

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

**944 FIRST APPEAL NO. 315 OF 2003
WITH CA/1888/2016 IN FA/315/2003**

- . Venkat s/o Rangrao Kohale
died through his L.R.,
- 1. Suresh s/o Venkat Kohale
Age: 45 years, Occu.: Service
- 2. Ramesh s/o.Venkat Kohale
Age: 42 years, Occu.: Agril.
- 3. Prakash s/o Venkat Kohale
Age: 36 years, Occu.: Agril.
- 4. Vilas s/o Venkat Kohale
Age: 32 years, Occu.: Agril.
- 5. Dinkar s/o Venkat Kohale
Age: 28 years, Occu.: Agril.
- 6. Simintabai w/o Venkat Kohale
Age: 60 years, Occu.: Agril,

All above R/o.Haregaon,
Tq.Ausa, Dist.Latur.

..Appellants

VERSUS

- . The State of Maharashtra
Through The Collector, Latur.

..Respondent

...

Advocate for Appellants : Mr.K.S.Patil h/f.

Mr.B.N.Patil

AGP for Respondent : Mr.K.N.Lokhande

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CORAM : M.S.SONAK, J.**DATE : 18th January, 2018****ORAL JUDGMENT:-**

1) Heard Mr.K.S.Patil learned counsel, who holds for Mr.B.N.Patil learned counsel for the appellants and Mr.K.N.Lokhande learned AGP for the respondent.

2) Mr.Patil learned counsel for the appellants at the outset, requested this Court to take up Civil Application No.1888 of 2016 for consideration, since, in the said application, the appellants have prayed for remand to the Reference Court for reasons set-out in the civil application.

3) Mr.Patil learned counsel submits that the appellants have placed on record awards of the Reference Court and also Judgment of this Court confirming those awards in

respect of acquisition of lands in the vicinity of the appellants' land. He points out that in terms of such awards, which have been confirmed by this Court, the rate of compensation is substantially more.

4) Mr.Patil learned counsel points out that the Reference Court in the impugned Judgment and Award has determined compensation only @ Rs.500/- per Are. In particular, Mr.Patil invites my attention to the Judgment and award dated 25.9.2014 in First Appeal No.233 of 1998, which relates to acquisition from the village Makni, Tq.Omerga. It is stated to be in the vicinity of the appellants' land. Mr.Patil points out that the land involved in the appeals are for one and the same Project and therefore, the appellants should be granted an opportunity to place on record all such material for the purpose of enhancement.

5) Mr.Patil learned counsel for the appellants submits

that the appellants will satisfy the Reference Court that they are entitled to amount of their claim and seek for compensation, which is higher than that claimed by them at the time of seeking the Reference.

6) Mr.Lokhande, learned AGP submits that the appellants are bound by the claim made by them at the stage of seeking Reference. He submits that there is no question of the appellants seeking any compensation higher than that claimed by them at the stage of seeking the Reference. In any case, Mr.Lokhande learned AGP submits that the sale instances relied upon by Mr.Patil are not comparable and therefore, the same cannot be considered at this stage. He submits that there is no case made out for remand of the matter as well.

7) Upon due consideration of the rival contentions and after perusal of the material on record, prima-facie, it appears that the sale instances referred to by the

appellants pertain to land in or around the vicinity of the acquired land. No doubt, the lands may pertain to adjoining village, however, at this stage, it cannot be said that the instances are totally irrelevant. At the same time, as contended by Mr.Lokhande, learned AGP, it cannot be said that the instances are totally comparable and on such basis, it is not possible to award the same compensation that has been awarded in said matter.

8) The safe course to adopt in such a situation would therefore be to set aside the impugned Judgment and award and to remand the matter to the Reference Court for fresh adjudication.

9) The issue as to whether the appellants can claim compensation at the rates higher than what they have originally claimed is kept open.

10) If the appellants apply for amendment, then such

issue to be considered by the Reference Court in accordance of law on merits. It is made clear that this Court has not decided said issue and therefore, all contentions of all parties are kept open.

11) Normally, when the impugned award is set aside, the appellants, who have already withdrawn the amount in pursuance of such award are required to re-deposit such amount before the Reference Court. However, taking into consideration peculiar circumstances of the present case and also accepting the suggestion made by Mr.Patil, learned counsel for the appellants that such withdrawal can be made subject to the determination by the Reference Court on remand, this course is not adopted. Another reason for non-adoption of this course is that in this matter, the State or acquiring body had neither preferred an appeal nor filed any cross-objection. This means that this rate is acceptable to the State or acquiring body. In these circumstances, it will not be appropriate to

require the appellants to refund the amount of compensation already withdrawn rather it will be appropriate to go by suggestion made by Mr.Patil that such withdrawal shall abide the appellants by the final orders of the Reference Court in pursuance of remand.

12) Accordingly, the impugned Judgment and award is set aside.

13) The matter is remanded to the Reference Court for fresh adjudication in accordance with law and on its own merits. Both the parties are permitted to adduce fresh evidence and all contentions of all parties are kept open to be determined by the Reference Courts.

14) Parties to appear before the Reference Court on 12.2.2018 at 10:30 a.m. and produce authenticated copy of this order.

15) The Reference Court is directed to dispose of the Reference as expeditiously as possible and in any case within a period of one year from the date of production of authenticated copy of this order.

16) The Civil Application No.1888 of 2016 is disposed of.

17) Consequently, the First Appeal is also disposed of in the aforesaid terms.

18) There shall be no order as to costs.

19) All concerned to act on the authenticated copy of this order.

[M.S.SONAK, J.]