

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

FIRST APPEAL NO. 4475 OF 2017

Govind s/o Shamrao Bansode,
age Major, occ. Agril.,
R/o Gategaon,
Tq. and Dist. Latur

...Appellant
[Orig. Claimant)]

VERSUS

1] The State of Maharashtra,
through the Collector, Latur,

2] The Executive Engineer,
Minor Irrigation Division,
Latur

...Respondents

...

Advocate for Appellant : Shri G.K.Sontakke
AGP for Respondent no.1 : Mr. S.P.Deshmukh
Advocate for Respondent no. 2 : Mr. Ram Deshpande

...

CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING

THE JUDGMENT : 18.9.2018

DATE OF PRONOUNCEMENT

OF JUDGMENT : 21.9.2018

J U D G M E N T :

This appeal is directed against the order, passed by the Second Joint Civil Judge, Senior Division, Latur, in Land Acquisition

Reference No. 1273 of 1999, dismissing the said Land Reference.

2. Heard Shri V.K.Sontakke, learned counsel for the appellant, Shri S.P.Deshmukh, learned AGP for respondent no.1 and Shri Ram Deshpande, learned counsel for respondent no. 2.

3. Learned counsel for appellant submits that learned Trial Court rejected the Land Reference without awarding any opportunity to the appellant to lead sufficient evidence. He submits that though the Trial Court considered the sale instance referred by the Land Acquisition Officer in the award, the said sale deed was not filed on record by the respondents. Therefore, the appellant did not get opportunity to examine that document and to assail its suitability. He prays for remand of the matter for getting suitable opportunity to lead additional evidence in support of his contention. He placed reliance on the judgments in the case of **"Gurudas Gopal Pai and anr. Vs SLAO and anr."** [2013 (4) Bom CR 214], in

the case of **"Babu Wadikar vs State of Maharashtra and others"** [First Appeal No. 2502 of 2016, decided on 6.6.2017], and in the case of **"Narayan Vithu Vaigaonkar vs Deputy Collector and Land Acquisition Officer"** [2013 (2) Bom CR 789].

4. Learned counsel for respondent no.2 supported the judgment, passed by the Trial Court, on the ground that the sale instance referred to by the Trial Court while dismissing the Land Reference is of the land, situated near the acquired land. He submits that the subject sale instance of the land was prior to issuance of notification under Section 4(1) of the Land Acquisition Act. It was of the land situated in same village, from where the land of claimant was acquired. He points out that the sale instance relied by the claimant (Exh.17) is of Gat No.51, situated at village Sakhara, which is not adjacent village. He submits that sufficient opportunity was given to the appellant. In the alternate, he submits that if matter is remanded, interest and statutory benefits

may be waived from the date of passing of the award till the date of judgment of this appeal.

5. Learned AGP supports the judgment, passed by the Trial Court.

6. I have gone through the judgment in the case of **Gurudas Gopal Pai and anr. Vs SLAO and anr.** (supra). The ratio of these all authorities is that opportunity of leading oral and documentary evidence needs to be given to the claimants in Land Reference matter.

7. In the case at hand, after going through the judgment, passed by the learned Trial Court, it emerges that because the claimant filed sale instance, dated 12.12.1996 of Gat No. 51 of the land situated at village Sakhara, which is 5 kms. away from the acquired land, learned Trial Court discarded that sale instance on the ground that the acquired land is situated at village Ghategaon. The Trial Court relied on sale instance referred by the Land Acquisition Officer in the award of Gat

No. 205, dated 19.2.1996 of the land situated at village Ghategaon.

8. It is to be noted that no doubt sale instance of Gat No. 51, dated 12.12.1996 (Exh.17) relied by the claimant is of the village Sakhara, that does not mean that the land which was subject of that sale instance, was not land in proximity to the acquired land, regarding quality, potentiality, situation and other relevant factors. The sale instance of Gat No. 205, dated 19.2.1996 relied by the Trial Court was not placed on record, it was not perused by the Trial Court as to whether it was comparable sale instance or not. Learned Trial Court blindly accepted the same as comparable sale instance. No opportunity was given to the claimant to cross-examine the witness on the sale instance relied by respondent no.2. Thus, it emerges that the learned Trial Court hastily disposed of the Land Reference without awarding fair opportunity to the claimant to lead appropriate oral and documentary evidence.

9. Therefore, in view of law settled by this Court in above referred authorities, to give fair opportunity to the claimant, the Land Reference No. 1273 of 1999 deserves to be remanded to the same Court for re-consideration after awarding opportunity of leading additional oral and documentary evidence to both the parties. The delay caused in filing the appeal is waived by this Court, subject to condition that the claimant will not be entitled to interest and other statutory benefits for the period of delay. Therefore, specific instructions are to be given to the Trial Court not to award interest and statutory benefits to the claimant for the period of delay condoned by this Court by passing the order, dated 31.8.2017.

10. Before parting with the judgment, I prefer to consider the objection regarding payment of deficit court fee. After going through the appeal, it emerges that the appellant claims total compensation of Rs. 13,33,652/-. However, for payment of court fee, he restricted claim of Rs.25,000/- and paid the court fee on the said

amount. Such practice of the appellant is not permissible under law. The appellant has to pay court fee on entire claim amount of Rs.13,33,652/- in accordance with rules. Therefore, direction needs to be given to the Registrar (Judicial) to recover the deficit court fee from the appellant as per rules.

11. Hence the following order.

(i) First Appeal No. 4475 of 2017 is allowed.

(ii) The judgment and award, passed by Second Joint Civil Judge, Senior Division, Latur, in Land Acquisition Reference No. 1273 of 1999 is set aside.

(iii) Land Acquisition Reference No. 1273 of 1999 is remanded to the Court of Civil Judge, Senior Division, Latur, for re-consideration after awarding reasonable opportunity to the claimant and to the respondents to lead additional oral and documentary evidence in support of their respective contentions.

(iv) The Trial Court shall re-assess the entire additional evidence as well as

evidence already placed on record.

(v) The Trial Court shall not award interest or any other statutory benefits to the claimant from 12.2.2004 till 31.8.2017 while passing fresh award.

(vi) The appellant and the respondents shall remain present before the Trial Court on 7.1.2019 for receiving further directions from the Trial Court.

(vii) The Registrar (Judicial) to recover deficit court fee from the appellant in accordance with law and rules.

(viii) The parties to bear their respective costs.

[SUNIL K.KOTWAL, J.]

dbm