

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

908 FIRST APPEAL NO.1560 OF 2017

Dilip s/o Nagu Athwale,
Age; 37 years, Occupation; Agril,
Resident of Sawargaon Wayal,
Taluka Mantha, District; Jalna.

VERSUS

1. The State of Maharashtra,
Through Collector, Jalna.
2. The Special Land Acquisition Officer,
M.I.W. Jalna.
3. The Executive Director,
M.I.W.Jalna.

RESPONDENTS.

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Advocate for Appellant : Mr.Patunkar Swapnil S.
AGP for Respondent Nos 1 & 2: Mr. R.B. Bagul
Respondent No. 3 Served
...

CORAM : SUNIL K.KOTWAL, J.

DATE : DECEMBER 14, 2018

ORAL JUDGMENT :

This appeal is directed against the judgment
and award of dismissal of Land Acquisition Reference

No. 636 of 2011 passed by the 4th Joint Civil Judge Senior Division, Jalna on the ground that the claimant did not lead evidence. Respondent Nos. 1 to 3 are the State of Maharashtra, Land Acquisition Officer and the Acquiring Body, respectively.

2. Heard Mr. S.S. Patunkar, learned counsel for appellant and the learned AGP Mr. R.B. Bagul, for respondent nos. 1 and 2.

3. Learned counsel for appellant submits that the matter before the Reference Court being for enhancement of the compensation awarded by the Land Acquisition Officer, sufficient opportunity needs to be given to the appellant to lead evidence. He has pointed out that the Land Acquisition Act being beneficial legislation, this Court need not take rigid view. He has placed reliance on "**SUBHASH S/O BABULAL RAJPUT VS STATE OF MAHARASHTRA AND ANOTHER**" [2012(2) Mh.L.J.395], wherein this Court has already

taken view that the Land Reference cannot be rejected only for the reason that the revision applicant has failed to adduce the evidence. In that matter, the Land Reference was remanded to the Reference Court for consideration.

4. Learned AGP for State vehemently objects to remand the Land Reference on the ground that in paragraph No. 8 of the judgment, the Reference Court has observed that since 17.12.2015 till 02.01.2017 i.e. the date of judgment, the claimant did not remain present before the Reference Court to lead the evidence.

5. I have gone through the judgment. As rightly pointed out by the learned counsel for appellant, the Land Acquisition Act being beneficial legislation, an opportunity needs to be given to the appellant to bring on record sufficient evidence to prove his contention. Only because from the date of framing

of issues, the claimant did not turn up before the Reference Court. The Reference Court should not have dismissed the claim petition, only for the reason of lack of evidence on the part of the claimant. Thus, considering the view taken by this Court in "**SUBHASH S/O BABULAL RAJPUT VS STATE OF MAHARASHTRA AND ANOTHER**" (supra), this appeal deserves to be allowed.

6. Accordingly, First Appeal No. 1560 of 2017 is allowed.

The judgment and award passed by 4th Jt. Civil Judge Senior Division, Jalna in LAR No. 636 of 2011 is set aside.

LAR No. 636 of 2011 is remanded to the Court of learned 4th Jt. Civil Judge Senior Division, Jalna, for reconsideration after giving sufficient opportunity to both parties to lead oral and documentary evidence before the Reference Court. The Court of learned 4th Jt. Civil Judge Senior Division, Jalna, shall dispose of the Land

Reference within a period of six months from the date of receipt of the record and proceedings by that Court.

Both parties are directed to remain present before the Reference Court on 5.3.2019 for receiving further directions from the Reference Court.

Appellant shall waive the interest on enhanced compensation, if any, granted by the Reference Court from 17.12.2015 to 02.01.2017.

Record and proceeding be immediately sent to the Reference Court.

Parties to bear their respective costs of the appeal.

[SUNIL K.KOTWAL, J.]

mahajansb/