

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

CIVIL APPLICATION NO. 5661 OF 2018 IN FA/852/2002

SHAHURAJ GOPINATH KOHALE DECEASED THR LRS
CHANDRASHEKHAR AND ORS
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Kuldeep S. Patil.
AGP for Respondent No.1 : Ms. S. S. Raut.
...

**CORAM : K.K. SONAWANE, J.
DATED : 3rd JULY, 2018.**

Order :-

1. Heard learned counsel for applicants and learned AGP for respondent- State of Maharashtra. Perused the application.
2. The applicants moved present application with following prayer -
 - "A. The Civil Application may please be allowed;
 - B. The Judgment and order dated 01/11/2001 passed by the Joint District Judge Latur in LAR 612/1995 may kindly be modified to entitled claim of the applicants.
 - C. The instant first appeal may kindly be remanded back for leading the first evidence to the applicant by giving time bound.
 - D. The applicants may holding be allow and permit to file the documents for perusal of this Hon'ble court for final hearing of the instant First Appeal.
 - E. Any other relief deemed fit may please be granted;"
3. Learned counsel for applicants contends that the applicants have preferred First Appeal bearing No. 852 of 2002 against the impugned Judgment and Award passed by the Reference Court in L.A.R.No. 612 of 1995 dated 05-11-2001. It has been alleged that the Reference Court did not appreciate the evidence on record in it's proper perspective and awarded the compensation amount. According to applicants, there were Judgments and Awards of the Reference Court in other proceedings of land acquisition subjudice before the Court of law. The claimants in these petitions get enhancement of compensation more than the market value granted to the claimants-applicants for

their acquired lands. Therefore, on the basis of subsequent development of latest decision of court of law in reference petitions of the lands located within the vicinity of acquired land of the claimants-applicants, the impugned Judgment and Award of the Reference Court may be modified and matter may be remitted back to the concerned Reference Court for hearing afresh to determine just and proper market value of the land under acquisition.

4. Learned AGP raised objection and submits that the application is not amenable within purview of law. It would unjust and improper to cause any interference in the findings of the Reference Court without appreciating the evidence on record.

5. Having considered the rival submissions on behalf of both sides, I find substance in the contentions put-forth on behalf of learned AGP. Admittedly, the applicants filed First Appeal bearing No. 852 of 2002, which is pending for hearing on merit. The procedural formalities of print, paper book came to be dispensed with. In such circumstances, instead of hearing of the first appeal on merit, for appreciation of validity and correctness of the findings of the Reference Court, it would fallacious to remit back matter straight way at the instance of applicants. The merits of the matter are yet to be considered. The attempt of the applicants to appreciate subsequent verdict of the court of law after colossal period appears to be preposterous and not amenable within the purview of law. Be that as it may, all these circumstances are required to be considered at the time of final hearing of the appeal on merit. But, at this stage, mere by appreciating subsequent development in regard to evaluation of the market value of the surrounding lands under acquisition, it would unjust and improper to remit back the matter by modification of the impugned Judgment and Award which is subject matter of present appeal. Hence, application being not amenable within the purview of law, deserves to be dismissed. No order as to the costs.

[K. K. SONAWANE]
JUDGE

rrd.