

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.820 OF 2004

- 01 Abdul Hafij Khan Jahankhan,
age: 52 years, Occ: Agriculture,
and Private Service.
- 02 Abdul Gani s/o Jahankhan Patel,
died, through LRs:
- 2a Farhat wd/o Abdul Gani Patel,
age: 55 years, Occ: Agriculture,
R/o Shivankhed, Tq. Ahmedpur,
District Latur.
- 2b Abdul Khadir s/o Abdul Gani Patel,
age: 35 years, occ: Agriculture,
R/o Shivankhed, Tq. Ahmedpur,
District Latur.
- 2c Shakera d/o Abdul Gani Patel,
age: 32 years, Occ: Agriculture,
R/o Shivankhed, Tq. Ahmedpur,
District Latur.
- 2d Meheraj d/o Abdul Gani Patel,
age: 30 years, Occ: Agriculture,
R/o Shivankhed, Tq.Ahmedpur,
District Latur.
- 2e Humera d/o Abdul Gani Patel,
age: 28 years, Occ: Agriculture,
R/o Shivankhed, Tq.Ahmedpur,
District Latur.
- 2f Imran s/o Abdul Gani Patel,
age: 26 years, Occ: Agriculture,
R/o Shivankhed,
Tq.Ahmedpur, District Latur.
- 2g Irfan s/o Abdul Gani Patel,
age: 24 years, occ: Agriculture,
R/o Shivankhed,

Tq.Ahmedpur, Dist.Latur.

2h Jeshan d/o Abdul Gani Patel,
age: 19 years, Occ: Agriculture,
R/o Shivankhed,
Tq.Ahmedpur, Dist.Latur.

2i Rubina d/o Abdul Gani Patel,
age: 25 years, Occ: Agriculture,
R/o Shivankhed, Tq.Ahmedpur,
District Latur.

2j Heena d/o Abdul Gani Patel,
age: 20 years, Occ: Agriculture,
R/o Shivankhed, Tq.Ahmedpur,

Both R/o Shivankhed (Kd.),
Tq.Ahmedpur, Dist. Latur.

Appellants

Versus

The State of Maharashtra,
through Collector, Latur.

Respondent

Mr.D.A.Mane, advocate holding for Mr.Milind Patil, advocate for the appellants.

Mr.B.V.Virdhe, A.G.P. for the Respondent.

CORAM : M.S.SONAK, J.

DATE : 14th February, 2018.

ORAL JUDGMENT :

1 This appeal takes exception to the judgment and award dated 03.07.2003 made by the Reference Court, dismissing L.A.R. No.203/2001 (Old LAR No.1541/1990), on the ground that the claimants had no *locus standi* in the matter.

2 Mr.Mane, advocate, who holds for Mr.Milind Patil, advocate, for appellants-claimants, submits that there was a

partition between appellant's brother Abdul Gafur Khan on one hand and the appellant on the other, in terms of which, the acquired land came to be allotted to the appellant. He submits that in fact, copy of the partition deed, along with affidavit filed by Abdul Gafur Khan, was filed before the Land Acquisition Officer and upon consideration of such documents, compensation amount, awarded in favour of Abdul Gafur Khan, in the award, was, in fact, disbursed to the appellant. He submits that since no issue of *locus standi* was framed by the Reference Court, all this material remained to be produced before the Reference Court.

3 He points out that Nusrat s/o Bashir Ahmed Attar, an official from the office of Land Acquisition Officer, who was examined in this matter as Witness No.1 for the Respondent, has, in fact, deposed to the circumstance that the deed of partition and affidavit of Abdul Gafur Khan were indeed filed before the Land Acquisition Officer and the fact that the compensation amount was disbursed to the present appellants on the basis of these documents. He submits that the Reference Court has totally glossed over the evidence of Nusrat s/o Bashir Ahmed Attar. He submits that as the issue of *locus standi* was not framed, the appellants were deprived of an opportunity to adduce appropriate evidence to establish their *locus standi*. Mr.Mane submits that to this extent, there is violation of principles of natural justice. For all these reasons, Mr.Mane submits that the impugned award is liable to be set aside and the matter is liable to be remanded to the Reference Court for fresh adjudication.

4 Mr.Virdhe, learned A.G.P., submits that there is no

dispute that the award in this case refers to the name of Abdul Gafur Khan, brother of the appellant. He submits that, therefore, no Reference is maintainable at the behest of appellants. He submits that nothing prevented appellants from producing relevant material before the Reference Court and since, no such relevant material was produced, the Reference Court was right in rejecting the Reference on the ground of lack of *locus standi*. Mr.Virdhe submits that Abdul Gafur Khan was not even examined as a witness in the Reference proceedings. For all these reasons, Mr.Birdhe submits that this appeal is liable to be dismissed.

5 Upon due consideration of rival contentions and upon perusal of the material on record, the impugned judgment and award is liable to be set aside and the matter is liable to be remanded to the Reference Court for fresh adjudication. The reasons for adoption of this course of action are set out herein after.

6 In the first instance, Mr.Mane, learned Counsel for appellants, is right in contending that there is no issue of *locus standi* framed by the Reference Court. If such issue was to be framed, then, the appellants could have been faulted for not producing any evidence to the satisfaction of the Reference Court as to their *locus standi* to maintain such Reference. In the absence of such issue, the appellants were not put to notice that they were required to adduce evidence in support of their *locus standi*. Taking into consideration the material, which has come on record from the deposition of the witness on behalf of Respondent itself, it is only appropriate that the Reference Court grants yet another

opportunity to the appellants to establish their *locus standi*.

7 Secondly, the Reference Court, in making the impugned judgment and award and non suiting the appellants only on the ground of *locus standi*, has completely glossed over the deposition of Nusrat s/o Bashir Ahmed Akhtar, an official from the office of Land Acquisition Officer, who has deposed on behalf of the Respondent. This witness has made the following statements in the course of his evidence:-

“As per written request of orig. claimant, reporting the office about partition of the land in between the brothers, the present applicant was disbursed Rs.25,384/- on 25.1.1990.”

“.....Office record is having partition deed submitted by brothers, dt. 30.3.1984 (Zerox copy), supported by Affidavit in original of Abdul Gafur Khan.”

8 From the aforesaid deposition, it appears that there is, at least, *prima facie*, evidence that the original claimants i.e. Abdul Gafur Khan had informed the Land Acquisition Officer about the partition and on the basis of such writing from Abdul Gafur Khan, the Land Acquisition Officer disbursed the compensation amount in favour of present appellants. The evidence also suggests that in the office of Land Acquisition Officer, there is record of partition deed dated 30.03.1984 (Xerox copy), which is supported by an affidavit in original of Abdul Gafur Khan. This relevant and vital information has been completely glossed over by the Reference Court, which has non suited the appellants for want of *locus standi*.

9 Taking into consideration aforesaid, this appeal is allowed. The impugned judgment and award dated 03.07.2003 is set aside. L.A.R. No.203/2001 (Old LAR No.1541/1990) is restored to the file of Reference Court and the Reference Court is directed to dispose of the Reference in accordance with law and on its own merits, as expeditiously as possible, and in any case, within a period of six months from the date of production of authenticated copy of this order. The Reference Court to frame specific issue of *locus standi* and thereafter afford all the parties opportunity to lead evidence on this issue. The issue of *locus standi* should not be considered in isolation and the Reference Court is requested to dispose of the entire Reference on merits i.e. determining whether the appellants are entitled to any enhancement or not. Therefore, it is clarified that all the issues, which arise in the Reference, including the issue of *locus standi*, shall be decided by the Reference Court on one and the same time and not by treating the issue of *locus standi* as a preliminary issue.

10 Appeal is disposed of in aforesaid terms. There shall be no order as to costs.

11 All concerned to act upon authenticated copy of this order. Parties to appear before the Reference Court on 12.03.2018 and file an authenticated copy of this order.

M.S.SONAK
JUDGE

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