

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
911 CRA NO. 73 OF 2017

DNYANESHWAR S/O KUNDALIK SATHE
VERSUS
THE STATE OF MAHARASHTRA THR COLLECTOR AND ANOTHER

...

Advocate for Petitioner : Mr. Ingale Vivekanand V.
AGP for Respondent No. 1 : A.M. Phule.
Advocate for Respondent No. 2 : Mrs. Reddy Ranjana D.

CORAM : K. L. WADANE, J.

DATE : 11th October, 2017

ORDER:

1. With the consent of the parties, this Civil Revision Application is taken up for final hearing.

2. Heard learned Counsel appearing for the applicant and the learned A.G.P. appearing for the respondents/State.

3. The applicant was owner of land Sy. No. 33 admeasuring 03-H 54 Are, situated at village Makani Tq. Lohara, District Osmanabad. The aforesaid property is acquired by the acquiring body for the purpose of Construction of Irrigation Colony at village Makani Tq. Lohara. It is alleged that, the Special Land Acquisition officer awarded meagre amount of compensation for the acquired land of the claimant, therefore, claimant has preferred reference under

section 18 of the Land Acquisition Act and it was initially filed in the office of Special Land Acquisition Officer at Osmanabad who referred it to the Civil Judge, Senior Division, Osmanabad, and after formation of Civil Judge, Senior Division Court at Omerga the aforesaid reference came to be transferred to the Omerga Court.

4. It is further contended that, at the time of the hearing of the matter the claimant and his learned advocate remained absent and failed to adduce his evidence, therefore, the learned Reference Court dismissed the Land Acquisition Reference No. 757/2009 on 19.01.2013. The learned counsel appearing for the present applicant/original claimant submits that the matter needs to be remanded.

5. Learned A.G.P. for the respondents/State opposes the request on the ground that sufficient opportunity was given to the claimant to adduce their evidence. Learned A.G.P. further submits that the claimant and his advocate remained absent at the time of hearing and failed to adduce any sort of oral as well as documentary evidence to support his claim. Therefore it cannot be said that no opportunity was given.

6. I have carefully gone through the reasons recorded by the Reference Court, particularly, in para No. 15 of the judgment, wherein, it is mentioned that the claimant though challenges the award but failed to adduce oral evidence in support of his claim. The claimant though given sufficient opportunity failed to adduce oral evidence to substantiate his claim and therefore in absence of evidence from the side of claimant, the compensation awarded by the Land Acquisition Officer found to be proper and reasonable.

7. From the reasons recorded by the Reference Court, it appears that, the claimant and his learned advocate were absent therefore no oral as well as documentary evidence was adduced to to prove the claim. In spite of the fact, I am of the opinion, since the immovable property of the claimant is acquired therefore, the matter needs to be adjudicated on merits.

8. The learned counsel appearing for the applicant/claimant relied upon the observations in case reported in 2011 (3) Mh.L.J.(Narayan Deorao Gore V/s. State of Maharashtra) to contend that, Civil Revision Application is maintainable when the parties have not

adduced their evidence in the Reference Court.

9. I have gone through the observations of the above cited case and I am of the opinion these observations are applicable to the facts of the present case.

10. In view of the above, I am of the opinion an opportunity must be given to the claimant to adduce his evidence. Therefore, matter needs to be remanded. While remanding the matter it is to be noted that at the time of condonation of delay in filing the Civil Revision application this Court passed an order that the claimant/applicant will not be entitled for the monetary benefits of interest during the period of delay which is sought to be condoned. While deciding the Reference, the Reference Court has to take note of the order passed by this Court while condonation of delay.

11. Civil Revision Application is allowed.

12. Judgment and Order passed in Land Acquisition Reference No. 757/2009 dated 19.01.2013 is hereby quashed and set aside.

13. The matter is remanded to the Reference Court

for disposal in accordance with law. Learned Reference Court shall give opportunity to both the sides to adduce their evidence and after hearing both the sides the Reference Court shall decide the reference within a period of six months from the date of the appearance of the parties.

14. Parties are directed to remain present in the Reference Court on 27.11.2017. No separate notices are required.

15. Civil Revision Application is disposed of.

(K. L. WADANE, J.)

mkd