

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 1050 OF 2014

Uttam s/o Bhaurao More.

... **APPELLANT**

VERSUS

The State of Maharashtra and another.

... **RESPONDENTS**

...
Mrs. P. G. Sontakke, with Mr. G. K. Sontakke, Advocate for the Appellant.
Mr.S.P.Sonpawle, AGP for the Respondents.

...

CORAM : **V. K. JADHAV, J.**

DATE : 17th January, 2017.

Per Court:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award dated 27th
August, 2008 passed by the learned Joint Civil Judge Senior Division,
Ahmedpur in LAR No.121 of 2002, the original Claimant has preferred
this appeal.

3 Brief facts giving rise to the present appeal are as follows:

The land owned and possessed by the Appellant /
Claimant came to be acquired for the purpose of construction of

Salgara percolation tank by notification under Section 4 dated 9th April, 1996 and the award dated 27th May, 1999, the Appellant / Claimant has preferred LAR No.121 of 2002 on the ground that the Special Land Acquisition Officer has awarded inadequate compensation for the acquired land.

4 The learned Joint Civil Judge Senior Division, Ahmedpur vide its impugned judgment and award dated 27th August, 2008 dismissed the reference petition mainly on the ground that the Appellant / Claimant has not adduced any evidence. Hence, this appeal.

5 The learned counsel for the Appellant / Claimant submits that from the same award, the other agriculturists preferred land acquisition references and the same Joint Civil Judge Senior Division, Ahmedpur by its common judgment and award dated 30th January, 2009 in LAR No.122 of 2002 alongwith connected land acquisition references partly allowed the said reference petitions and directed the State to pay the compensation at the rate of Rs.1,05,000/- per Hectare alongwith all the statutory benefits. The learned counsel submits that in fact, the reference petition filed by the present

Appellant / Claimant should have taken up and decided alongwith the said group. However, it was separately decided by the Reference Court and dismissed mainly on the ground that the Appellant / Claimant has not adduced any evidence.

6 The learned AGP appearing for the Respondents submits that the Appellant / original Claimant has not adduced any evidence and the learned Judge of the Trial Court has disposed of the reference petition on merits. No interference is required. The learned AGP in the alternate submits that event if this Court remands the matter to the Trial Court, the note may be taken that the delay occurred in filing the present appeal has been condoned by this Court on the ground that the Appellant / Claimant would not claim interest for the delayed period in case any enhancement in compensation is granted.

7 On careful perusal of the common judgment and award passed in LAR No.122 of 2002 alongwith connected reference petitions, it appears that those reference petitions have been preferred by the agriculturists from the same award and after considering the evidence adduced by the Petitioners therein, the

learned Joint Civil Judge Senior Division, Ahmedpur has enhanced the compensation at the rate of Rs.1,05,000/- per Hectare for the land acquired. The reference petition filed by the present Appellant came to be dismissed on the ground that he has failed to adduce evidence.

8 In view of this, in my considered opinion, the Appellant / original Claimant may be given one more chance to substantiate his claim before the Reference Court. Hence, I proceed to pass the following order:

ORDER

- I. The appeal is hereby partly allowed.
- II. The judgment and award dated 27th August, 2008 passed by the learned Joint Civil Judge Senior Division, Ahmedpur in LAR No.121 of 2002, is hereby quashed and set aside.
- III. The matter is remanded to the Trial Court with the following directions:
 - a) Re-admit Land Acquisition Reference No.121 of 2002 to its original number.
 - b) The Appellant / Claimant is permitted to lead

the oral and documentary evidence in support of his case.

c) The Respondents are also at liberty to lead the oral and documentary evidence in rebuttal.

IV. It is made clear that in view of the undertaking given by the Appellant / Claimant, the Trial Court shall take a note that the Appellant / Claimant would not be entitled to claim any interest for the delayed period occurred in filing the appeal, in case the Reference Court grants enhancement in the compensation.

V. The parties shall appear before the Trial Court on 8th February, 2017.

VI. Record and proceedings be returned to the Reference Court forthwith.

VII. Pending civil application stands disposed of.

[V. K. JADHAV, J.]