

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

22 FIRST APPEAL NO. 654 OF 2017

LAXMIBAI W/O HARJI KALE,
THROUGH GPA BABURAO S/O HARJI LAKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Appellant : Mr. M. V. Ghatge, Mr. Bharat N. Gadegaonkar.
AGP for Respondent Nos.1 & 2 : Mr. S. N. Morampalle.
Advocate for Respondents : Mr. S. G. Karlekar.

...

CORAM : **V. K. JADHAV, J.**
DATE : 03rd July, 2017.

JUDGMENT:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by learned learned Civil Judge Senior Division, Basmatnagar dated 29th August, 2012 in LAR No.39 of 2010, the original Claimant has preferred this appeal.

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

- i) Agricultural land owned and possessed by the Appellant / original Claimant came to be acquired by the Government for the purpose of construction of U.P.P. Canal at village Kurunda. Section 4

notification was published on 27th July, 2000 and the Special Land Acquisition Officer has awarded the compensation of Rs.1,60,000/- per Hectare. Being dissatisfied with the inadequate compensation awarded by the Special Land Acquisition Officer, the Appellant / Claimant has preferred LAR No.39 of 2010. It has been contended in the claim petition that the Special Land Acquisition Officer has not considered the market value of the acquired land and further awarded in adequate compensation. The Special Land Acquisition Officer has not considered the fertility and the location of the acquired land. The Appellant / Claimant has claimed the compensation at the rate of Rs.4,00,000/- per Hectare.

- ii) The Respondent / State has strongly resisted the claim petition by filing the written statement Exhibit 13. It has been contended that as per the rate fixed by the Town Planner, Aurangabad, the Special Land Acquisition Officer has awarded just and reasonable compensation at the rate of

Rs.1,60,000/- per Hectare. The learned Civil Judge Senior Division, Basmatnagar vide its impugned judgment and award dated 29th August, 2012 dismissed the reference petition. Hence, this appeal.

4 The learned counsel for Appellant / original Claimant submits that the Reference Court has not given sufficient opportunity to the Appellant / Claimant to adduce oral and documentary evidence to substantiate her contention. The learned counsel submits that on 3rd March, 2012, issues were framed in the matter and within a period of five months, the Reference Court has dismissed the reference petition for want of evidence. The learned counsel submits that in the month of June 2012, the Reference Court has forfeited right of the Appellant / Claimant to lead the evidence and thereafter, within two months, dismissed the reference petition.

5 The learned counsel for Respondent / acquiring body submits that though the issues were framed on 3rd March, 2012 thereafter, on each and every date, either the Claimant or her counsel remained absent or sought adjournment on one or another reason. Thus, the learned Judge of the Reference Court constrained to pass

the order on 22nd June, 2012 forfeiting thereby the right of the Appellant / Claimant to lead the evidence. The impugned judgment and order passed by the Reference Court thus, calls for no interference.

6 I have also heard the learned AGP for the Respondent / State.

7 On perusal of the pleadings, it appears that though the reference petition was filed before the Special Land Acquisition Officer in the year 2005, it was sent to the District Court, Parbhani in the year 2010. The Reference Court has framed the issues on 3rd March, 2012. On perusal of *Roznama*, it appears that on some dates the matter was adjourned as both the parties were absent or otherwise. However, on 12th June, 2012, the Reference Court has passed the order and closed the evidence of Claimant on the ground that she has lost her interest in prosecuting the case. Even though the claim petition was filed before the Special Land Acquisition Officer in the year 2005, the same was sent to the Court in the year 2010 and two years thereafter, the Reference Court has framed the issues. However, within three months, the Reference Court has passed no evidence order on the ground that the Appellant / Claimant has not adduced the evidence.

The agricultural land owned and possessed by the Appellant / Claimant came to be acquired for the said project and atleast her claim is required to be disposed of on merits. Thus, the impugned judgment and award passed by the Reference Court is liable to be quashed and set aside by remanding the matter to the Reference Court to decide the same afresh. Hence, the following order:

ORDER

- I. The appeal is hereby partly allowed. No costs.
- II. The judgment and award passed by learned Civil Judge Senior Division, Basmatnagar dated 29th August, 2012 in LAR No.39 of 2010, is hereby quashed and set aside.
- III. The matter is remanded to the Reference Court with the following directions:
 - a) Re-admit LAR No.39 of 2010 to its original number and proceed to determine the same.
 - b) The Appellant / Claimant is at liberty to adduce oral and documentary evidence in support of her case and the

Respondents acquiring body / State are also at liberty to adduce the evidence in rebuttal.

- c) The Reference Court shall dispose of the aforesaid reference petition within three months from the date of receipt of the record and proceedings.

IV. Record and proceedings be sent to the Reference Court forthwith.

V. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]

ndm