

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

910 CRA NO. 51 OF 2017
VITTHAL S/O PANDA GAIKWAD
VERSUS

THE STATE OF MAHARASHTRA AND ORS

...

Advocate for Petitioners : Mr. Patne Santosh N.
AGP for Respondent No. 1 and 2 : Mr. S.S. Dande.

CORAM : K. L. WADANE, J.

DATE : 11th October, 2017

ORDER:

1. With the consent of the parties, this Civil Revision Application is taken up for final hearing.

2. Heard learned Counsel appearing for the applicant and the learned A.G.P. Appearing for the respondents/State.

3. The applicant was owner of the House No. 124 admeasuring 110.36 square meters situated village Ashta (Jahagir) Tq. Omerga. The aforesaid property is acquired by the acquiring body for the purpose of Turori Medium Project Tq. Omerga and it is alleged that a meagre amount of compensation to the tune of Rs. 63,170/- was awarded to the applicant. However, the market price of the acquired property at the relevant time was more than Rs. 2,75,000/-. Therefore, the claimant has preferred reference under section 18 of the Land Acquisition Act and it was initially filed in

the office of Special Land Acquisition Officer at Osmanabad who referred it to the Civil Judge, Senior Division, Osmanabad, and after formation of Civil Judge, Senior Division Court at Omerga the aforesaid reference came to be transferred to the Omerga Court.

4. It is contended that the notice of the transfer of the reference was received by the claimant. The claimant was represented by the advocate in the Civil Court at Omerga. However, according to applicant, the concerned advocate did not inform the progress of the matter and the dates given in the matter for hearing and ultimately the claimant was unable to adduce oral as well as documentary evidence on record. It is further contended that, at the time of the hearing of the matter the learned advocate appearing for the claimant/applicant was absent. The learned counsel for the present applicant/original claimant submits that the matter needs to be remanded.

5. Learned A.G.P. for the respondents/State opposes the request on the ground that sufficient opportunity was given to the claimant to adduce their evidence. Learned A.G.P. further submits that the learned advocate appearing for the claimant in the Reference

Court was absent for so many dates. Therefore it cannot be said that no opportunity was given.

6. I have carefully gone through the reasons recorded by the Reference Court, particularly, in para No. 8 of the judgment, wherein, it is mentioned that the reference is pending since last seven years. During the course of these seven years the claimant even did not submit the record of his acquired house, Namuna No. 8, copy of Award and the copy of 'E' Statement. The matter posted for evidence since 09.08.2006 and adjourned for about 06 dates, however, there is no progress in the reference. On almost all the dates the learned advocate as well as the claimant did not appear. No application is filed. Further it is observed by the Reference Court that, despite the several opportunities, the learned advocate for the claimant did not appear before the Reference Court. Ultimately, the reference came to be rejected.

7. From the reasons recorded by the Reference Court, it appears that, the learned advocate representing for claimant in the Reference Court was absent and he did not remain present in the Reference Court for so many dates. It reflects the negligence on

the part of the learned advocate appearing for the claimant in the Reference Court. In spite of the fact, I am of the opinion, for the negligence of the advocate, the claimant shall not suffer. Since the immovable property is acquired therefore, the matter needs to be adjudicated on merits.

8. The learned counsel appearing for the applicant/claimant relied upon the observations in case reported in 2011 (3) Mh.L.J.(Narayan Deorao Gore V/s. State of Maharashtra) to contend that, Civil Revision Application is maintainable when the parties have not adduced their evidence in the Reference Court.

9. I have gone through the observations of the above cited case and I am of the opinion these observations are applicable to the facts of the present case.

10. In view of the above, I am of the opinion an opportunity must be given to the claimant to adduce his evidence. Therefore, matter needs to be remanded. While remanding the matter it is to be noted that at the time of condonation of delay in filing the Civil Revision application this Court passed an order that the claimant/applicant will not be entitled for the

monetary benefits of interest during the period of delay which is sought to be condoned. While deciding the Reference, the Reference Court has to take note of the order passed by this Court while condonation of delay.

11. Civil Revision Application is allowed.

12. Judgment and Order passed in Land Acquisition Reference No. 769/2005 dated 12.07.2007 is hereby quashed and set aside.

13. The matter is remanded to the Reference Court for disposal in accordance with law. Learned Reference Court shall give opportunity to both the sides to adduce their evidence and after hearing both the sides the Reference Court shall decide the reference within a period of six months from the date of appearance of the parties.

14. Parties are directed to remain present in the Reference Court on 27.11.2017. No separate notices are required.

15. Civil Revision Application is disposed of.

(K. L. WADANE, J.)

mkd