

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**910 FIRST APPEAL NO. 2662 OF 2016
WITH CA/3472/2017 IN FA/2662/2016**

SHILABAI UTTAM GOSAVI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Appellant : Mr. Kabade Vivek V
Mr. RB Bagul, AGP for Respondents.

CORAM : P.R.BORA, J.

DATE : 19th July, 2017.

PER COURT :

1) Heard learned Counsel appearing for appellant and learned AGP appearing for the respondents.

2) Reference application filed by the present appellant has been dismissed by the Reference Court mainly on the ground that the appellant failed to bring on record any evidence in order to substantiate his claim. Learned Counsel appearing for the appellant submitted that at the relevant time, several other Reference Applications were also filed arising

out of the same acquisition and it was an understanding that evidence may be adduced in any one of the matters. Learned Counsel submitted that under the said impression, the present appellant did not take any steps for adducing any evidence in the matter and eventually the trial court has dismissed the reference application for want of evidence. The learned counsel further submitted that the appellant is in a position to substantiate his claim by adducing necessary evidence in this regard. The learned counsel submitted that in the companion matters, compensation has been enhanced by the Reference Court to a considerable extent and as such, opportunity needs to be given to the appellant either to file additional evidence before this court or the matter be remitted back to the Reference Court by permitting the appellant to adduce necessary evidence before the Reference Court.

3) Learned AGP opposed for accepting the

request made on behalf of the appellant. In the alternative, learned AGP submitted that, if at all the court is inclined to remit back the matter to the Reference Court with direction to permit the appellant to adduce evidence in the matter, it be taken into account that the earlier reference application was protracted because of the inaction on the part of the appellant himself and as such, the appellant cannot be made entitled for the interest of the said period if the amount of compensation is enhanced. The learned Counsel for the appellant promptly submitted that the appellant is ready to undertake not to claim any interest of the period of delay in the event the amount of compensation is enhanced. In view of the above, I find it appropriate to pass the following order, -

ORDER

i) The impugned judgment and award dated 20th March, 2012, passed by the Civil Judge, Senior Division, Omerga in LAR No.743/2009 (old No.19/2002), is hereby quashed and set aside;

ii) The matter is remanded to the learned Reference Court with direction that the appellant be permitted to adduce oral as well as documentary evidence in support of his claim and to decide the reference application afresh on its own merits. Needless to state that the respondents will have an opportunity to cross-examine the claimants and the witnesses, which may be examined on behalf of the claimants and also to adduce evidence, if any, in order to substantiate the defences raised by them

iii) It is clarified that the appellant will not be entitled for any interest from the date of the earlier decision of the Reference Court, i.e. 20th March, 2012 till this date. Such undertaking be filed by the appellant before the Reference Court also;

iv) The appeal stands allowed in the aforesaid terms. Pending civil application, if any stands disposed of.

(P.R.BORA,J.)

bdv/