

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

FIRST APPEAL NO. 4493 OF 2017

Govind Vitthal Ghaiwat  
Age : 45 years, Occu.: Agri.,  
R/o Undirwadi, Tal. Vaijapur,  
Dist. Aurangabad

.. Appellant  
(Orig. Claimant)

Versus

1] The State of Maharashtra,  
Through, the Special Land Acquisition Officer,  
Jayakwadi Project, Collector Office,  
Aurangabad

2] The Executive Engineer (Irrigation),  
Zilla Parishad, Aurangabad

.. Respondents

...  
Mr. N.J. Pahune Patil, Advocate for appellant  
Mr. A.M. Phule, AGP for respondent-State  
Mr. D.B. Pawar, Advocate for respondent no.2  
...

CORAM : SUNIL P. DESHMUKH, J.  
DATE : 16-04-2018

ORAL JUDGMENT :

1. Heard learned counsel for the appearing parties.
2. Appellant's 46 Are land situated at village Pashapur, Taluka Vaijapur, District Aurangabad had been taken in possession even before acquisition proceedings have been initiated. Section 4 notification had been issued in 1996 and award had been passed in 2001. The amount of compensation paid under the award by

special land acquisition officer being inadequate, reference had been filed bearing L.A.R. no. 64 of 2010 in civil court. The appellant, as such, is before this court in first appeal.

3. Mr. N.J. Pahune Patil, learned counsel appearing for appellant submits that perusal of impugned order in present matter shows that decision in reference had been rendered for failure to adduce evidence in support of the claim. Perusal of order further reveals that the case pleaded in reference, has been referred to by court and it does not appear that any effective hearing has taken place so far as appellant is concerned.

4. Learned counsel further goes on to state that companion land acquisition references in respect of the land acquisition under same notification for same project, in the meanwhile, were decided and compensation had been enhanced. He submits that appellants are, in-fact, in possession of lot of evidence including that in the shape of sale deeds which are relevant while determining compensation. He submits that in connected matters evidence had been filed. He, therefore, submits that a good cause is getting lost due to dismissal of reference for want of evidence.

5. Learned counsel Mr. Pahune Patil submits since 2010, the reference had been pending before the civil court and had been lingering on. In the circumstances, income yielding property had been taken in acquisition. The appellant faced with earning livelihood, could not give un-remitting attention to lingering pendency of the land acquisition reference before civil court. In the circumstances, in absence of any evidence on behalf of appellant, land acquisition reference had been decided for want of evidence on behalf of the appellant. He submits that there had been communication gap between the Advocate and the claimant and, therefore, delay has caused. Said delay has been condoned under order dated 04-10-2017 passed by this court in civil application no. 8138 of 2017.

6. He further refers to decision of supreme court in the case of *Dhiraj Singh (D) Tr. Vs. Haryana State* reported in (2014) 14 SCC 127, wherein delay has been condoned for approaching for enhancement of compensation. He submits that it is not a case that there is absolutely no evidence in support of the claimant's case. He, therefore, submits that opportunity be given to appellant to lead evidence in support of his claim.

7. Learned counsel for the appellant undertakes to file undertaking to the effect that appellant will not claim statutory benefits for the delayed period in the event land acquisition reference is allowed and compensation is enhanced.

8. Learned AGP, however, 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 appellant. He submits that there is tacit acceptance of error in prosecution going by the submissions on the either side. In such a case, it is not a case wherein indulgence should be given to the request being made in the appeal.

9. Looking at that, the reference had been pending since 2010 and had lingered on, it further is not clear from the record that, as to whether the matter had been attended to while it had been decided by the reference court. Further, the circumstances as referred to under which the land acquisition reference could not be attended to are not doubtful. In the circumstances, looking at the judgment of supreme court, referred to supra, and particularly, also to that delay has been condoned under order of this court dated 04-10-2017 and also undertaking to be filed by appellant, it appears to be expedient to direct reference court to decide

reference on its merits subject to appellant producing evidence in support of his claims and further also that appellant would not be entitled to claim interest for the delayed period, as per the undertaking to be filed by the appellant.

10. In the larger interest of justice, therefore, impugned judgment and award passed by reference court is set aside, remitting and restoring the matter to reference court for decision thereon afresh by giving opportunity to the parties.

11. Parties shall appear before reference court on 26-06-2018 and shall abide by the schedule given by reference court. Reference court is expected to proceed with the remitted matter expeditiously and decide the same within a period of six months from 26-06-2018.

12. First appeal is allowed in aforesaid terms.

[SUNIL P. DESHMUKH]  
JUDGE

arp/