

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

951 FIRST APPEAL NO. 1534 OF 2014

Dattaraj s/o Narayanrao Deshmukh,
 Age : 60 years, Occu.: Agriculture,
 R/o.: Paithangate, H. No. 5-18-46,
 Deshmukh Niwas, Aurangabaad.

... **APPELLANT**
(Ori. Claimant)

VERSUS

1. The State of Maharashtra,
 Through Special Land Acquisition
 Officer, Spl. Unit, Aurangabad.
2. The Commissioner-
 Municipal Corporation, Aurangabad.

... **RESPONDENT**
(Ori. Opponents)

...
 Advocate for Appellant : Deshmukh Anita D., Shri. K D Jadhav (consent
 Not Obtained)
 AGP for Respondent No.1: Shri. C. V. Dharurkar,
 Advocate for Respondent No.2 : Shri. Chapalgaonkar S. G.

...

CORAM : P R. BORA, J.
DATE : 03.08.2017

ORAL JUDGMENT :

- 1) The present appeal is filed against the judgment and award dated 19/03/2014 passed by the Court of Civil Judge Senior Division, Aurangabad in Land Acquisition Reference No. 15 of 2011. The aforesaid Reference Application was filed by the present appellant. The same has been dismissed by the Reference Court mainly on the ground

that claimant did not adduce any oral and documentary evidence in order to substantiate his claim. The Learned Counsel relying on the judgment of the Hon'ble Apex Court in **Ramanlal Deochand Shah & Anr. V. State of Maharashtra & Anr. (AIR 2013 SC 3452)** submitted that the Reference Court could not have dismissed the Reference Application on the ground that the claimant did not adduce any evidence. The learned Counsel, therefore, prayed for remanding the matter back to the Reference Court with permission to the appellant to adduce oral and documentary evidence in support of his claim.

2) Shri. S. G. Chapalgaonkar, learned Counsel appearing for Corporation has opposed the submission made on behalf of the appellant. The learned Counsel inviting my attention to the discussion made by the Reference Court submitted that the Reference Court has not dismissed the Reference Application merely for the reason that no evidence was adduced by the appellants, but, has also submitted that the Special Land Acquisition Officer seems to have correctly determined the market value of the acquired land and, therefore, the Reference Court did not find it necessary to cause any interference in the amount of compensation so offered by the Special Land Acquisition Officer. Learned Counsel further submitted that from the record, it is discernible that though the Reference Application was filed in the year, 1989 since no steps were taken by the appellant, the Reference Application could

not be decided till the year 2011. The learned Counsel submitted that despite availing all opportunities, the claimant did not adduce any oral or documentary evidence and as such the Reference Court was constrained to dismiss the Reference Application. Learned Counsel submitted that no case is made out even for remand of the matter and no interference is required in the judgment and award so passed. In the alternative, learned Counsel submitted that if the matter is to be remanded back to the Reference Court and if the appellant is likely to be permitted to adduce necessary evidence, the appellant may be disentitled from claiming interest of the period of delay which apparently seems to have caused because of inaction on his part.

3) I have carefully considered the submission advanced by the learned Counsel appearing for the parties. Perusal of the impugned judgment shows that non-adducing of oral or documentary evidence by the appellant is the main reason for dismissal the Reference Application.

Hon'ble Apex Court in the case of **Ramanlal Deochand Shah & Anr. V. State of Maharashtra & Anr.** (supra) has observed as under :

"14. The failure or the omission to lead evidence to prove the claim appears in the above context to be a case of some kind of misconception about the legal requirement as to evidence needed to prove cases of enhancement of compensation. We do not in that view see any reason to deny another opportunity to the landowners to prove their cases by adducing evidence in support of their claim for enhancement. Since, however, this opportunity is being granted ex debito justitiae, we

deem it fit to direct that if the Reference Court eventually comes to the conclusion that a higher amount was due and payable to the appellant-owners, such higher amount including solatium due thereon would not earn interest for the period between the date of the judgment of the Reference Court and the date of this order. These appeals are with that direction allowed, the judgments and orders impugned in the same modified to the extent that while the enhancement order by the Reference Court shall stand set aside, the matters shall stand remanded to the Reference Court for a fresh disposal in accordance with law after giving to the landowners opportunity to lead evidence in support of their claims for higher compensation. No costs. "

4) In view of the observation so made, it is apparent that the Reference Court could not have dismissed the application on the ground that the claimant did not adduce any evidence. The impugned judgment and award, therefore, cannot be sustained.

5) However, there appears substance in the submission made by the learned Counsel appearing for the respondent Corporation that while extending the appellant claimant an opportunity of adducing evidence, he needs to be disentitled from claiming interest of the period which has been consumed because of inaction on his part in adducing the evidence.

6) When the original Reference Application which was filed in the year 1989 remained to be undecided till the year 2014, a reasonable

inference can be drawn that the claimant was not diligent in prosecuting his claim. The permission to adduce necessary evidence to substantiate his claim, therefore, cannot be blanketly granted to the appellant. I, therefore, deem it appropriate to disentitle the appellant from the benefit of interest for the period of delay which has been caused at his instance.

7) From the available record, it cannot be gathered as to when the matter was fixed for hearing for the first time and at whose instance the proceeding were delayed. The Reference Court will be in a better position to ascertain as to because of whose negligence or inaction the matter could not be proceeded further. If it is found that the matter was time to time adjourned only at the instance of original claimant, he cannot be given premium by awarding interest of the said period also. I, therefore, deem it appropriate to issue necessary directions to the Reference Court in that regard also. Hence, the following order.

ORDER

1. The impugned order stand set aside.
2. The matter is remitted back to the Reference Court for deciding it afresh by permitting the appellant to adduce necessary oral and documentary evidence in support of his claim. Needless to state that the respondents will have equal opportunity to

rebut the said evidence.

3. It is clarified that the claimant will not be entitled for the interest of the period of delay which has been caused at his instance. The Reference Court while deciding the matter, shall also ascertain from the record as to because of whose negligence the matter could not be proceeded and since when. The Reference Court shall disentitle the claimant from the benefit of interest for the said period by passing a reasoned order.

5) In view of the fact that the original Reference Application was filed in the year 1989, the Reference Court is directed to hear and decide the Reference Application as expeditiously as possible and preferably within a period of six months after receiving the record from this court.

6) The parties to appear before the Reference Court on 21 of August 2017 so, no further notice may be required to be issued by the Reference Court.

7) The appeal stands allowed in the aforesaid terms.

(P. R. BORA)
JUDGE