

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

FIRST APPEAL NO.3252 OF 2016

Nivrutti S/o. Vithoba Bhingole (died)
and other

Bharat S/o. Nivrutti Bhingole
Age: 42 years, Occu. Agril,

Radhi W/o. Sakharam Kote
Age:36 years, Occu. H.H.

R/o. Masobachiwadi, Tq. Nilanga,
Dist. Latur

...APPELLANTS
(Orig. Claimants)

VERSUS

1. The State of Maharashtra
Through the Collector, Latur
2. The Spl. Land Acquisition Officer,
(P.T. & I.T.) Latur
3. The Executive Engineer,
Minor Irrigation Division,
At. Latur

...RESPONDENTS

**WITH
FIRST APPEAL NO.3249 OF 2016**

Vithoba S/o. Shyamrao Wadikar
Age: Major, Occu. Agri.,
R/o. Masobachiwadi, Tq. Nilanga,
Dist. Latur

...APPELLANT
(Orig. Claimant)

VERSUS

1. The State of Maharashtra,
Through the Collector, Latur

2. The Spl. Land Acquisition Officer,
(P.T. & I.T.) Latur,
3. The Executive Engineer,
Minor Irrigation Division,
At Latur

...RESPONDENTS

**WITH
FIRST APPEAL NO.3250 OF 2016**

Vishwanath S/o. Ramrao Kadam
Age: Major, Occu.: Agri.,
R/o. Masobachiwadi, Tq. Nilanga,
Dist. Latur

...APPELLANT
(Orig. Claimant)

VERSUS

1. The State of Maharashtra,
Through the Collector, Latur
2. The Spl. Land Acquisition Officer,
(P.T. & I.T.), Latur
3. The Executive Engineer,
Minor Irrigation Division,
At Latur.

...RESPONDENTS

**WITH
FIRST APPEAL NO.3251 OF 2016**

Ambaji S/o. Narshing Chapate
Age: Major, Occu. Agri.,
R/o. Masobachiwadi, Tq. Nilanga,
Dist. Latur

...APPELLANT
(Orig. Claimant)

VERSUS

1. The State of Maharashtra,
Through the Collector, Latur
2. The Spl. Land Acquisition Officer,
(P.T. & I.T.), Latur

3. The Executive Engineer,
Minor Irrigation Division,
At Latur.

...RESPONDENTS

**WITH
FIRST APPEAL NO.3308 OF 2016**

Maroti S/o. Kashiram Wadikar
Age: Major, Occu.: Agri.,
R/o. Masobachiwadi, Tq. Nilanga,
Dist. Latur

...APPELLANT
(Orig. Claimant)

VERSUS

1. The State of Maharashtra,
Through the Collector, Latur
2. The Spl. Land Acquisition Officer,
(P.T. & I.T.), Latur
3. The Executive Engineer,
Minor Irrigation Division,
At Latur.

...RESPONDENTS

...
Mr. Sontakke Gajanan K., Advocate for Applicants;
Mr. P.G. Borade, AGP for Respondents/State
Mr. Amol D. Shinde, Advocate for Respondent No.3
...

CORAM : P.R. BORA, J

DATE : 29/06/2017

ORAL JUDGMENT:

1. Heard finally. Since all these five appeals are arising out of common judgment and award passed by the Court of Civil Judge, Senior Division, Nilanga on 10th November 2010 of in LAR No. 101/2002, with four

connected other Land Acquisition References, I deem it appropriate to decide all these appeals by common reasoning.

2. Shri Sontakke, learned Counsel appearing for the appellants, submitted that the Reference Court has rejected the Reference petitions vide the impugned judgment and award for the reason that witness Vishwanath who had deposed in the said Reference petitions on behalf of the claimants did not make himself available for cross examination by the opponents and the second reason that though the claimants have relied upon the valuation report prepared by one Shri A.V.Phulari, they did not examine the said valuer before the Court and, as such, there was no opportunity for the acquiring body or the State to cross examine the said witness. Learned Counsel submitted that the Reference Court has thus not rejected the Reference petition on merits but on some technical grounds. Learned Counsel submitted that the Reference Court could not have rejected the reference petitions on these grounds.

3. Learned Counsel, on instructions, submitted

that the witness who was examined by the appellants in the Reference Court to substantiate the contentions raised in their respective applications would remain present before the Reference Court for cross examination in the event the matters are remitted back. Learned Counsel submitted that an opportunity also needs to be given to the appellants to examine Shri A.V. Phulari to prove the valuation report.

4. Learned Counsel, relying upon the judgment of the Honourable Apex Court in the case of **Ramanlal Deochand Shah & Anr. V. State of Maharashtra & Anr. (AIR 2013 SC 3452)** submitted that the rejection of the appeals by the Reference Court on such ground is disapproved by the Honourable Apex Court in the aforesaid judgment and the Honourable Apex Court did allow the claimants therein to prove their case by giving necessary evidence by imposing certain conditions on them. Learned Counsel further submitted that in companion matters, this Court has also allowed the appeals on similar grounds relying upon the judgment in the case of **Ramanlal Deochand Shah & Anr.** (supra). Learned

Counsel has placed on record copy of the order passed by this Court in similar matters i.e. in F.A. No.2502 of 2016 (Babu Shamrao Wadikar vs. The State of Maharashtra and others), with connected matter dated 6th June, 2017, F.A. No. 2501 of 2016 (Bhanudas Kashiram Wadikar vs. The State of Maharashtra and Others), with connected matters, dated 14.02.2017 and F.A. No. 2697 of 2016 (Manik Prabhu Malakapure vs. The State of Maharashtra and others) with connected matters, dated 05.01.2017. Learned Counsel submitted that the present appeals may also be allowed on similar terms.

5. Shri Amol Shinde, learned Counsel appearing for the acquiring body resisted the submissions advanced on behalf of the appellants. Learned Counsel, inviting my attention to paragraph no.8 of the judgment, submitted that ample opportunities were given to the appellants i.e. original claimants to adduce necessary evidence in support of their claim, however, the claimants failed to adduce such evidence and as such, there was no other alternative before the Reference court except to decide the matters on the basis of the material available on record. Learned

Counsel submitted that in such circumstances, no fault can be found with the impugned judgment and award. Learned Counsel, therefore, prayed for dismissal of the appeals.

6. I have carefully considered the submissions advanced by the learned counsel appearing for the appellants and the learned Counsel appearing for the acquiring body. I have also perused the earlier judgments relied upon by the appellants in similar matters. On perusal of the impugned judgment, it is revealed that the Reference Court has rejected the reference petitions mainly on the ground that witness Vishwanath, who deposed on behalf of the claimants before the Reference Court, did not make himself available for his cross examination and has thus ignored his evidence as was adduced by way of his examination in chief. The second reason which the Reference Court has assigned for rejecting the reference petitions is that though the claimants were relying upon the valuation report prepared by one Shri A.V.Phulari, they did not examine Shri A.V.Phulari as their witness.

7. It appears to me that in view of the law laid down in the judgment of the Honourable Apex Court in the case of **Ramanlal Deochand Shah & Anr. V. State of Maharashtra & Anr.**, (supra), the Reference Court could not have rejected the reference petitions on the aforesaid grounds. The Honourable Apex Court in the case of **Ramanlal Deochand Shah & Anr. V. State of Maharashtra & Anr.**, (supra) held as under:

"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."

8. Copies of the orders passed by this Court in companion matters reveal that, relying upon the judgment of the Honourable Apex Court in the case of Ramanlal Deochand Shah & Anr. V. State of Maharashtra & Anr., the said appeals have been allowed by this Court by extending an opportunity to the appellants therein to substantiate their claim before the Reference Court by imposing certain conditions. In view of the law laid down by the Honourable Apex Court in the case of Ramanlal Deochand Shah & Anr. V. State of Maharashtra & Anr., and in view of the fact that in similar matters this Court, relying upon the said judgment, has remitted back the matters to the Reference Court for deciding them afresh by providing opportunity to the parties to adduce evidence in support of their respective contentions, I do not see any reason for taking any contrary view. Hence, the following order:

ORDER

(i) The Judgment and Award passed in reference petition No. LAR Nos.101 of 2002, 102/2002, 103/2002, 104/2002 and 105/2002 is set aside.

(ii) The aforesaid reference petitions are remitted back to the Reference Court for deciding the same afresh

by providing due opportunity to the parties to the reference petitions to adduce evidence in support of their respective contentions.

(iii) The parties shall appear before the Reference Court on 19th of July , 2017.

(iv) Appellants i.e original claimants, without seeking any further adjournment from the Reference Court, shall adduce the evidence in support of their claim on the date which may be fixed by the Reference Court. Needless to state that the State would have equal opportunity to cross examine the witnesses which may be examined by the claimants and it would also be open for the State to adduce evidence in support of its defense if so desired.

(v) The Reference Court to decide the reference petitions as expeditiously as possible and preferably within the period of six months from the date of appearance of the parties before it.

(vi) In the event the amount of compensation is enhanced by the Reference Court, as undertaken by the claimants, they shall not be entitled for the interest of the period from 10.11.2010 to 29.6.2017.

(vii) The appeals stand allowed in aforesaid terms. No costs.

. Pending Civil Applications, if any stand disposed of.

(P.R. BORA)
JUDGE

AGP/