

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

12 FIRST APPEAL NO.2417 OF 2016

MASIDKHAN SARDARKHAN AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Appellants : Mr. Kale Ajeet B.
Mr. SN Morampalle, AGP for Respondents:

CORAM : P.R.BORA, J.

DATE : 29th August, 2016.

PER COURT :

1) Heard Shri Kale, learned Counsel appearing for appellants. The learned Counsel has tendered across the Bar the undertaking by the appellants in the present appeal to the effect that in event of success of the present appeal and consequent remand of the matter to the Reference Court for fresh consideration, if the amount of compensation is enhanced by the Reference Court, the appellants will not claim interest on the enhanced amount of compensation from the date of judgment in LAR No.18/2000 till the date of order of this Court in the present

appeal. The undertaking so submitted is taken on record and marked "X" for identification.

2) Learned Counsel appearing for the appellants further submitted that the Reference Court has rejected the Reference merely on the ground that the claimants did not adduce any evidence in support of their claim. It is well-settled that the Reference Application cannot be dismissed by the Reference Court on the ground that no evidence was adduced by the claimants in that regard. The learned Counsel for the appellants has relied upon the judgment of the Hon'ble Apex Court in the case of Ramanlal Deochand Shah Vs. State of Maharashtra and Anr. AIR 2013 SC 3452, and more particularly has invited my attention to the observations made by the Hon'ble Apex Court in para 14 of the said judgment, which are reproduced as under, -

"14.The failure or the omission to lead evidence to prove the claim appears in the above context to be a case of some kind of

misconception about the legal requirement as to evidence needed to prove cases of enhancement of compensation. We do not in that view see any reason to deny another opportunity to the landowners to prove their cases by adducing evidence in support of their claim for enhancement. Since, however, this opportunity is being granted *ex debito justitiae*, we deem it fit to direct that if the Reference Court eventually comes to the conclusion that a higher amount was due and payable to the appellant-owners, such higher amount including solatium due thereon would not earn interest for the period between the date of the judgment of the Reference Court and the date of this order. These appeals are with that direction allowed, the judgments and orders impugned in the same modified to the extent that while the enhancement order by the Reference Court shall stand set aside, the matters shall stand remanded to the Reference Court for a fresh

disposal in accordance with law after giving to the landowners opportunity to lead evidence in support of their claims for higher compensation. No costs."

3) In view of the law laid down as above, by the Hon'ble Apex court, the present matter will have to be remitted back to the Reference Court for deciding it afresh for the reason that the Reference Application has not been decided on merits by the Reference Court

ORDER

i) The Reference Application is remanded back to the Reference Court for deciding the same afresh by providing opportunities to the parties concerned.

ii) The parties shall appear before the Reference Court on **27th October, 2016**. No separate notice needs to be issued in the matter.

iii) The applicant shall not seek unnecessary further adjournment in the

matter and may proceed with the matter and adduce whatever evidence they wish to adduce before the Reference Court. Same opportunity will be available for the respondents also.

iv) The Reference Court to expedite hearing of the Reference Application and decide the same in accordance with law expeditiously and preferably within six months;

v) While awarding the interest, the undertaking submitted by the appellants in this Court shall also be taken into consideration, wherein the appellants have waived their right to claim the interest from the date of decision in the Land Acquisition Reference till decision of the present appeal;

vi) The Record and Proceedings be forthwith sent back to the concerned Reference Court.

(P.R.BORA)
JUDGE

bdv/