

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) FA NO.3589 OF 2016

901 FIRST APPEAL NO. 3589 OF 2016

BHASKAR DAYARAM CHAUDHARI
VERSUS
THE SPECIAL LAND ACQUISITION JALGAON AND ANR

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Advocate for Appellant : Mr. P.A.Bhosale h/f Mr. Hajare Abhishek M.
Hajare Abhishek M.

AGP for Respondent State: Mr. S.P.Sonpawale
Smt. Kutti Choudhary Chaitali R., Adv., for respondent no.2.

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CORAM : P.R. BORA, J.
Dated: June 23, 2017
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PER COURT :-

1. The appellant has filed the present appeal challenging the judgment and award dated 5th of February, 2016, passed by the Court of Joint Civil Judge, Senior Division, Bhusaval, in Land Acquisition Reference No.205/2014 (Old LAR No.2051/2005).

2. The Reference application has been rejected by the Reference Court mainly for the reason that the claimant did not adduce any oral or documentary evidence in support of his claim. Learned Counsel for the appellant submitted that in view of the law laid down by the Honourable Apex Court in **Ramanlal Deochand Shah & Anr. V. State of Maharashtra & Anr. (AIR 2013 SC 3452)**, the Reference Court should not have rejected the Reference Application only on the ground that the claimant did not any oral or documentary evidence. Learned Counsel, on instructions, further submitted that the claimant will adduce the

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necessary oral and documentary evidence in case the matter is remitted back to the Reference Court for deciding it afresh on the very first date of hearing which may be fixed by the Reference Court without seeking further adjournment therefor. Learned Counsel, on instructions, further submitted that claimant waives his right to claim interest of the period from the date his evidence was closed before the Reference Court till today, in the event the amount of compensation is enhanced by the Reference Court on the said enhanced amount of compensation.

3. Smt. Kutti, learned Counsel appearing for the acquiring body has opposed for accepting the request of the appellant stating that despite availing ample opportunities the appellant has failed in adducing any oral and documentary evidence and, in such circumstances, no fault can be found with the impugned judgment and order. Learned Counsel, therefore, prayed for dismissal of the appeal.

4. On perusal of the impugned judgment, it is revealed that the Reference Court has rejected the Reference Application for the reason that the claimant did not adduce any oral or documentary evidence. In case of **Ramanlal Deochand Shah & Anr. V. State of Maharashtra & Anr.** (cited supra), the Apex Court 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

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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."

5. In view of the law laid down as above by the Apex Court, it is evident that the Reference Court could not have rejected the Reference on the ground that the claimant did not adduce any oral or documentary evidence. As was pointed out by the learned Counsel for the appellant, earlier in similar circumstances, this Court as well as the Division Bench of this Court has remitted back the matters to the Reference Court for deciding the same afresh by giving opportunities to the parties to the Reference proceedings for adducing necessary evidence in support of their respective contentions. In view of the law as laid down by the Honourable Apex Court, I am inclined to accept the request made by the appellant herein. Hence, the following order:

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ORDER

1. The judgment and order passed in LAR No.205/2014 on 5th February, 2016, is set aside. The Reference stands restored to its original file and the matter is remitted back to the Reference Court for deciding it afresh by giving due opportunity to the claimant as well as to the State and the acquiring body to adduce the necessary oral and documentary evidence in support of their respective contentions.
2. The parties to appear before the Reference Court on 10th July, 2017.
3. As undertaken by the appellant / claimant, he shall not ask for any adjournment and shall adduce evidence from his side on the very first date which may be fixed by the Reference Court.
4. It is clarified that, as undertaken by the appellant / claimant, he will not be entitled for the interest in case the amount of compensation is enhanced, on the said amount of enhanced compensation, for the period commencing from the date his evidence was earlier closed by the Reference Court till 23.6.2017.
5. The First Appeal stands allowed in aforesaid terms.

(P.R. BORA, J.)

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