

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

CIVIL REVISION APPLICATION NO. 168 OF 2017

1. Babu s/o Bhagwant Gobade
Age :Major, Occu: Agri
2. Satish s/o Bhagwant Gobade
Age Major Occu:Agri
3. Prakash s/o Bhagwant Gobade ... **Applicants**
Age Major, Occu: Agri.
All R/o Dadgi, Taluka Nilanga
District Latur

VERSUS

1. The State of Maharashtra,
Through the Collector, Latur
2. The Special Land Acquisition
Officer, P. T. I. T. Latur
3. The Executive Engineer, ... **Respondents**
Lower Terana Canal,
Division, No.2, Latur

Mr.Vishwajit R.Jain(Kamboj),Advocate for the applicants

Mr. A. M.Phule, AGP for respondent Nos. 1 and 2

Mr.Shyam C. Arora, Advocate for respondent Nos. 1 and 3

CORAM : K. L. WADANE, J.

DATE : 12th October, 2017

ORDER:

1. With the consent of parties, the revision
application is taken up for final disposal.

2. Heard Mr.Jain,learned counsel for the applicants
Mr.Phule, learned AGP for respondent Nos. 1 and 2 and
Mr. Arora, learned counsel for respondent Nos. 3.

3. It is the case of the applicants/claimants that their land Gat No.38/2 admeasuring 46 R situated at Village Dadgi, Taluka Nilanga District Latur is acquired for the purpose of Dadgi Lower Terna Left Canal. Notification under section 4 of the Land Acquisition Act was published on 03.09.2004 and the possession of the land has been taken by private negotiation. Notification under section 6 was published on 14.07.2005. According to the claimants the compensation awarded by the Land Acquisition Officer is inadequate and therefore they have made a Reference under section 18 of the Land Acquisition Act, that was referred to the Joint Civil Judge, Senior Division, Nilanga, registered as LAR No.47/2012.

4. When the matter was posted for hearing, before the reference court, the claimants have failed to adduce their oral as well as to place documentary evidence on record. Respondents 1 and 2 have not led their evidence and closed their evidence by filing purshis at Exh.15. On perusal of the reasons recorded by the learned reference Court, it appears that since both the parties have not adduced their oral or documentary evidence, it was not possible for the Reference Court to adjudicate the market price of the

acquired land.

5. The learned counsel appearing for the applicants submits that the Advocate representing the claimants in the Reference Court was not attentive to the matter. He did not inform the claimants about the stages of the proceedings nor he intimated that evidence is required to be adduced in the matter and the applicants/ claimants came to know about the order passed by the Reference Court from one Advocate Mr. Arun Patil from the village of the applicants.

6. On perusal of the reasons recorded by the learned reference court, there is no reference in the reasons that at the time of hearing or at the time of judgment claimants or the Advocate appearing for them was present in the Court or not. The reference court has disposed of the reference simply on the ground that no evidence is adduced by the claimants, holding that the compensation awarded by the Land acquisition officer is proper. It is contended in the application that there was negligence on the part of Advocate representing the applicants in the reference court. Considering the facts and circumstances of the case, it appears that the reference court has not determined the

market price of the acquired land in absence of the evidence.

7. The learned counsel appearing for the applicants submits that the matter be remanded to the Reference Court and the claimants will be attentive in the proceedings and will lead evidence. The learned counsel appearing for respondent No.3 opposed the application on the ground that the claimants were not diligent in prosecuting the reference before the Reference Court.

8. Anyhow, there may be some negligence on the part of the Advocate of the claimants. However, looking to the facts that immovable property of the applicants has been acquired by the respondents for the purpose of construction of percolation tank/canal, therefore one opportunity must be given to the claimants to adduce their evidence to show the actual market price of the acquired land as on the date of notification under section 4 of the Land Acquisition Act. However, the claimants will not be entitled for interest/monetary benefits for the period of delay which was sought to be condoned in Civil Application No.635/2017. Hence, following order:

O R D E R

- i. Judgment and award of the learned Jt. Civil Judge, Senior Division, Nilanga in L.A.R. No. 47/2012 dated 16.08.2014 is quashed and set aside.
 - ii. The matter is remanded to the Reference Court for its disposal in accordance with law.
 - iii. Learned Reference Court is requested to decide the reference within a period of six months from the date of appearance of the parties before it.
 - iv. The parties are directed to appear before the learned Reference court on 13th November, 2017.
 - v. It is made clear that in case the reference of the claimants is allowed, then the claimants will not be entitled to claim interest/monetary benefits on the enhanced amount of compensation as indicated in the order dated 13th September, 2017 passed in Civil Application No. 635/2017.
9. Civil Revision Application is accordingly disposed of. No order as to costs.

(K. L. WADANE, J.)