

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 47 OF 2017

TULSHIRAM S/O NAROBA DEVKATTE DIED THR LRS
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Petitioners : Shri Nagargoje Ankush N.
AGP for Respondents: Shri Tambe S.K.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 17, 2018

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PER COURT :-

1. The applicants, who are L.Rs. of the original claimant, are aggrieved by the order dated 30.11.2009, by which, LAR No. 558 of 2001 (Old No. 405 of 1994), has been dismissed only because the applicant / deceased had not led evidence. It is not disputed that the original applicant Tulshiram passed away during the pendency of the LAR proceedings. This aspect was not brought to the notice of the Court and steps were not taken to bring the L.Rs. on record as these applicants were not aware about the pending LAR claim.

2. I have considered the strenuous submissions of the learned Advocates for the applicants and the learned AGP. It is strenuously contended on behalf of the State that the laxity and

negligence on the part of the applicants has led to the dismissal of the LAR proceedings. In numerous matters before this Court, such applicants have been deprived of the interest component on the enhanced amount of compensation.

3. By order dated 17.2.2017 passed on Civil Application No.975 of 2016, this Court has exhaustively considered the circumstances cited by these applicants as the grounds for condonation of delay in filing the Civil Revision Application. The statement of the applicants that they would waive the interest component from 2003, which is the year in which the original claimant passed away, till 10.12.2015, as recorded in paragraph No.4 of the order.

4. Learned counsel for the applicants submits, on instructions, that the applicants stand by the statement made by them as has been recorded in paragraph No.4 of the aforesaid order.

5. In the matter of Appasaheb Mohanrao Chede Vs. State of Maharashtra and another [2011 (2) All M.R. 255], this Court has considered an identical case and has observed in paragraph No.9 as under:-

“9. Coming to the first contention of the Counsel appearing for the revision petitioner that Land Acquisition Reference should not have been rejected, on the ground of not filing documentary evidence is concerned, this Court in case of *Kawadu Madha v. Bansod (supra)*, has taken a view that the said order rejecting the reference on the ground of failure of the revision petitioner to adduce evidence cannot be taken to be adjudicated, and therefore, same cannot be treated to be an Award. Therefore, the ground i.e. no documentary evidence is filed by the revision petitioner, cannot be a ground to reject the reference. This Court in the aforesaid case in para No. 7 has observed thus:

It is true that the adjudication made by the Civil Court on the reference has to be regarded as an award, whether an enhanced compensation is given or not. But in that event the Court should consider the material on record, even if the party is absent and has failed to adduce evidence. Unless the material on record is considered the order cannot be said to be an adjudication. In the instant case the ground given for the dismissal of reference by the Civil Court is that the applicant (present revision petitioner) remained absent and did not adduce any evidence to show that a proper compensation was not paid to him and that he is entitled to more compensation than paid. The above order clearly shows that the reference was dismissed only for the reason of failure of the applicant (present revision

petitioner) to adduce evidence. Thus the material on record is not considered by the Civil Court. It is not considered as to how the compensation awarded by the Land Acquisition Officer was correct. So the order cannot be taken to be an adjudication and therefore the same cannot be treated to be an award. The order passed by the Civil Judge, Senior Division, Yavatmal also cannot be treated to be a dismissal of the reference in default. The learned Counsel for revision petitioner submitted that the case could not be dismissed in default also.

(Emphasis supplied).

Therefore, in my opinion, the Court below should not have rejected the reference, on the ground of failure of the revision petitioner to adduce evidence.

Yet in another unreported Judgment in the case of *Shri Kamalkar S/o Laxman Suryawanshi v. State of Maharashtra in Civil Revision Application No. 1965 of 2005* and in other two connected matters, this Court has taken a similar view. Therefore, I have no hesitation, to hold that the reference filed by the revision petitioner, should not have been dismissed, merely on the ground of failure of the revision petitioner to adduce evidence.”

Therefore, in my opinion, the Court below should not have rejected the reference, on the ground of the failure of the revision petitioner in adducing evidence.

6. In view of the above and in the light of the order of this Court dated 17.2.2017, this application is allowed. The order dated 30.11.2009 is quashed and set aside and LAR proceeding No.558 of 2001 is restored to the file of the learned Joint Civil Judge (S.D.), Ahmedpur on the following conditions:-

(A) The litigating sides shall appear before the LAR Court on 10.8.2018.

(B) In the event, the LAR proceedings are allowed, the applicants would be deprived of the interest component from 18.11.2003 (date of demise of the original claimant) till 10.12.2015.

(C) An application shall be filed forthwith on 10.8.2018, by these applicants, seeking leave to be brought on record in place of the deceased original claimant.

(D) The applicants would commence the recording of their oral evidence on/or before 24.8.2018 and shall refrain from seeking adjournments on unreasonable and trivial grounds.

(E) Keeping in view that the LAR proceedings were originally lodged on 2.7.1994, the LAR Court would give precedence to this proceeding and shall decide

**the same as expeditiously as possible and in any case
on/or before 28.2.2019.**

(RAVINDRA V. GHUGE, J.)

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