

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 845 OF 2017
WITH CA/4818/2016 IN FA/845/2017 WITH CA/4819/2016 IN FA/845/2017

DNYANOBA PANDA SATHE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Appellants : Mr. Kabade Vivek V
AGP for Respondent Nos. 1 and 2: Mr. A.M. Phule
Advocate for Respondent No.3 : Mrs. Chaitali Kutti
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CORAM : V. K. JADHAV, J.
DATED : 25th JULY, 2017

PER COURT:-

1. Being aggrieved by the judgment and award dated 14.02.2013 passed by learned Civil Judge, Senior Division, Omerga in L.A.R. No. 747 of 2009, the original claimants have preferred this appeal.

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

Being dissatisfied with the inadequate compensation awarded by the S.L.A.O. to the land owned and possessed by the appellants-claimants, acquired for the purpose of lower Terna project, Makani, Tq. Omerga, the appellants-claimants had filed L.A.R. No. 747 of 2009 and the learned C.J.S.D. by its impugned judgment and award dated 14.02.2013 dismissed the claim petition on the ground that though the claimants have challenged the award, failed to adduce the evidence.

Hence, this appeal.

3. Learned counsel for the appellants-claimants submits that though the reference petition was filed in the year 1994, in the year 1997 issues were framed in the matter and thereafter pending L.A.R. was frequently transferred from one court to another court. Even on one occasion, the matter was referred to Lok Adalat and again sent back to the regular court. Learned counsel submits that agricultural land, belonging to the appellants-claimants, came to be acquired and the appellants-claimants have not received just and reasonable compensation. Thus, the appellants may be given one more chance to lead the oral and documentary evidence to substantiate their contentions.

4. Learned counsel for the respondent acquiring body submits that though the reference court has forfeited the right of the claimants to lead evidence due to continuous absence in the proceeding on 21.6.2007, till the year 2013, the appellants-claimants neither bothered to file an application for setting aside the said order nor sought permission from the court to lead oral and documentary evidence to substantiate their contentions. Learned counsel submits that if this Court is inclined to remand the matter and if the appellants-claimants succeed in the reference petition, the reference court may be directed not grant interest for the aforesaid period.

5. On perusal of record and proceedings, it appears that for considerable period, the issues were not framed by the court and thereafter the matter was transferred to C.J.S.D. Omerga, as earlier the matter was pending before C.J.S.D. Osmanabad. It appears from the impugned order that the reference court has rejected the reference petition mainly on the ground that the appellants-claimants have not adduced any evidence to substantiate their contentions. The agricultural land owned and possessed by the appellants-claimants came to be acquired and according to them, they have not received just and reasonable compensation. In view of same, one more chance is required to be given to the appellants-claimants to substantiate their contentions, however, they would not be entitled for the interest amount for the aforesaid period i.e. from 2007 to 2013, in the event if the reference court decides the reference petition in their favour. Hence, I proceed to pass the following order:-

O R D E R

- I. The appeal is hereby partly allowed. No costs.
- II. The judgment and award dated 14.2.2013 passed by the learned C.J.S.D. Omerga in L.A.R. No. 747 of 2009 is hereby quashed and set aside.
- III. The matter is remanded to the reference court with following

directions:-

- i) Restore the L.A.R. No. 747 of 2009 to its original number and decide the same afresh after giving opportunity of being heard to both the parties.
 - ii) The appellants-claimants are at liberty to adduce oral and documentary evidence and the respondent State and acquiring body also are at liberty to adduce oral and documentary evidence in rebuttal.
 - lii) In the event, if the reference court decides the reference petition in favour of the appellants and award the compensation at the enhanced rate, the appellants claimants shall not be entitled to claim interest from the date of forfeiture of their right to adduce evidence till the order of dismissal of reference petitions passed by the reference Court.
- IV) The parties shall appear before the reference Court on 23.08.2017 and the reference court shall dispose of L.A.R. No. 747 of 2009 within six months from the date of appearance of the parties.
- V) Appeal is accordingly disposed of.
- VI) Pending civil applications are also disposed of.

(V. K. JADHAV, J.)