

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1230 OF 2017

KALAWATIBAI RANGNATH KARAD DIED LRS ELWANT RANGNATH
KARAD DIED LRS SHANTABAI ELWANT AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Patil Vijay B.

AGP for respondent Nos. 1 and 2: Mr. S.N. Morampalle

Advocate for Respondent No.3 : Mrs. Kutti Choudhary Chaitali R.

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CORAM : V. K. JADHAV, J.

DATED : 7th FEBRUARY, 2018

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. Being aggrieved by the order dated 02.01.2017 passed below Exh.64 in L.A.R. No. 468 of 2010, by the learned C.J.S.D. Nanded the original claimants have preferred this writ petition.
3. Brief facts giving rise to the present writ petition are as follows:-

The petitioners have filed Land Acquisition Reference No. 468 of 2010 under section 18 of the Land Acquisition Act for determination and enhancement of compensation amount in respect of land Gat No. 172 admeasuring 1 Hectare and 70 R, alongwith trees, land Gat no. 172 A/A admeasuring 1 Hectare and 70 R,

alongwith trees and land Gat no. 175 admeasuring 1 Hectare 88 R, alongwith trees, as detailed in the claim petition. During pendency of the said reference petition, the petitioners-original claimants filed an application Exh.64 seeking amendment in the reference petition under the provisions of Order VI Rule 17 of C.P.C. The learned Joint C.J.S.D. Nanded, by order dated 02.01.2017, rejected the said application. Hence, this writ petition.

4. Learned counsel for the petitioners submits that in para 2 of the original reference petition, the petitioners have claimed compensation for acquisition of agricultural land and also the trees as detailed in the said para. Learned counsel submits that the claimant No.1/1, who is no more, was the Karta of the family and during his life time, he got valued the said trees standing in the acquired land with the help of a private valuer. The claimants, however, after adducing the evidence of claimant 1/6, came to know about the said valuation report and accordingly filed an application Exh.64 seeking amendment in the reference petition. Learned counsel submits that in terms of the said report of the private valuer, the petitioners original claimants are seeking amendment in the reference petition to the extent of rate, per tree. Learned counsel submits that the claimant No. 1/1 died in the year 2014 and thereafter the petitioners adduced evidence in support of their contentions raised in the

reference petition. Learned counsel submits that the proposed amendment would not change the nature of the reference petition in any manner. Even the respondent State as well as the acquiring body have also not disputed the existence of trees as the same has been mentioned in the award.

5. Learned counsel for the petitioners, in order to substantiate his contentions, placed reliance on the judgment in the case of ***Sumer Builders Pvt. Ltd. vs Sadhana Textiles Mills Pvt. Ltd. and others*** reported in ***2015 (1) All. M. R. 795***.

6. Learned counsel for the respondent-acquiring body submits that after evidence of the petitioners was over, the petitioners have filed an application Exh. 64 seeking amendment in the pleading. Learned counsel submits that the said petitioner 1/1 died in the year 2014, however, during his life time, he filed the reference petition and he was looking after the Court dates, as contended by the petitioners. Consequently, there was no reason for him to claim less amount in the original reference petition for the standing trees in the acquired land, ignoring the report of the private valuer, which was within his knowledge. Learned counsel submits that the petitioners were not diligent in seeking permission to carry out the proposed amendment. The reference court has rightly rejected the said

application.

7. Learned counsel for the respondent-acquiring body, in order to substantiate her contentions, placed reliance on the judgment in the cases of ***J. Samuel and others vs Gattu Mahesh and others***, reported in ***2012 (4) Mh.L.J. 40***, ***Sai Shradha Developers, Sangamner and Others vs Ravindra Ganpatrao Bharitkar and others***, reported in ***2012 (6) Mh.L.J. 348*** and ***Prakash Ratanlal @ Ratansa Kasari vs. Bhika Banda Dhage and another***, reported in ***(2010) (1) Mh.L.J. 810***.

8. I have also heard the learned A.G.P. for respondent Nos. 1 and 2.

9. On perusal of copy of reference petition, it appears that the petitioners-original claimants have claimed compensation for the standing trees in the acquired land at the enhanced rate. It is also not disputed that the lands were acquired alongwith the standing trees and there is reference of the standing trees in the award. In para 14 of the reference petition, the petitioners-claimants have claimed compensation at the enhanced rate for the standing trees. By way of proposed amendment, the petitioners-claimants are seeking higher rate in tune with the valuation carried out by the private valuer. For

example, in the original reference petition, the petitioners have claimed the compensation of Rs.30,000/- per teakwood tree, whereas by way of proposed amendment, the petitioners are seeking price at the enhanced rate of Rs.40,000/- per tree. It further appears from the contents of application Exh.64 that deceased claimant 1/1, during his life time, had engaged horticulture expert and valuer for valuation of trees in the acquired land. The claimant No. 1/1 died in the year 2014. Though it appears that during life time of claimant 1/1, he did not claim the same rate as per the valuation report obtained by him from the aforesaid expert, however, after his death, the petitioners-claimants adduced the evidence in support of their claim petition and thereafter came to know about this report. In my considered view, the proposed amendment would not change the nature of the claim in any manner and no prejudice is caused to the respondent-acquiring body.

10. Learned counsel appearing for the respondent-acquiring body has not disputed the existence of trees in the acquired land though number of trees are disputed. Further, though the petitioners-claimants have claimed compensation at the enhanced rate and even by way of proposed amendment seeking enhancement in the rate, it is always for the reference court to consider the claim on merits. I do not think that the respondent-acquiring body is placed at

surprise by way of proposed amendment. However, the claimants have filed the application at belated stage and therefore, they are required to be saddled with costs. Hence, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby allowed. No costs.
- II. The impugned order dated 02.01.2017 passed below Exh.64 in L.A.R. No. 468 of 2010, by the learned C.J.S.D. Nanded is hereby quashed and set aside.
- III. The application Exh.64 is hereby allowed in terms of its prayer clauses subject to payment of costs of Rs.5000/- to be paid to the respondents or deposited before the Reference Court within a period of four weeks from today.
- IX. Needless to say that the petitioners-claimants are required to pay court fees on the enhanced claim.
- X. The writ petition is disposed of accordingly.

(V. K. JADHAV, J.)

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