

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

**901 FIRST APPEAL NO. 1338 OF 2003
WITH CA/1956/2001 IN FA/1338/2003**

- . Maharashtra State Electricity Board
Through the Executive Engineer M.S.E.B.,
Jalgaon. ..Appellant

VERSUS

- 1) Trimbak s/o Mahadu Zambre
(deceased L.Rs.)
- 1-A) Smt.Narmadabai w/o Trimbak Zambre
Age: 68 years, Occu.: Household
- 1-B) Pandit s/o Trimbak Zambre
Age: 62 years, Occu.: Nil
- 1-C) Subhash s/o Trimbak Zambre
Age: 57 years, Occu.: Agril.,
- 1-D) Sharad s/o. Trimbak Zambre
(deceased L.Rs.)
- 1-D-A) Bindubai w/o Sharad Zambre
Age: 36 years, Occu.: Household
- 1-D-B) Prashant s/o Sharad Zambre
Age: 16 years, Occu.: Nil
- 1-D-C) Rajendra s/o Sharad Zambre
Age: 12 years, Occu.: Nil
Applicant 1-D-B & 1-D-C are
under guardianship of applicant
1-D-A)
All R/o.Fekari, Tq.Bhusawal,
Dist.Jalgaon.

- 2) The Special Land Acquisition Officer,
U.T.P.I., Jalgaon. ..Respondents

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Advocate for Appellant : Mr.Sanjay V.Mundhe
Advocate for Respondent Nos.1-C and G.P.A. of 1-A, 1-B,
1-D-A to C: Mr.V.G.Kodale h/f. Mr.V.D.Gunale
AGP for Respondent/State : Mr.A.M.Phule

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CORAM : M.S.SONAK, J.
DATE : 15th February, 2018

ORAL JUDGMENT:-

- 1) Heard the learned counsel for the parties.
- 2) Mr.Sanjay Mundhe learned counsel for the appellant submits that the appellant is acquiring body for the benefit of whom the acquisition proceedings came to be instituted by the State Government. He points out that the compensation amount is actually required to be paid by the appellant herein. He submits that notwithstanding the mandate of Section 50 of the Land Acquisition Act, 1894, the appellant was never impleaded as a party before the Reference Court or given any opportunity to adduce

the evidence for the purpose of fixation of rate of the compensation. He submits that since there is non-compliance of this mandatory provision, the impugned Judgment and award dated 27.4.1998 is required to be set aside, the matter be remanded to the Reference Court for fresh adjudication by afford of opportunity of adducing evidence to the appellant herein. He relies on ***Agra Development Authority Vs. Special Land Acquisition Officer and others [AIR 2001 SC 992]*** and ***Delhi Development Authority Vs. Bhol Nath Sharma [AIR 2011 SC 428]*** in support of his submissions.

3) Mr.A.M.Phule learned AGP supports the contention of Mr.Sanjay Mundhe and also urges remand after setting aside the impugned Judgment and award.

4) Mr.V.G.Kodale learned counsel, who holds for Mr.V.D.Gunale leaned counsel submits the appellant was thereby aware of the proceedings but did not seek any

impleadment before the Reference Court. He points out that the enhancement awarded by the Reference Court is well within the limits prescribed in the Government Resolution dated 3.11.2016 as amended from time to time. He submits that no portion of the enhancement compensation has been paid to the respondents/claimants, even though the execution of the Reference Court award had never been stayed by this Court. He submits at this point of time that almost after 20 years, an order of remand will be quite harsh and therefore, the appeal itself be dismissed in the interest of justice.

5) Upon due consideration of the rival contentions, quite reluctantly the contention of Mr.V.G.Kodale will have to be rejected and again quite reluctantly the contentions of Mr.Sanjay Mundhe learned counsel and Mr.A.M.Phule learned AGP will have to be accepted. This is because there is no dispute that the appellant is the acquiring body, which is ultimately required to pay the

compensation amount or the enhanced compensation amount. There is really no dispute that the appellant is "person interested" within the meaning assigned under Section 3(b) of the Land Acquisition Act, 1894 (said Act).

6) Section 50 of the said Act provides that where the provisions of this Act are put in force for purpose of acquiring land at the cost of any fund controlled or managed by a local authority or any company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or company. Sub-Section 2 of this Section further provides that in any proceedings held before the Collector or Court in such cases the local authority or company concerned may appear and adduce evidence for purpose of determining the amount of compensation. The proviso makes it clear that no such local authority or company shall be entitled to demand a reference under Section 18.

7) In **Agra Development Authority** (supra) Hon'ble Supreme Court, after noticing that the appellant had not been given any opportunity to adduce evidence for the purpose of fixation of rate of compensation remitted the matter to the Special Land Acquisition Officer for re-fixing amount after giving notice. In **Delhi Development Authority** (supra) the award of the Reference Court was set aside and the matter was remitted to the Reference Court for fresh adjudication after afford of opportunity to the acquiring body.

8) Mr.Sanjay Mundhe learned counsel makes it clear that the appellant will be satisfied if the impugned Judgment and award made by the Reference Court is set aside and the matter is remitted to the Reference Court for fresh adjudication in time-bound manner. He as well as Mr.A.M.Phule learned AGP assure this Court that they will co-operate with the Reference Court for expeditious disposal of the reference, should this Court consider a

remand with time-bound directions.

9) Taking into consideration the aforesaid position, the impugned Judgment and award dated 27.4.1998 made by the Reference Court is hereby set aside and the matter is remanded to the concerned Reference Court for fresh adjudication and disposal of L.A.R. No.242 of 1993 in accordance with law and on its own merits.

10) The respondents/claimants as well as the State Government is granted an option to either proceed on the basis of evidence, which is already recorded or to lead fresh evidence or to lead additional evidence. The Reference Court has however, accord opportunity to the appellant to adduce evidence after formally impleading the appellant as a party to the reference proceedings.

11) Since, the impugned award is not set aside on merits i.e. upon evaluation of the evidence already recorded, it

is made clear that all contentions of all parties are kept expressly open for determination of the Reference Court. The Reference Court is further directed to dispose of the Reference Court as expeditiously as possible and in any case within four months from the date of production of authenticated copy of this order.

12) The parties/their representatives are directed to remain present before the Reference Court on 5.3.2018 and produce authenticated copy of this order.

13) All concerned, including the Reference Court to act on the basis of authenticated copy of this order.

14) The appeal is allowed in the aforesaid terms. There shall be no order as to costs.

15) Registry is directed to transmit the record and proceedings to the concerned Reference Court forthwith and in any case before 5.3.2018.

16) Civil application does not survive and the same is disposed of.

[M.S.SONAK, J.]