

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

FIRST APPEAL NO. 2501 OF 2016

BHANUDAS KASHIRAM WADIKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...

**WITH
FA/3737/2016**

GOVIND S/O HANMANT BOLANGE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...

**WITH
FA/3738/2016**

BABU S/O HANMANT MANE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...

**WITH
FA/3739/2016**

SHIVAJI S/O BABU WADIKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...

**WITH
FA/3740/2016**

DNYANOBA S/O MADHAV WADIKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

**WITH
FA/3741/2016**

MADHAV S/O KASHIRAM WADIKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...

WITH
CA/16136/2016 IN FA/3741/2016

...

WITH
FA/3742/2016

SUDHAKAR S/O SITARAM PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...

WITH
FA/3743/2016

NARSING S/O GOVIND BOLANGE AND OTHER.
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...

WITH
FA/3744/2016

MARUTI S/O YASHWANT TORSALLE (DIED) THROUGH
LRS.

BHAGIRATHIBAI W/O. MARUTI TORSALLE AND
OTHERS.

VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...

WITH
FA/3745/2016

SITARAM S/O GUNDAJI PATIL (DIED) THROUGH L.RS.
MATHURABAI W/O SITARAM PATIL AND OTHERS.

VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

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Advocate for Appellant: Mrs P G Sontakke/G.K.Sontakke
AGP for Respondents 1,2 : Mr S S Dande
Advocate for Respondent 3 : Mr S V Kurundkar

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CORAM : V.K. JADHAV, J.**Dated: February 14, 2017**

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PER COURT :-

1. Heard finally with consent at admission stage.
2. 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.118/2002 and other connected matters, the original claimants have preferred these first appeals.
3. 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 S.L.A.O. 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.

4. The learned counsel for the appellants-original claimants submits that, the witness Dnyanoba Wadikar though submitted his evidence by affidavit, he remained absent for cross examination when called on 11.6.2010. On the same date, reference court has closed evidence of the claimants and posted the reference petitions for evidence of respondent-State. Thereafter, respondent State has filed pursis for not adducing any evidence and the Reference Court has dismissed LARs by common judgment and award dated 12.1.2011 as aforesaid. Learned counsel submits that Reference Court has dismissed the petitions mainly on the ground that the claimants have not adduced any evidence and furthermore, though valuation report is produced before the Court, the same 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 and also by keeping witness Dnyanoba present for his further cross examination.

5. 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.

6. I have also heard the learned AGP for respondent Nos. 1 and 2 and learned counsel for respondent acquiring body.

7. Learned counsel appearing for the respondent Acquiring body submits that, claimant Dnyanoba had not appeared before the Reference Court, though affidavit of evidence is filed, for his cross examination. Even though, Reference Court has posted the matter

thereafter for the evidence of State and Acquiring Body, the appellants-claimants have not filed any application for setting aside the order of close evidence passed against them by the Reference Court. Learned counsel submits that the appellants claimants are not diligent in prosecuting their case and therefore, no case is made out for for remand of the matter. 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.

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 Fulari, 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.

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

O R D E R

- I. FIRST APPEAL NOs. 2501 OF 2016 WITH FA/3737/2016 WITH FA/3738/2016 WITH FA/3739/2016 WITH FA/3740/2016 WITH FA/3741/2016 WITH CA/16136/2016 IN FA/3741/2016 WITH FA/3742/2016 WITH FA/3743/2016 WITH FA/3744/2016 WITH FA/3745/2016 are hereby partly allowed.
- II. Common Judgment and Award passed by the Civil Judge S.D., Nilanga dated 12.1.2011 in LAR No.118/2002 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.118/2002 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 30.3.2017.
- 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.**)

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