

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

**909 FIRST APPEAL NO. 2697 OF 2016
WITH
CA/16617/2016 IN FA/2697/2016**

MANIK PRABHU MALAKAPURE
VERSUS
THE STATE OF MAH AND ORS

...

WITH
FA/2698/2016

NAMDEO KHANDU WADIKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...

WITH
FA/2699/2016

GAMPATI S/O VITHOBA BHINGOLE
VERSUS
THE STATE OF MAH AND ORS

...

WITH
FA/2700/2016

VENKAT MADHAV WADIKAR
VERSUS
THE STATE OF MAH AND ORS

...

WITH
FA/2701/2016

NARSAMMA PRABHU MALKAPURE
VERSUS
THE STATE OF MAH AND ORS

WITH

FA/2702/2016

PRAYAGBAI SHANKAR WADIKAR
VERSUS
THE STATE OF MAH AND ORS

...

WITH
FA/2703/2016

RAUBAI PANDURANG KOKARE DIED THROUGH L.RS.,
GANPATI PANDURANG KOKARE
VERSUS
THE STATE OF MAH AND ORS

...
Advocate for Appellant : Mrs P G Sontakke
AGP for Respondents 1,2 : Mr C V Dharurkar/A M Phule/ S
S Dande/B V Virdhe,
Advocate for Respondent 3 : Mr Arora Shyam C

...
CORAM : V.K. JADHAV, J.
Dated: January 05, 2017
...

PER COURT :-

1. Being aggrieved by the common judgment and award dated 12.1.2011 passed by the Civil Judge S.D., Nilanga in L.A.R. No.119/2002 and other connected matters, the original claimants have preferred these first appeals.

2. Brief facts, giving rise to the present appeals are as follows :-

The appellant's house property came to be acquired by the Government for the Submergence of Hangarga Minor Irrigation Project” of village Masobachiwadi, Tq. Nilanga, Dist. Latur. The SLAO has declared award on 6.2.2001 and granted compensation. Being dissatisfied with the valuation carried out by the SLAO in respect of the house property owned and possessed by the appellants, the appellants-original claimants preferred Land acquisition reference

petitions. The learned Civil Judge S.D., Nilanga by its impugned common judgment and order dated 12.1.2011 in the aforesaid land acquisition references dismissed the said petitions mainly on the ground that the appellants-claimants have failed to prove their case by adducing evidence to the satisfaction of the reference court.

3. The learned counsel for the appellants-original claimants submits that, in paragraph no.7 of the judgment, the learned judge of the trial court has observed that, the claimants filed adjournment applications from time to time below exh.33, 34, 35 and 36, however, the claimants failed to adduce their evidence and therefore their evidence is closed. Learned counsel submits that, in fact, those applications exh.33 to 36 came to be filed by respondent no.1 and on perusal of exh.1, it appears that on 12.3.2010 learned CJSD has directed the claimants to lead evidence on the adjourned date otherwise their evidence will be closed and by order dated 11.6.2010 the court below closed the evidence of the claimants. Learned counsel submits that the appellants-claimants was not given sufficient opportunity to lead oral and documentary evidence in support of their contention. Even though, valuation report prepared by one Anil Vaijnath Fulari was produced before the Court, the appellants-

claimants could not secure his attendance before the court below for one or another reason. Learned counsel submits that, the courts below has dismissed the petitions mainly on the ground that though the claimants deposed that they have prepared the valuation report through the Government Valuer Shri Anil Fulari, said valuation report is not proved by the claimants through said valuer. Learned counsel submits that, the appellants-claimants are ready to adduce evidence in the form of the valuation report prepared by Anil Fulari by examining this witness to prove the contents of said valuation report as per the directions if given by this Court within a time bound period.

4. Learned counsel for the appellants-claimants places her reliance on the judgment Ramanlal Deochand Shah Vs. State of Maharashtra and another reported in AIR 2013 Supreme Court 3452.

5. I have also heard the learned AGP for respondent Nos. 1 and 2.

6. Learned counsel for respondent no.3 submits that, even though the learned judge of the trial court has closed the evidence of the claimants by order dated 11.6.2010, the

appellants-claimants subsequent thereto even though case was posted for the evidence of the respondent, made no efforts to file an application for setting aside the order of close evidence dated 11.6.2010 and adduce evidence by examining the said government valuer Mr. Fulari. Learned counsel submits that, most of the time appellants-claimants and their respective counsel remained absent before the Court and even though L.A.R. petitions were filed and registered in the year 2002, the learned judge could decide the petitions in the year 2011. Learned counsel submits that, the appellants-claimants are at fault and even though sufficient opportunity was given to them, they have failed to examine said witness Government Valuer Anil Fulari. The learned Judge of the trial Court has considered the other evidence produced on record and held that the compensation awarded by the L.A.O. is adequate. No interference is required. Learned counsel submits that, in the alternate, if this court is inclined to remand the matter to the learned Civil Judge S.D., Nilanga by giving opportunity to the appellants-claimants to adduce evidence in support of their pleadings and, in the event, if reference court decides to enhance the compensation, the claimants shall not be entitled to claim the interest/statutory benefits for the aforesaid period.

7. On careful perusal of the record and proceeding, it appears that the appellants-claimants have produced on record the valuation report prepared by Anil Fulari, who happened to be a Government Approved valuer. Even, witness Ganpati, who is also one of the claimants in his affidavit of evidence has specifically given reference to the valuation report prepared by said Anil Fulari. It further appears from the record that, applications at exh.33 to 36 in fact filed by the respondent to seek adjournment. Further, it is also a part of record that the appellants-claimants produced on record various documents like copy of the award, E-statement etc., and also sought adjournment on the ground that the appellants-claimants are unable to remain present and adduce evidence due to agricultural work in their respective fields. Even, the appellants-claimants sought adjournment on the ground that they want to transfer their reference petitions to some another court. In fact, they have also preferred transfer petitions before the District Judge bearing MA No.73/2010 contending therein that the claimants are the poor persons and they are not in a position to adduce evidence immediately before the Court for the reason that they have no source of their livelihood. It has also contended in the said petition that the court is not recording proper evidence and imposing heavy costs in case

adjournment is sought. Apart from this, it is also a part of record that the learned judge of the trial court has adjourned the hearing by directing the appellants-claimants to adduce evidence on 12.3.2010 and thereafter within three months closed the evidence of appellants-claimants for the reason that even though such a directions were given no evidence was adduced.

8. In case of Ramanlal Deochand Shah (supra) relied upon by learned counsel for appellants-claimants in paragraph no.14 of the Judgment, Supreme Court has made following observations :-

“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.”

9. In the instant case, the appellants-claimants have lost their house property and there is no reason to deny them

another opportunity to prove their case by adducing evidence in support of their claim for enhancement. If the Reference court comes to the conclusion that higher amount was due and payable and such higher amount including interest and solatium due thereon the claimants certainly are not entitled for the said benefits for the period between the date of judgment of the Reference Court and date of this order.

10. In view of the above discussion, I proceed to pass the following order.

O R D E R

I. First Appeal Nos.2697/2016, 2698/2016, 2699/2016, 2700/2016, 2701/2016, 2702/2016, 2703/2016 are hereby partly allowed.

II. Common Judgment and Award passed by the Civil Judge S.D., Nilanga dated 12.1.2011 in LAR No 119/2002 and another connected matters except L.A.R. Nos. 123/2002 and 130/2002 are hereby quashed and set aside and the matters are remanded to the learned Civil Judge S.D., Nilanga with the following directions :-

- a] Re-admit LAR Nos.119/2002 and other connected matters except LAR No.123/2002 and 130/2002 to its original number and proceed to determine the same.
- b] Evidence (if any) recorded during the original trial, shall be the evidence during the trial after remand.

- c] The claimants are at liberty to adduce further oral and documentary evidence in support of their contentions and the respondents are also at liberty to adduce oral and documentary evidence and also evidence in rebuttal in support of their contention.
- d] The parties shall appear before the learned Civil Judge S.D., Nilanga on 2.2.2017.
- e] The learned Civil Judge S.D. Nilanga shall dispose off the aforesaid LAR petitions within SIX MONTHS from the date of appearance of the parties, as aforesaid.
- f] The claimants are not entitled to claim any interest and statutory benefits covering the period between the date of earlier judgment of the Reference Court and date of this order in the event if the reference Court comes to the conclusion that the enhanced compensation is payable.

III. Record and proceed be sent back forthwith.

IV. All first appeals accordingly disposed of. All pending civil applications also stand disposed of.

sd/-

(V.K. JADHAV, J.)

...

aaa/-