

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1352 OF 2016

Executive Engineer,
Majalgaon, Canal Division No.7,
Gangakhed, District Parbhani,
Through
Milind s/o Vasantryao Kulkarni,
Age 52 years, Occ. Service

...Appellant

versus

1. Digambar Gunderao Lonikar,
Age 80 years, Occ. Agriculture
R/o. Loni, Tq. Ambejogai,
District Beed
2. Sudhakar Gunderao Lonikar
Age 77 years, Occ. Agriculture
R/o. As above
3. Madhukar Gunderao Lonikar
Age 74 years, Occ. Agriculture
R/o. As above
4. State of Maharashtra,
Through
The Collector, Beed
District Beed

...Respondents

WITH
FIRST APPEAL NO. 1353 OF 2016

Executive Engineer,
Majalgaon, Canal Division No.7,
Gangakhed, District Parbhani,
Through
Milind s/o Vasantryao Kulkarni,
Age 52 years, Occ. Service

...Appellant

versus

1. Laxmikant s/o Sadashiv Lonikar,
Age 45 years, Occ. Agri. & Service
R/o. Loni, Tq. Ambejogai,
District Beed
 2. Chandrashekhar s/o Sadashiv Lonikar
Age 40 years, Occ. Agri. & Service,
 3. State of Maharashtra,
Through
The Collector, Beed
District Beed
- ...Respondents

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Mr. S.C. Arora, advocate for the appellant
Mr. S.M. Kulkarni, advocate for respondents-claimants
Mr. A.M. Phule, A.G.P. for the respondent-State.

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CORAM : V. K. JADHAV, J.
DATED : 16th MARCH, 2017

PER COURT:-

1. Heard learned counsel for the respective parties.
2. The present appeals are filed by the acquiring body.
3. The claimants had filed Reference under Section 18 of the Land Acquisition Act (for short 'L.A. Act') being dissatisfied with the amount of compensation awarded by the Special Land Acquisition Officer (for short, 'S.L.A.O.'). The Reference court partly allowed the Reference. Aggrieved thereby the present appeals are filed.

4. The factual matrix can be summed up as under:-

The Notification u/s 4 of L.A. Act was issued on 10.01.1985. The award was passed on 27.08.1987. The Reference under section 18 of the L.A. Act bearing L.A.R. No. 16 of 1988 and 17 of 1988 were filed on 11.1.1988. Accordingly, the evidence was led by the claimants before the Reference court and the Reference Court delivered the judgment and award on 22.1.2004.

5. The S.L.A.O. has awarded compensation of the acquired lands in the range @ Rs. 70/- to Rs.75/- per R. The Reference court enhanced the compensation to Rs.200/- (Rupees two hundred only) per R.

6. Mr. Arora, learned counsel for the appellant relying on the judgment of the Apex Court in the case of ***U.P. Awas Evam Vikas Parishad vs. Gyan Devi (Dead) by L.Rs. And Anr. reported in AIR 1995 SC 724 (1)*** and another judgment of the Apex Court in the case of ***Agra Development Authority vs. Special Land Acquisition Officer reported in 2001 (2) SCC 646*** submits that the matters be remitted back to the Reference Court and allow the acquiring body to put forth its case.

7. Mr. Gaikwad, learned counsel for the claimants submits that the Reference Court has considered the sale instances on record and has passed the award. The appellants are not necessary and proper party to the reference. The totality of the evidence has been considered. The State has opposed the References by filing written statement and cross examining the claimants and their witnesses.

8. It is submitted that the objections under Section 28-A of the L.A. Act filed by the other claimants are pending and the same are not being disposed of as the appeals are pending. As such, it was submitted that instead of admitting the appeals, the matters be remitted back or in the alternate the respondents may file on record such evidence which they would like to produce so that the same can be considered in the appeals itself. The learned counsel submits that he has instructed to state that the appellant would like to cross examine the claimants and their witnesses regarding the said sale deed.

9. With the assistance of learned counsel, I have gone through the judgment.

10. It appears that the claimants have withdrawn the amount.

They are also not prejudiced by the remand of the matters.

11. In the light of the above, the impugned judgment and award is liable to be quashed and set aside and the matters are to be remitted to the Reference Court.

12. In view of the above, I pass the following order:-

- I. The impugned judgment and award is quashed and set aside.
- II. The matters are remitted to the Reference Court for deciding the same afresh.
- III. The appellant shall be added as respondent in the Reference.
- IV. The parties shall appear before the Reference Court on 13.04.2017.
- V. As all the parties are before this court, no separate notice is necessary to be issued.
- VI. The appellant shall file written statement, if any, by 13.06.2017.
- VII. The claimants are also entitled to lead additional evidence, if they choose to.

- VIII. The acquiring body i.e. the appellant and the State may also adduce evidence if they choose to.
 - IX. Taking into account the fact that the matters are remitted back to the Reference court and the matters are old, the Reference court shall decide the same expeditiously and preferably within six months from the date of appearance of the parties.
 - X. The record and proceedings, if any, be sent back immediately.
 - XI. The amount already withdrawn by the claimants shall be retained by them and the same will be subject to the award that would be passed by the Reference court afresh.
13. In the light of above, the first appeals are accordingly disposed of, however, with no order as to costs.

(V. K. JADHAV, J.)

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