

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

CIVIL REVISION APPLICATION No. 178 of 2017

Devidas S/o Dadarao Bhosale,
age 68 years occupation agriculture
R/o Bedga Taluka Omerga District Osmanabad

...Applicant

VERSUS

1. The State of Maharashtra
Through : The Collector, Osmanabad
District Osmanabad
2. The Special Land Acquisition Officer,
Krishna Khore, Osmanabad District Osmanabad.
3. The Executive Engineer,
Strengthening Division, Krishna Khore,
V.B. Corp., Omerga District Osmanabad

...Respondents

Mr. V.V. Ingale, *Advocate for applicant*

Mr. S.N. Kendre, *Asstt. Govt. Pleader for respondents No. 1 & 2*

CORAM : SUNIL P. DESHMUKH, J.

DATE : 15th October, 2018

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and heard learned advocates for appearing parties finally by consent.
2. The applicant aggrieved by judgment and order dated 26-03-2012 passed by learned civil judge, senior division,

Omerga, dismissing the land acquisition reference No. 971 of 2005 (old No. 800 of 2001) is before this court.

3. Indisputably, 00 *Hector* 83 *Are* land situated at village Bedga, Tq. Omerga District Osmanabad, had been acquired from applicant-claimant for the purpose of construction of Bhikarsangavi Sathwan Talav at village Bhikarsangvi, Tq. Omerga, District Osmanabad. An award was passed by special land acquisition officer, Krishna Khore, Osmanabad, and amount of award was withdrawn under protest by claimant-applicant. The applicant had filed land acquisition reference bearing No. 971 of 2005 (old No. 800 of 2001) for enhancement in compensation. The land acquisition reference had been rejected under order dated 26-03-2012 for proceedings were not attended to and for want of evidence.

4. It has been contended by the advocate appearing for the applicant that the applicant had no knowledge about the transfer of his land acquisition reference No. 800 of 2001 by district judge, Osmanabad, to civil judge, senior division, Omerga, after establishment of new additional district court at Omerga and that was renumbered as land acquisition reference No. 971 of 2005 nor the advocate had informed about the same. Mobility of applicant had been affected due to old age.

5. The applicant, in the circumstances, on 26-03-2012 could not attend the court at Omerga. The reference court had dismissed the reference for want of prosecution and evidence. About the same the applicant realized around the time of December, 2015 from other claimants whose lands were acquired. Due to the communication gap between applicant and advocate, delay had caused in filing the present civil revision application. Said delay has been condoned earlier under order dated 19-09-2017 in civil application No. 4351 of 2016.

6. Learned counsel Mr Ingle for applicant submits that in impugned order reference court has erroneously observed that the applicant is not interested in the matter. In fact, the applicant has paid deficit court fees at the time of filing of land acquisition reference and the applicant is in possession of evidence. He further goes on to submit that companion land acquisition references in respect of the land acquisition under same notification for the same project, evidence had been produced. In the meanwhile, those references have been decided and compensation has been enhanced and applicant's land acquisition reference has been rejected. He, therefore, submits that a good cause is getting lost due to dismissal of reference for want of evidence.

7. Learned counsel for applicant refers to and relies on decision of supreme court in the case of *Dhiraj Singh (Dead) through legal representatives and others Vs. State of Haryana and others* reported in (2014) 14 S.C.C. 127 and refers to paragraphs no. 14, 15 and 16, and also relies on order dated 6th August, 2018 in Civil Application No. 5558 of 2018 in Civil Revision Application Stamp No. 11067 of 2018 and reported decisions relied on and as have been referred to in paragraph No. 3 of said order and order dated 10th January, 2018 in civil application No. 12437 of 2017 in civil revision application stamp No. 31946 of 2017 and other companion matters, wherein delay has been condoned in approaching high court and matters have been allowed directing land acquisition reference court to decide the references.

8. He submits that it is not a case that there is absolutely no evidence in support of the applicant's case. He, therefore, submits that opportunity be given to applicant to lead evidence in support of his claim. Learned Advocate for applicant makes a statement that the applicant would not claim interest for the period of delay, from the date of impugned order to date of filing present civil revision application in high court.

9. Learned Government Pleader Mr. Kendre purports to resist,

saying that there is no error committed by reference court while the same had been dismissed for want of evidence on behalf of applicant. He submits that there is tacit acceptance of error in prosecution going by the submissions on the either side. It is not a case wherein indulgence should be given to the request being made in the application.

10. Having regard to decision in the case of "*Dhiraj Singh*" (supra), and other decisions on the same issue i. e. order dated 6th August, 2018 in Civil Application No. 5558 of 2018 in Civil Revision Application Stamp No. 11067 of 2018 and reported decision relied on and as have been referred to in paragraph No. 3 of said order and order dated 10th January, 2018 in civil application No. 12437 of 2017 in civil revision application stamp No. 31946 of 2017 and companion matters, resistance by learned Assistant Government Pleader would have little efficacy.

11. In the circumstances, it appears to be expedient to indulge into request being made in present civil revision application. Impugned judgment and order dated 26-03-2012 passed by learned civil judge, senior division, Omerga in land acquisition reference No. 971 of 2005 (old No. 800 of 2001) stands set aside and land acquisition reference No. 971 of 2005 (old No. 800 of 2001) stands restored with the reference court, Omerga, to hear

said land acquisition reference on merits in accordance with law and procedure, as expeditiously as possible, preferably within a period of six months from the date of receipt of writ of this order.

12. Applicant to file undertaking before the reference court to the effect that he would not claim benefit of interest for the period of delay, as aforesaid.

13. Applicant - claimant to co-operate in early disposal of the matter.

(SUNIL P. DESHMUKH)
JUDGE.

Madkar