

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 1005 OF 2017
WITH
CIVIL APPLICATION NO. 3973 OF 2005
IN
FIRST APPEAL NO. 1005 OF 2017**

Konkan Railway Corporation Ltd. ...Appellant

Versus

Sau.Shamal Suresh Kolage & Anr. ...Respondents

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Ms.Kiran Bagolia i/b. Ms.Lalita Panchakshari for the Appellant.
Mr.Sanskar Marathe for Respondent No.1.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: SEPTEMBER 20, 2017**

P.C. :

1. This appeal is directed against the judgment and order dated 20.01.2001 passed by the learned Civil Judge, Senior Division, Ratnagiri, in Land Reference No. 144 of 1994 thereby allowing enhancement in the compensation in favour of the original claimant i.e. respondent no.1.

2. This application is for leave to file First Appeal.

3. The appellant is an acquiring body and going to pay compensation from its purse to the original claimant.

4. Learned counsel for the appellant i.e. Konkan Railway has submitted that the appellant was not a party in Land Reference No. 144 of 1994 and after obtaining leave, this appeal is filed. She has further submitted that as the appellant was not a party to the land reference, they could not lead any evidence. The State Government, who was a party to the said land reference, did not examine any witness and, therefore, the learned counsel for the appellant submitted that being the appellant i.e. the acquiring body, the matter be remanded back to the learned Civil Judge, Senior Division, Ratnagiri. In support of her submissions, she relied on the judgment of this Court passed in ***First Appeal No. 1003 of 2003 in Land Reference No. 45 of 1995*** decided on ***01.03.2005***. (*Konkan Railway Corporation Ltd V/s. Shri.Ganpat Sonu Khedekar & Anr.*). In the said case, in the same project of Konkan Railway, the Division Bench of this Court has remanded the matter for fresh trial.

5. While responding this, learned counsel for respondent no.1 has submitted that this matter not to be remanded back to the trial Court in

view of the judgment of the Supreme Court in the case of ***Satish Kumar Gupta and Anr. Versus State of Haryana And Ors.*** reported in ***AIR 2017 SCC 172***, wherein it is held that after allotment by the State Government, the allottee has no locus to contest the claim for enhancement of compensation. The said ratio is applicable to the present case. In the said case, the appellant i.e Konkan Railway is an allottee and, therefore, the appellant has no locus to contest the claim for enhancement of compensation before the Reference Court.

6. Learned counsel of both the parties submit that the appellant/ Konkan Railway had deposited an amount of Rs. 1,61,182/- on 08.12.2004 in the trial Court.

7. Learned counsel for respondent no.1 has submitted that till date the claimant has not withdrawn any amount. She be allowed to withdraw the said amount. He has further submitted that the application for withdrawal of the amount has not been filed.

8. In the case of ***Satish Kumar Gupta and Anr.(supra)***, the State Government had acquired the lands for setting up industrial model township by the Haryana State Industrial Development Corporation and substantial part of the acquired land was allotted by the Haryana State Industrial Development Corporation to Maruti Suzuki India Limited. A

Conveyance Deed was executed in favour of the allottee wherein it was mentioned that in the event of enhancement in the compensation, the allottee shall be liable to pay additional price on that basis and thus, it was accepted by the company. In the present case, the land was acquired pursuant to the requisition of Konkan Railway and as per notification issued under Section 4 (1) of the Land Acquisition Act, the name of Konkan Railway project is mentioned and, therefore, Konkan Railway has locus to contest the land reference claim.

9. In view of the above submissions, I remand back this matter to the Civil Judge, Senior Division, Ratnagiri, under Rule 23 A Order 41 of the Code of Civil Procedure and pass the following order:

ORDER

- (i) The order dated 20.01.2001 passed by the learned Civil Judge, Senior Division, Ratnagiri is hereby set aside.
- (ii) The application for withdrawal of the amount has not filed by the claimant; however, in all fairness as the claimant is an old lady, she is allowed to withdraw 70% of the amount of compensation deposited by the appellant/Konkan Railway.

- (iii) The Registrar (Judicial) is directed to send the papers immediately to the Court of Civil Judge, Senior Division, Ratnagiri.
- (iv) Parties to appear before the trial Court on 04.10.2017 at 11.00 a.m. without fail.
- (v) The appellant/Konkan Railway is to be impleaded in the land reference as a party opponent on the same day. Necessary steps are to be taken. The appellant/Konkan Railway shall disclose a list of the witnesses, which they want to examine thereafter within a period of one week.
- (vi) The original claimant may cross examine those witnesses and the earlier oral and documentary evidence tendered by the claimant shall remain on record as it is.
- (vii) The trial Court after considering the evidence, which is recorded earlier and available and which will be tendered by the appellant/Konkan Railway shall decide the matter on or before 15.01.2018.

10. First Appeal is disposed of accordingly.

11. In view of disposal of the Appeal, Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)