

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3390 OF 2016.

1. Dagadabai w/o Manikchand Fulpagar
(Died, Lrs)
- 1-A) Mangilal s/o Manikchand Fulpagar,
Age: 50 Yrs., occu. Busines,
R/o Kasari Bazar, Aurangabad,
District Aurangabad. = **APPELLANT**
(orig. claimant)

VERSUS

- 1) The State of Maharashtra
For the Special Land Acquisition
Officer (Vishesh Ghatak),
Collector Office, Aurangabad.
- 2) The Municipal Corporation,
Aurangabad, through the
Commissioner. = **RESPONDENT/S**

Mr.Pratap P.Mandlik, Advocate for Appellant;

Mr.SP Sonpawale,AGP for Respondent No.1;

Mrs.Manjusha Deshpande, Adv. For Resp.No.2.

CORAM : P.R.BORA, J.

DATE : 19th July,2017.

ORAL JUDGMENT:

- 1) Heard. Admit. With consent of learned
counsel appearing for the parties, taken up for
final disposal.

2) The present appeal is filed against the judgment and award passed by the Court of Joint Civil Judge, Senior Division (Corporation Court, Aurangabad) in LAR No.22/2012 (old LAR No. 21/1998) decided on 19th June, 2014.

3) The aforesaid Reference application was filed by one Dagadabai w/o Manikchand Fulpagar under Section 18 of the Land Acquisition Act, (for short the Act) claiming enhancement in the amount of compensation, as was offered by the Special Land Acquisition Officer. The property belonging to said Dagadabai was acquired by the respondent corporation for widening of the road. The Special Land Acquisition Officer had offered the compensation of Rs.25,00,049/- and dissatisfied with the amount of compensation so offered, the application under Section 18 of the Act was preferred by the original claimant.

4) The Reference Court has dismissed the Reference application mainly on the ground that

the claimant did not adduce any evidence in order to substantiate the claim raised by her in the Reference application.

5) Shri Mandlik, learned Counsel appearing for the appellants, submitted that during pendency of the reference application, original claimant Dagadabai died on 25th December, 2012. Since the legal heirs of deceased Dagadabai were not aware of the progress in the reference application filed by her, they could not be brought on record in the reference application and the reference application was ultimately dismissed by the Reference Court vide the impugned judgment and order dated 19th June, 2014.

6) The learned counsel submitted that the present appeal is filed by the legal heirs of deceased Dagadabai. The learned Counsel submitted that the Reference Court could not have dismissed the reference application on the ground that the claimant did not adduce any evidence in order to

substantiate her claim. Placing reliance on the judgment of the Hon'ble Apex Court in the case of Ramanlal Deochand Shah Vs. State of Maharashtra - (AIR 2013 SC 3452), the learned Counsel submitted that opportunity needs to be given to the legal heirs of Dagadabai to prove their claim by adducing necessary evidence there for and the reference application requires to be decided on merits. The learned Counsel, therefore, at the first place, prayed for remanding the matter to the Reference court for deciding it afresh by giving due opportunity to the present appellants, to adduce necessary evidence in support of their claim.

7) The learned Counsel further submitted that the appellants have also filed a separate application seeking leave to adduce the evidence before this Court so that the matter can be decided by this Court in the First Appeal.

8) Smt. Deshpande, leaned Counsel appearing

for the respondent - Corporation, has opposed the submissions made on behalf of the appellants. The learned Counsel submitted that the reference application was filed by the original claimant in the year 1998 and from the record it is evident that the same was not prosecuted for long 16 year, and claimant did not make any effort to adduce evidence in support of her claim and that was the reason that the reference court was ultimately constrained to dismiss the same for want of any evidence. The learned Counsel submitted that without any sufficient reason being brought on record by the appellants, no interference is warranted in the impugned judgment and award.

9) In the alternative, the learned Counsel submitted that in view of the judgment of the Hon'ble Apex Court in the case of Ramanlal Shah (cited supra), if the Court inclines to remit back the matter to the reference court for deciding it afresh, as has been held in the said

judgment by the Hon'ble Apex court, the claimants shall be dis-entitled from claiming interest of the period which was consumed because of the negligence or inaction on their part.

10) I have carefully considered the submissions made on behalf of the learned Counsel appearing for the appellants and learned Counsel appearing for the respondents. On perusal of the impugned judgment, it is evident that the Reference Court has dismissed the reference application mainly on the ground that the claimant did not adduce any evidence in order to substantiate her claim. In view of the law laid down by the Hon'ble Apex Court in the case of Ramanlal Shah, the said course was impermissible for the reference court.

11) In the circumstances, as has been held by the Hon'ble Apex Court in the case of Ramanlal Shah (cited supra), the matter will have to be remitted back to the reference court for deciding

it afresh. While doing so, the submission made on behalf of the learned counsel appearing for the respondent corporation also deserves to be considered. The reference application was filed in the year 1998. Though, there is nothing on record to concretely show as to because of whose negligence or inaction, the reference application could not be proceeded further, a reasonable inference can be drawn that when the reference application remained pending for long 15 - 16 years, some blame is definitely attributable on the part of the original claimant also. In such circumstances, though I am inclined to condone the delay, I deem it appropriate to disentitle the claimants from award of interest of the period of delay caused in prosecuting the matter by them. Hence, the following order -

ORDER

- i) The Judgment and Award dated 19th June, 2012 passed by learned Civil Judge, Senior Division, (Corporation

Court), Aurangabad, in LAR No.22/2012 is quashed and set aside. The matter is remitted back to the reference court for deciding it afresh by giving due opportunity to the parties to the *lis*;

ii) It is clarified that the appellants/claimants shall not be entitled for interest payable under the provisions of the Land Acquisition Act from 19.6.2014 till the date of this order, on the enhanced amount of compensation if the same is enhanced by the Reference Court.

iii) In view of the fact that the original reference application was filed in the year 1998, the reference court shall make endeavour to expeditiously dispose of the reference application and preferably within the period of eight months from the date of this order.

iv) The appeal stands allowed in the aforesaid terms, however, without any order as to costs. Pending civil application, if any, stands disposed of.

(P . R . BORA)
JUDGE

bdv/