

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

FIRST APPEAL NO. 1238 OF 2006

Sadashiv s/o Nagnath Pawar,
age 39 yrs, Occ. Agri,
R/o Naichakur, Tq. Omerga,
Dist. Osmanabad. .appellant.

VERSUS

The State Maharashtra,
Through the Collector,
Osmanabad. Respondent.

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**WITH
FA/1239/2006**

Madhav s/o Nagnath Pawar,
(died) through his Legal
Representatives :

1. Smt Kantabai w/o Madhav Pawar,
age 50 yrs, Occ. Household,
R/o Naichakur, Tq. Omerga,
Dist. Osmanabad.
2. Govind s/o Madhav Pawar,
age 30 yrs, Occ. Agri,
R/o as above.
3. Dnyaneshwar s/o Madhav Pawar,
age 25 yrs, Occ. Agri,
R/o as above.
4. Sou. Kavita w/o Sitaram Survase
age 27 yrs, Occ. Household,
R/o as above. ..Appellants..

VERSUS

The State of Maharashtra,
through the Collector,
Osmanabd.

Respondent.

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Advocate for Appellant : Mr S R Dendgle
AGP for Respondents: Mr B V Virdhe

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CORAM : V.K. JADHAV, J.

Dated: February 09, 2017

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ORAL JUDGMENT :-

1. Being aggrieved by the Judgment and Award passed in L.A.R No.475/2004 with connected matters as mentioned therein, the original claimant in L.A.R No.489/2004 and in L.A.R. No.484/2004 has preferred these appeals for enhancement of the compensation. The learned Civil Judge S.D. Omerga, by its impugned judgment and award dated 15.7.2006 awarded enhanced compensation to the claimants in L.A.R No.484/2004 and 489/2004 @ Rs.**29,250/-** per hector. The learned Civil Judge S.D., Omerga has awarded total compensation of Rs.55,867.50/- to claimant Sadashiv Nagnath Pawar in L.A.R No.489/2004 and an amount of Rs.37,732.50 to claimant Madhav Nagnath Pawar in LAR No.484/2004 in respect of acquired land. Being aggrieved by the same, the original claimants in L.A.R

No.489/2004 and 484/2004 preferred these appeals for enhancement of compensation.

2. Before entering into the merits of the case, the learned AGP appearing for respondent-State submits that, acquiring body was not impleaded as party in the original proceeding and in view of the authoritative pronouncement of the Supreme Court in case of Abdul Rasak and others Vs. Kerala Water Authority and others, reported in **(2002) 3 Supreme Court Cases 228**, the matters need to be remanded to the Reference Court with a directions to implead the respondent no.2 Acquiring Body as party to the reference and then dispose of the land Acquisition Reference in accordance with law.

3. Learned counsel appearing for the appellant/original claimant has also not disputed this legal position.

4. I have also heard the learned AGP for the respondent State.

5. The Supreme Court by relying upon the case in U.P. Awas Evam Vikas Parishad Vs. Gyan Devi, reported in (1995) 2 SCC page 326, in a case Abdul Rasak and others (supra), in paragraph No.11 has made following observations :-

“11. Keeping in view the fact that the Constitution Bench judgment of this Court was delivered during the pendency of appeals before the High Court and the manner in which K.W.A. also came to be constituted after commencement of land acquisition proceedings and the delay which has already taken place in the conclusion of the proceedings for finalizing compensation which delay is not attributable to the claimants though, we maintain the order of remand made by the High Court but make the following directions :

1. The Kerala Water Authority shall be deemed to have been brought on record in the reference cases as defendant. The cause title of the reference cases shall be amended accordingly. The K.W.A. may file its written statement to the claim petition filed by the claimants;
2. The Civil Court shall expeditiously proceed to try the reference cases in compliance with the order of remand made by the High Court;
3. The statement of the witnesses already recorded on behalf of the claimants need not be recorded afresh;
4. The Kerala Water Authority shall be allowed an opportunity of cross- examining the witnesses which have already been examined. However, such of the witnesses as are not available, and, therefore, cannot be called before

the Court, their statements shall not be excluded from consideration and shall be read in evidence;

5. The claimants may adduce such other evidence as they may propose to do and both the State of Kerala and Kerala Water Authority shall have the liberty of cross-examining such witnesses who are now examined by the claimants;
6. The Kerala Water Authority shall have the liberty of adducing such evidence as it may propose to do."

6. In view of this, following order is passed.

O R D E R

- I. First appeals are hereby partly allowed.
- II. The impugned common Judgment and Award dated 15.7.2006 passed by the learned Civil Judge S.D. Omerga in L.A.R.No.484/2004 Madhav Nagnath Pawar died through LR's. Vs. State of Maharashtra and LAR No.489/2004 Sadashiv Nagnath Pawar Vs. State of Maharashtra is hereby quashed and set aside.
- III. Matters are remanded to the Reference Court with the following directions:-

The Respondent Acquiring Body 'Godawari Marathwada Irrigation' shall be deemed to have been brought on record in the Reference case as the respondent. The cause title of the Reference Case shall be amended accordingly.

- IV. The Respondent Acquiring Body 'Godawari Marathwada Irrigation' is permitted to file its written statement to the claim petition.
- V. The learned Civil Judge S.D., Omerga Shall dispose of the Reference case, as expeditiously as possible, preferably within a period of SIX MONTHS from the date of this order.
- VI. The evidence (if any) recorded during the original Trial shall, subject to all just exception be read in evidence during the trial after remand.
- VII. The Respondent Acquiring Body 'Godawari Marathwada Irrigation' if submits the written statement before the Reference Court, the claimant as well as the respondent No.1 State are hereby permitted to lead the additional evidence before the Reference Court. Needless to say that the Respondent Acquiring Body 'Godawari Marathwada Irrigation' is at liberty to lead oral as well as documentary evidence in support of its case as per the pleadings.
- VIII. First Appeals are accordingly disposed of. Pending civil application, if any, stands disposed of.

(V.K. JADHAV, J.)

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