

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

914 FIRST APPEAL NO. 3913 OF 2017

MALANBAI KISAN KAJAVE
VERSUS
THE STATE OF MAHARASHTRA AND ORS.

...

Advocate for Appellant : Mr. B. K. Pawar.
AGP for Respondents : Mr. V.S. Badak.

CORAM : K. L. WADANE, J.

DATE : 13th December, 2017

ORDER:

1. With the consent of both parties, this appeal taken up for final hearing.

2. Heard Mr. Pawar, learned counsel for appellant and Mr. Badak, learned A.G.P. for respondents/State.

3. Appellant preferred this appeal being aggrieved with the judgment and order passed by Joint Civil Judge Senior Division, Omerga, dated 30.04.2009, in Land Acquisition Reference No. 569/2005. Learned counsel for the appellant submits that the appellant is illiterate lady, residing in remote place from Omerga town. He further submits that, the Advocate representing the claimant in the Reference Court had not intimated the date of hearing to the claimant, therefore, she was unable to attend the Court

proceedings, ultimately, the Reference Court has dismissed the reference on the ground that no evidence is adduced on behalf of the claimant.

4. On perusal of the grounds in the appeal it appears that, the claimant had engaged advocate in Reference Court. The learned advocate has given understanding to the claimant that as and when the matter will be listed for evidence, he will intimate the claimant about the same, however, the advocate did not inform, therefore the claimant was unaware about the proceedings. Next ground in the appeal is that the matter is transferred from Osmanabad Court to Omerga Court. Thereafter the claimant appeared through her advocate in Omerga Court, however, no opportunity was given to lead her evidence. Learned counsel for the appellant submits that, since the immovable property of the claimant has been acquired by the State/acquiring body, the matter needs to be remanded.

5. On perusal of the reasons recorded by the learned Reference Court no where it is mentioned in the judgment that the claimant was given opportunity to lead evidence. On perusal of para No. 6 of the judgment of Reference Court it appears that, the matter was

pending since year 2000. The claimant or her advocate have not submitted any application, from which it appears that the claimant was not interested to conduct the proceedings. Thus from the reasons recorded by the Reference Court it appears that no evidence was adduced on behalf of claimant.

6. So looking to the above reasons it appears that no evidence was adduced on behalf of both parties. In such circumstances, I am of the opinion that one more opportunity must be given to claimant to adduce her evidence. Learned counsel for the appellant/claimant submits that in case claimant succeeds in land acquisition reference, the appellant/claimant will not claim interest/monetary benefits from the date of dismissal of the reference till this date i.e. the date of order of this Court.

7. In view of above and in the interest of justice I am of the opinion that the matter needs to be remanded to the Trial Court for its disposal in accordance with law.

8. Parties are directed to appear before the Reference Court on 15.01.2018.

9. The Reference Court shall give opportunity to both the sides to lead their evidence and dispose of the reference within a period of six months from the date of appearance of the parties.

10. With these directions, First Appeal No. 3913/2017 is disposed of.

(K. L. WADANE, J.)

mkd