

(1)

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

**CIVIL REVISION APPLICATION NO. 233 OF 2016**

Bhausahab s/o Dnyanoba Barate,  
Age: 35 years, Occu: Agril.,  
R/o. : Baratewadi, Tq. Kallamb,  
Dist. Osmanabad

..APPLICANT

VERSUS

1. The State of Maharashtra,  
Through Collector,  
Osmanabad
2. The Special Land Acquisition Officer,  
Medium Project No.2, Osmanabad
3. The Executive Engineer,  
Minor Irrigation Division,  
Osmanabad

..RESPONDENTS

Mr A. R. Barate, Advocate for applicant;  
Mrs Vaishali Patil, Asstt. Govt. Pleader for respondents/State;

**CORAM : N.W. SAMBRE, J.**

**DATE : 13<sup>th</sup> July, 2017**

**ORAL ORDER**

Heard learned Counsel for applicant, learned AGP for respondent No. 1 and

2. None for respondent No.3.

2. The Land Acquisition Reference under Section 18 of the Land Acquisition Act, 1894, preferred by the present applicant came to be dismissed, vide judgment and order dated 8<sup>th</sup> March, 2016, passed by the learned 4<sup>th</sup> Joint Civil Judge Senior Division, Osmanabad, as the applicant had failed to adduce any evidence in support thereof.

(2)

3. While trying to make out a case, learned Counsel appearing on behalf of the applicant submits that the Reference Court should have granted an opportunity to the applicant by adjourning the matter, instead of deciding the same on its own merits. He would then urge that in the interest of justice, the Reference be restored to the file of learned Reference Court as the applicant undertakes that (a) he shall not claim any interest from the date of his absence before the learned Reference Court, till this date and (b) he shall not seek any adjournment in the matter before the learned Reference Court, if the Reference is restored.

4. He would then urge that failure to give an opportunity to the applicant be termed as failure to exercise the jurisdiction and as such, the civil revision application be entertained. He would rely upon following judgments of this Court in support of his submission :-

(a) **Kawadu s/o Madhav Bansod vs. State of Maharashtra & anr.**, reported in **2004 (1) ALL MR 651** and

(b) **Subhash s/o Babulal Rajput vs. The State of Maharashtra & anr.**, reported in **2012 (1) ALL MR 42**.

5. Per contra, the learned AGP appearing on behalf respondent Nos. 1 and 2 would strenuously oppose the claim of the applicant and would invite attention of this Court to judgment of the Apex Court in the matter of **D.L.F. Housing and Construction Company Private Limited, New Delhi vs. Sarup Singh**, reported in **AIR 1971 (SC) 2324** and judgment delivered by learned Single Judge of this Court in the matter of **Venkat s/o Baburao Karle vs. State of Maharashtra**, reported in **2012 (4) ALL MR 826**. According to learned AGP, the civil revision application is not maintainable and same be rejected.

(3)

6. Having considered rival claims, in view of conflict of the decision, this Court does not intend to go into the merits, however, having regard to the fact that the applicant has given an undertaking as reproduced herein above, it will be appropriate to give an opportunity to the applicant to adduce evidence in support of his claim. Hence, the following order:-

The order dated 8<sup>th</sup> March, 2016, passed by the learned Reference Court, in Land Acquisition Reference No. 840 of 2010 is quashed and set aside.

Land Acquisition Reference No. 840 of 2010 stands restored to the file of learned Civil Judge Senior Division, Osmanabad, subject to undertaking given by the applicant that he shall not claim any interest from the date of his absence before the learned Reference Court, till this date and that he shall not seek any adjournment in the matter and shall co-operate the said Court in expeditious disposal of the proceedings.

Learned Reference Court shall decide the aforesaid Reference, afresh in accordance with law, after giving an opportunity to the applicant to adduce evidence in support of his claim.

With the above observations, civil revision application stands allowed.

**(N.W. SAMBRE, J.)**