010 and dated 20.09.2012 passed in L.A.R. No. 322 of 2010, are liable to be quashed and set aside. Hence, the following order;-

O R D E R

- I. All these writ petitions are allowed.
- II. The judgment and award passed by the learned 3rd Joint Civil Judge, Senior Division, Jalna dated 1.3.2013 passed in L.A.R. No. 521 of 2010, dated 18.01.2013 passed in L.A.R. No. 265 of 2010, dated 13.08.2012 passed in L.A.R. No. 1069 of 2010, dated 19.03.2013 passed in L.A.R. No. 1156 of 2010 and dated 20.09.2012 passed in L.A.R. No. 322 of 2010, are quashed and set aside.

III. The proceedings under Section 18 of Land Acquisition Act 1894 are restored to the respective files of learned Civil Judge, Senior division, Jalna to decide the References afresh, after making acquiring body as party to such proceedings and permit the acquiring body to file their written statement and proceed with the reference in accordance with law.

IV. Writ petitions are accordingly disposed of. In the circumstances there shall be no order as to costs.

(V. K. JADHAV, J.)

rlj/