

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1230 OF 2017

SAMBHAJI APPARAO JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Appellant : Mr. Mahesh V. Ghatge
AGP for the respondent State: Mr. A.M. Phule
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 28.01.2011, passed by the learned District Judge-3, Latur in L.A.R. No. 422 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. 422 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

28.01.2011, the learned District Judge-3, 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 is filed in the year 1999, the issues were framed in the year 2008. Thereafter, on 7.10.2009 the matter was transferred from the file of C.J.S.D. to the District Court and the learned District Judge, Latur has dismissed the reference petition by observing that even though the number of opportunities were given to the claimant to adduce evidence, the claimant and his counsel remained absent. 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 District Judge 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, issues were framed in the year 2008 i.e. after lapse of 9 years. On perusal of Roznama, it appears that when the reference petition was pending before the learned Civil Judge, Senior Division, most of the times, hearing of reference petition was adjourned on the ground that Presiding Officer was busy in other matters. In the year 2009, the matter was transferred to the District Court. However, in the year 2010 record and proceeding was received. Thereafter, within a year the learned District Judge has dismissed the reference petition on the ground that the claimant has failed to adduce any evidence. 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 28.01.2011 passed by the learned District Judge-3, Latur in L.A.R. No. 422 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. 422 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. 422 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.)