

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

6 FIRST APPEAL NO. 2502 OF 2016

BABU SHAMRAO WADIKAR
VERSUS
THE STATE OF MAH AND ORS
...
WITH

FIRST APPEAL No.2500/2016

UTTAM RAMCHANDRA DADGE
VS
THE STATE OF MAHARASHTRA AND ORS.
...

Advocate for Appellant : Mrs. P G Sontakke
Mr. RB Bagul, AGP for Respondents: 1 & 2;
Mr. Kurundkar Sunil V. Adv For Resp. 3

CORAM : P.R.BORA, J.

DATE : 6th June, 2017.

PER COURT :

1) Heard finally with the consent of learned Counsel appearing for the parties at the stage of admission.

2) The Reference Court, vide common judgment passed on 29th September, 2010 in LAR No.205/2002, LAR No.206/2002 and LAR No.359/2002,

has dismissed the said Reference Applications. The learned Counsel appearing for the appellants brought to my notice that the learned Reference Court has rejected the Reference Applications mainly on the ground that the valuer, viz. Shri Anil Phulari, who was examined by the claimants to substantiate their claims, did not appear for cross-examination. The learned Counsel submitted that the Reference Court has, therefore, recorded the conclusion that there is no evidence in support of the claim raised by the claimants.

3) The learned Counsel further submitted that in the similar circumstances, this Court (Coram: V.K.Jadhav,J.), while deciding First Appeal No.2501/2016 with the connected First Appeals, has set aside the orders passed in the Reference Applications which were impugned in the said appeals and has remitted back the matters for deciding them afresh by giving due opportunity of hearing to the claimants and to adduce necessary evidence in support of their

respective claims.

4) The learned Counsel further submitted that in the another group of appeals also, this Court (Coram: V.K.Jadhav,J.) has taken similar view and has remitted back the matter for deciding it afresh.

5) Shri Kurundkar, learned Counsel appearing for the acquiring body, has opposed the submissions made on behalf of the appellants. The learned Counsel submits that though due opportunities were given to the claimants by the Reference Court, the claimants failed to make available Shri Phulari for cross-examination. The learned Counsel submitted that no interference is, therefore, required in the impugned Award.

6) This Court (Coram: V.K.Jadhav,J.) while allowing the earlier appeals (First Appeal No. 2501 of 2016 with connected appeals) in similar

circumstances, has observed thus, -

"8. On careful perusal of the record and proceeding, it appears that the appellants-claimants have produced on record the valuation report prepared by Anil Phulari, who happened to be a Government Approved valuer. Witness Dnyanoba has not remained present though his affidavit of evidence filed on record referring said valuation report below Exh.28."

9. 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."

10. 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."

7) In view of the above, I deem it appropriate to pass the following order, -

I. FIRST APPEAL Nos.2502/2016 with
FA/2500/2016 are hereby partly allowed.

II. Common Judgment and Award passed by the
Civil Judge S.D., Nilanga dated 29.9.2010
in LAR No.359/2002 and 206/2002 is 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 No.359/2002 and 206/2002
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 appellant shall keep private
valuer viz. Anil Phulari present
before the Reference Court for his
cross-examination by the respondents –
defendants on the date which may be
given by the Reference Court.
- d] 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 in rebuttal and in support of their contention.

e] The parties shall appear before the learned Civil Judge S.D., Nilanga on **3rd July, 2017.**

f] 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.

g] 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. The First Appeals are accordingly disposed of. Pending civil applications, if any, also stand disposed of.

(P.R.BORA,J.)

bdv/