

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1)

FA NO.2235 of 2016

901 FIRST APPEAL NO. 2235 OF 2016

NAIBRAO RAMRAO SAWANT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Appellant : Mr. P.A. Bhosale h/f Mr.Kale Ajeet B.
AGP for Respondent State: Mr. S.P.Sonpawale

...
CORAM : P.R. BORA, J.
Dated: June 21, 2017

...
PER COURT :-

1. Heard Shri P.A.Bhosale, learned Advocate, h/f Mr. Ajeet B.Kale, learned Counsel appearing for the appellant and Shri S.P.Sonpavale, learned AGP appearing for the respondent State.

2. The appellant has filed the present appeal challenging the judgment and award passed by the Court of Civil Judge, Senior Division, at Jalgaon (hereinafter referred to as the Reference Court) on 7.11.2014 in LAR No.616/2010 (Old No.429/2007). The Reference Court has dismissed the Reference Application so preferred by the present appellant.

3. Perusal of the impugned judgment shows that the Reference Court has rejected the Reference Application mainly on the ground that the appellants i.e. the claimants failed to adduce any oral or documentary evidence to substantiate the claim raised

agp/-

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by them. Shri Shri P.A.Bhosale, learned Advocate, h/f Mr. Ajeet B.Kale, learned Counsel for the appellant, relying upon the judgment of the Honourable Apex Court in the case of **Ramanlal Deochand Shah & Anr. V. State of Maharashtra & Anr. (AIR 2013 SC 3452)** submitted that in view of the ratio laid down in the aforesaid judgment, the matter needs to be remitted back to the Reference Court. Learned Counsel submitted that the claimants undertake to go ahead with the matter after remand without asking for any adjournment and further undertake to adduce the necessary oral as well as documentary evidence from the first given date. Learned Counsel further submitted that the applicants are also ready to waive right of interest on the amount of compensation if enhanced by the Reference Court for the period after closing of the evidence by the Reference Court till today.

4. Learned A.G.P. opposed the submission so made on behalf of the appellants. Learned Counsel inviting my attention to the Roznama submitted that ample opportunities were given by the Reference Court to the claimants to adduce necessary evidence in support of their claim, however, despite availing all those opportunities, since the claimants did not adduce any oral or documentary evidence, the Reference Court has rightly rejected the petition filed by the appellants and has confirmed the award passed by the Special Land Acquisition Officer. Learned A.G.P. submitted that the impugned judgment, therefore, does not require any interference.

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5. I have carefully considered the submissions advanced by the learned Counsel appearing for the parties. In view of the judgment of the Honourable Apex Court in Ramanlal Deochand Shah's case, cited supra, the Reference Court cannot, on the basis of the fact that the claimants did not adduce any oral or documentary evidence, dismiss the claim petition on the said ground. The Supreme Court has made following observations,

"14. The failure or the omission to lead evidence to prove the claim appears in the above context to be a case of some kind of misconception about the legal requirement as to evidence needed to prove cases of enhancement of compensation. We do not in that view see any reason to deny another opportunity to the landowners to prove their cases by adducing evidence in support of their claim for enhancement. Since, however, this opportunity is being granted ex debito justitiae, we deem it fit to direct that if the Reference Court eventually comes to the conclusion that a higher amount was due and payable to the appellant-owners, such higher amount including solatium due thereon would not earn interest for the period between the date of the judgment of the Reference Court and the date of this order. These appeals are with that direction allowed, the judgments and orders impugned in the same modified to the extent that while the enhancement order by the Reference Court shall stand set aside, the matters shall stand remanded to the Reference Court for a fresh disposal in accordance with law after giving to the landowners opportunity to lead evidence in support of their claims for higher compensation. No costs. "

6. In view of the observations so made by the Apex Court, it appears to me that the submission made on behalf of the appellant for remitting the matter back for deciding it afresh by the Reference Court deserves to be considered. Learned Counsel pointed out that this Court also in similar circumstances has earlier

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passed similar orders relying upon the ratio laid down in Ramanlal Deochand Shah's case (cited supra). Learned Counsel submitted that even the Division Bench, in certain matters, has taken similar view and has provided an opportunity to the claimants to substantiate their contention by remitting back the matter.

7. As noted earlier, the appellants have undertaken not to claim any interest of the period since the evidence of the claimants side was closed before the Reference Court till this date. It is, thus, evident that even if the amount of compensation is enhanced by the Reference Court, there would be no burden of interest on the State. For all these reasons, I am inclined to accept the request made on behalf of the appellant. Hence, the following order.

ORDER

(i) The Judgment and Award passed in Reference Application No. LAR No.616/2010 (Old No.429/2007) is set aside.

(ii) The aforesaid Reference Application stands restored to its original file and the matter is remitted back to the Reference Court for deciding the same afresh by providing due opportunity to the parties to the Reference Application to adduce evidence in support of their respective contentions.

(iii) The parties shall appear before the Reference Court on

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(iv) Appellant i.e original claimant shall without seeking any further adjournment from the Reference Court, shall adduce the evidence in support of his claim on the date which may be fixed by the Reference Court. Needless to state that the State would have equal opportunity to cross examine the witnesses which may be examined by the claimants and it would also be open for the State to adduce evidence in support of its defense if so desired.

(v) The Reference Court to decide the Reference Application as expeditiously as possible and preferably within the period of six months from the date of appearance of the parties before it.

(vi) In the event the amount of compensation is enhanced, as undertaken by the claimants, they shall not be entitled for the interest of the period from 17-10-2014 to 21-06-2017.

(vii) The appeal stands allowed in aforesaid terms. No costs.

(P.R. BORA, J.)

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