

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

913 FIRST APPEAL NO. 873 OF 2017

PRABHU MANSING RATHOD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Appellant : Mr. Rakh Asha D.
AGP for Respondent Nos.1 & 2 : Mr. S. N. Morampalle.
Advocate for Respondent No.3 : Mr. Avinahs D. Aghav.

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CORAM : **V. K. JADHAV, J.**
DATE : 19th July, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Joint Civil Judge Senior Division, Jalna dated 23rd July, 2014 in LAR No.1796 of 2010 (Old No.21 of 2005), the Claimant has preferred this appeal.

3 Brief facts giving rise to the present appeal are as follows:

- a) The agricultural land owned and possessed by the Appellant / Claimant came to be acquired by the Government for the purpose of construction of percolation tank of village Bori, Taluka Ambad,

District Jalna. The Special Land Acquisition Officer has awarded the compensation at the rate of Rs.355/- per Are. Being dissatisfied with the inadequate compensation awarded by the Special Land Acquisition Officer, the Appellant / Claimant has preferred the aforesaid land acquisition reference petition.

- b) The Joint Civil Judge Senior Division, Jalna vide impugned judgment and award dismissed the reference petition for want of evidence. The Reference Court has observed that the Appellant / Claimant has not adduced evidence even after lapse of 1 and 1/2 years after framing the issues. The learned counsel for Appellant / original Claimant submits that the Appellant / Claimant is a poor agriculturist and due to the aforesaid acquisition, he has to shift to some other place for earning his livelihood. The learned counsel submits that though the reference petition was filed in the year 2005, the Reference Court has framed the issues on 10th December, 2012 i.e. after lapse

of seven years. However, the Reference Court has dismissed the reference petition for want of evidence on the ground that during the period of 1 and 1/2 years only the Appellant / Claimant has not adduced evidence. The Appellant / Claimant was prevented from sufficient cause to appear before the Court and adduce evidence.

4 The learned counsel for Respondent / acquiring body submits that though sufficient opportunity was given to the Appellant / Claimant, he has failed to adduce evidence before the Court. Even though his right to lead the evidence was forfeited and the matter was posted for evidence of Respondents even thereafter, the Appellant / Claimant has not adduced any evidence. The Reference Court has therefore, rightly dismissed the reference petition. No interference is required.

5 On perusal of the impugned judgment and award and the record and proceedings, it appears that the reference petition was filed in the year 2005 bearing LAR No.21 of 2005 (Old), however, on 10th December, 2012, issues were framed by the Reference Court. The Appellant / Claimant has left the village to earn his livelihood and as

such, he could not appear before the Court after 2012 to adduce the evidence. In view of the same, one more opportunity should be given to the Appellant / Claimant, whose land came to be acquired by the Government for the purpose of construction of percolation tank and according to the Appellant / Claimant, the Special Land Acquisition Officer has not awarded just and reasonable compensation. Hence, the following order:

ORDER

- I. The appeal is hereby partly allowed. No costs.
- II. The judgment and award passed by the learned Joint Civil Judge Senior Division, Jalna dated 23rd July, 2014 in LAR No.1796 of 2010 (Old No.21 of 2005), is hereby quashed and set aside.
- III. The matter is remanded to the Reference Court for deciding the same afresh with the following directions:
 - a) Re-admit LAR No.1796 of 2010 (Old No.21 of 2005) to its original number.

- b) The Appellant / Claimant is at liberty to adduce oral and documentary evidence in support of his contentions and the Respondents are also at liberty to adduce oral and documentary evidence in rebuttal.
 - c) The Appellant / Claimant shall appear before the Reference Court on 16th August, 2017 and the Reference Court shall decide of the said reference petition afresh within three months from the date of appearance.
- IV. Record and proceedings be returned to the Reference Court forthwith.
- V. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]