

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

912 CRA NO. 175 OF 2017

UMARAOSING BHADURSING RAJPUT (DIED) HIS L.RS. SMT.
SUNDARABAI UMARAOSING RAJPUT A

VERSUS

THE STATE OF MAHARASHTRA THROUGH COLLECTOR,
OSMANABAD AND ANOTHER

...

Advocate for the Applicant : Mr. Ingale Vivekanand V.
AGP for Respondent/State : A.M. Phule.

CORAM : K. L. WADANE, J.

DATE : 11th October, 2017

ORDER:

1. With the consent of the parties, this Civil Revision Application is taken up for final hearing.

2. Heard learned Counsel appearing for the applicant and the learned A.G.P. appearing for the respondents/State.

3. The applicants were owner of land Sy. No. 36 admeasuring 01-H 21 Are, situated at village Tawasigad Tq. Omerga, District Osmanabad. The aforesaid property is acquired by the acquiring body for the purpose of construction of village Tawashigad. It is alleged that, the Special Land Acquisition officer awarded meagre amount of compensation for the acquired land of the claimants, therefore, claimants have preferred

reference under section 18 of the Land Acquisition Act and it was initially filed in the office of Special Land Acquisition Officer at Osmanabad who referred it to the Civil Judge, Senior Division, Osmanabad, and after formation of Civil Judge, Senior Division Court at Omerga the aforesaid reference came to be transferred to the Omerga Court.

4. It is further contended that, at the time of the hearing of the matter the claimants and their learned advocate remained absent and failed to adduce their evidence, therefore, the learned Reference Court dismissed the Land Acquisition Reference No. 994/2009 on 23.01.2014. The learned counsel appearing for the present applicants/original claimants submits that the matter needs to be remanded.

5. Learned A.G.P. for the respondents/State opposes the request on the ground that sufficient opportunity was given to the claimants to adduce their evidence. Learned A.G.P. further submits that the claimants and their advocate remained absent at the time of hearing and failed to adduce any sort of oral as well as documentary evidence to support his claim. Therefore it cannot be said that no opportunity was given.

6. I have carefully gone through the reasons recorded by the Reference Court, particularly, in para No. 15 of the judgment, wherein, it is mentioned that the claimants though challenges the award but failed to adduce oral evidence in support of his claim. The claimants though given sufficient opportunity failed to adduce oral evidence to substantiate their claim and therefore in absence of evidence from the side of claimant, the compensation awarded by the Land Acquisition Officer found to be proper and reasonable.

7. From the reasons recorded by the Reference Court, it appears that, the claimants and their learned advocate were absent therefore no oral as well as documentary evidence was adduced to prove the claim. In spite of the fact, I am of the opinion, since the immovable property of the claimants is acquired therefore, the matter needs to be adjudicated on merits.

8. The learned counsel appearing for the applicants/claimants relied upon the observations in case reported in 2011 (3) Mh.L.J.(Narayan Deorao Gore V/s. State of Maharashtra) to contend that, Civil Revision Application is maintainable when the parties

have not adduced their evidence in the Reference Court.

9. I have gone through the observations of the above cited case and I am of the opinion these observations are applicable to the facts of the present case.

10. In view of the above, I am of the opinion an opportunity must be given to the claimants to adduce their evidence. Therefore, matter needs to be remanded. While remanding the matter it is to be noted that at the time of condonation of delay in filing the Civil Revision application this Court passed an order that the claimants/applicants will not be entitled for the monetary benefits of interest during the period of delay which is sought to be condoned. While deciding the Reference, the Reference Court has to take note of the order passed by this Court while condonation of delay.

11. Civil Revision Application is allowed.

12. Judgment and Order passed in Land Acquisition Reference No. 994/2009 dated 23.01.2014 is hereby quashed and set aside.

13. The matter is remanded to the Reference Court

for disposal in accordance with law. Learned Reference Court shall give opportunity to both the sides to adduce their evidence and after hearing both the sides the Reference Court shall decide the reference within a period of six months from the date of the appearance of the parties.

14. Parties are directed to remain present in the Reference Court on 27.11.2017. No separate notices are required.

15. Civil Revision Application is disposed of.

(K. L. WADANE, J.)

mkd