

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1231 OF 2017

MADHAV PANDHARINATH GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Appellant : Mr. Mahesh V. Ghatge
AGP for the respondent State: Mr. B.V. Virdhe
Advocate for Respondent-acquiring body : Mr. S.S. Dande
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CORAM : V. K. JADHAV, J.
DATED : 12th JULY, 2017

PER COURT:-

1. Being aggrieved by the judgment and award dated 04.05.2012, passed by the learned Joint Civil Judge, Senior Division, Latur in L.A.R. No. 421 of 1999, the original claimant has preferred this appeal.

2. Brief facts giving rise to the present appeal are as follows:-

Being aggrieved by the inadequate compensation awarded by the S.L.A.O. in respect of claimant's acquired plot, the claimant had filed reference for enhancement of compensation, bearing L.A.R. No. 421 of 1999. The respondent State has strongly resisted the said reference petition by filing written statement. Though the reference petition was fixed for hearing, the appellant claimant has not adduced his evidence and as such, by impugned judgment and award dated 04.05.2012, the learned Joint Civil Judge, Senior Division, Latur, has dismissed the

reference petition. Hence, this appeal by the appellant-claimant.

3. Learned counsel for the appellant-claimant submits that though the reference petition was pending before the District Court, it was transferred to the C.J.S.D. on 7.10.2009. During pendency of reference petition before the District Court, the State has not filed say for considerable period and as such, the matter was adjourned from time to time for filing say. On 12.10.2007, written statements were filed and accordingly issues were framed. Though the reference petition was pending before the District Court, the same was not taken up for hearing as the Presiding Officer was busy in other matters. On 7.10.2009, the matter was transferred to learned C.J.S.D. and on 24.6.2010 the record and proceeding was received by the learned C.J.S.D. Learned counsel submits that thereafter by the impugned order, the reference court has disposed of the said reference petition for want of evidence. Learned counsel submits that in the connected reference petitions, the reference court has awarded enhanced compensation and the acquiring body has preferred appeals against the said judgment and award passed by the reference court and the same are still pending.

4. Learned counsel appearing for the respondent-acquiring body submits that despite number of opportunities given to the claimant, the appellant-claimant has not adduced any evidence and as such, learned reference Court has rightly dismissed the reference petition. Learned

counsel submits that if this Court is inclined to remand the matter, then reference court may be directed not to grant interest for such inordinate delay, in case enhancement is awarded in the reference petition after the remand.

5. It appears from the record that though the reference petition was filed in the year 1999, till 2007 the respondent State and acquiring body have not filed written statement. Thereafter, in the year 2007, the reference court has framed the issues, however, the matter was transferred to the learned Civil Judge, Senior Division and the record and proceedings of the reference petition was sent to the learned C.J.S.D. after a gap of one year. The immovable property owned and possessed by the appellant-claimant is acquired for extension of M.I.D.C. area at Latur. In the backdrop of this fact, the appellant-claimant should get one more opportunity to adduce evidence in support of his contention. So far as the point for grant of interest for the delayed period is concerned, the same is kept open and the respondent acquiring body is at liberty to raise the said point alongwith other points before the reference court, in case the reference court decided to award the compensation at the enhanced rate. Hence, I proceed to pass the following order:-

O R D E R

- I. First appeal is hereby partly allowed. No costs.

II. The judgment and award dated 04.05.2012 passed by the learned Civil Judge, Senior Division, Latur in L.A.R. No. 421 of 1999 is hereby quashed and set aside. The matter is remanded to the reference court for deciding it afresh, with following directions:-

a) Restore the L.A.R. No. 421 of 1999 to its original number. The appellant-claimant is at liberty to adduce oral and documentary evidence in support of his contention and the respondents are also at liberty to adduce the evidence in rebuttal.

b) The reference court shall dispose of L.A.R. No. 421 of 1999 within six months from today.

c) All points are kept open, including grant of interest for delayed period.

d) Record and proceedings be sent back to the reference court, forthwith.

III. First appeal is disposed of.

(V. K. JADHAV, J.)

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