

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

FIRST APPEAL NO.45 OF 2010

1. Shesherao Narsingrao Jadhav

Age : 70 years, Occu : Agril,

2. Subhash s/o. Narsingrao Jadhav

Age : 55 years, Occu. Agril,

Nos.1 & 2 R/o. Bhakaskheda, Tal. Udgir,

Dist. Latur

.. APPELLANTS

(Orig. Claimants)

Versus

The State of Maharashtra,

The Collector, Latur,

Dist. Latur.

.. Respondent

.....

Mr A.N. Gaddime, Advocate h/f. Mr V.D. Gunale,

Advocate for appellants

Mr S.M. Ganachari, AGP for respondent / State

.....

WITH

FIRST APPEAL NO.46 OF 2010

1. Gunwant s/o. Narsingrao Jadhav

Age : 50 years, Occu : Agril,

2. Ashok s/o. Narsingrao Jadhav

Age : 45 years, Occu : Agril,

Nos.1 & 2 R/o. Bhakaskheda, Tal. Udgir,

Dist. Latur

.. APPELLANTS

(Ori. Claimants)

VERSUS

The State of Maharashtra

The Collector, Latur

Dist. Latur

.. RESPONDENT

.....
Shri. V.D. Gunale, Advocate for appellants
Mr S.M. Ganachari, AGP for respondent / State
.....

WITH

FIRST APPEAL NO.47 OF 2010

Sarjerao Narsingrao Jadhav,
Age : 59 years, Occu : Agril,
R/o. Bhakaskheda, Tal. Udgir,
Dist. Latur

.. APPELLANT
(Ori. Claimant)

VERSUS

The State of Maharashtra,
The Collector, Latur,
Dist. Latur.

..RESPONDENT

.....
Shri. V.D. Gunale, Advocate for appellant
Mr S.M. Ganachari, AGP for respondent / State
.....

CORAM : P.R. BORA, J.

DATE : JULY 12, 2017.

ORAL JUDGMENT : -

1. The present appeals are filed challenging common Judgment and Award passed by the Court of Civil Judge, Senior Division, at Ahmedpur (hereinafter referred to as the 'Reference Court') on 17.08.2009 in L.A.R. No.2236/2001 (Old No.316/95) with

L.A.R. No.2238/2001 (Old No.318/95) and L.A.R. No.2277/2001 (Old No.426/95).

2. The present appellants had filed the aforesaid reference applications seeking enhancement in the amount of compensation as was awarded by the Special Land Acquisition Officer (hereinafter 'SLAO') towards the acquisition of the house properties owned by them. Shri. Gunale, learned Counsel appearing for the appellants brought to the notice of the Court that, in similar matters arising out of the same acquisition proceedings, in some earlier appeals decided by this Court (Coram: S.V. Gangapurwale, J.), the Court has remitted back the matters to the Reference Court to decide it afresh by giving due opportunities to the parties for leading proper evidence to substantiate their claims. The copy of the said Judgment passed in First Appeal No.1744/2013 along with the connected appeals on 20.08.2015 is placed on record.

3. The learned Counsel submitted that, in the present matters also the Reference Court has rejected the reference applications and has refused to enhance the amount of compensation on the sole ground that the valuation report which was submitted by the claimants and relied upon by the claimants was prepared by a private

valuer and at the time of taking inspection and making valuation, the said valuer has not given notice to the government authorities.

4. The learned Counsel invited my attention to para no.6 of the Judgment in First Appeal No.1744/2013, which reads thus :

"The valuation report is placed on record of the Reference Court. Even the valuer is examined to prove the said report. The said report is solely discarded on the ground that the notice to the Government was not given before the inspection. In fact, the evidence led by the valuer ought to have been discussed in detail. It is only after discussing the evidence and if the Reference Court comes to the conclusion that, the valuation report does not inspire confidence, then only the same could have been discarded. In the written statement the State had specifically stated that the possession of the acquired house properties has been taken after passing the award and making payment to claimants. Whereas the award states that, the possession was taken prior to notification U/Sec.4 of the L. A. Act. Even the Reference Court has failed to come to the conclusion as to the exact date of possession. It does not appear that, it is anybody's case that, the houses were demolished in the year 1992 when the valuer engaged by the present appellants is said to have visited the house properties. The said aspect was required to be discussed by the Reference Court while considering valuation report and/or discarding the same. In fact, case of present appellants rest on the valuation report as far as valuation of house properties is concerned and that is the major claim of present appellants. As far as sale deed is concerned, no doubt, it is after the notification U/Sec. 4 of the L. A. Act, the same is rightly discarded by the Reference Court, because agreement of sale is required to be proved in accordance with the provisions of the

Evidence Act, which does not appear to have been done so."

4. This Court, has, thus, held that the valuation report could not have been outrightly rejected by the Reference Court merely on the ground that, the private valuer has prepared the said report and further that before preparing report or at the time of inspection the valuer has not given notice to the government. For the reasons recorded by this Court in the aforesaid Judgment, the present appeals also deserve to be allowed on similar grounds.

5. Shri. Ganachari, learned AGP appearing for the State pointed out that, the acquiring body has not been made party in the present appeals, without whose presence no effective orders can be passed.

6. Shri. Gunale submitted that, even before the Reference Court the acquiring body was not party and as such in the appeal the acquiring body has not been made respondent. The learned Counsel submitted that, the claimants will add the acquiring body as a party respondent before the Reference Court by making proper application and seeking permission from the said Court.

7. In view of the fact that, the matters have to be remitted back, it does not materially affect whether the acquiring body is party to the present appeals or not. Moreover, now the claimants have undertaken to add the acquiring body as party - respondent before the Reference Court. The acquiring body will, thus, have an opportunity to resist the petitions and to adduce necessary evidence on its behalf also. The appeals, therefore, stand allowed in the aforesaid terms. No order as to costs. R & P be sent back to the Lower Court immediately.

[P.R. BORA]
JUDGE