

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 910 OF 2002

Swapna Sahakari Grahnirman Sanstha Maryadit
Through its Chairman, 9, Vardhaman Apartments
Behind Hotel Ellora
kranti chowk, Aurangabad

Appellant

Versus

1. The State of Maharashtra
through the Collector,
Auragabad.
2. Maharashtra Industrial Development
Corporation
Through Superintending Engineer
Old M.I.D.C., Railway Station Road,
Aurangabad.

Respondents

WITH
FIRST APPEAL NO. 897 OF 2002

M/s Bade Kendre and Company
Through its partner
Miss Swapna Udhav Kendre
age 16 years, occ. education
u/g Udhav s/o Manikrao Kendre
age 42 years, occ. business
r/o Aurangabad.

Appellant

Versus

1. The State of Maharashtra
through the Collector,
Auragabad.
2. Maharashtra Industrial Development
Corporation
Through Superintending Engineer

Old M.I.D.C., Railway Station Road,
Aurangabad.

Respondents

WITH
FIRST APPEAL NO. 911 OF 2002

Janardhan Patilba Agale
Deceased through LRs

1. Kasabai w/o Janardhan Agale
age 65 years, occ. household
r/o Plot No. 97, house no. 115, paithan road
Nakshatrawadi, Aurangabad
Tq. & dist. Aurangabad.
2. Vishnu s/o Janardhan Agale
age 49 years, occ. agriculture
r/o as above.
3. Babasaheb s/o Janardhan Agale
age 41 years, occ. agriculture
r/o as above.
4. Mrs.Mathura w/o Mohan Magar
age 53 years occ household
r/oAngoori Bagh, Aurangabad.
5. Mrs. Sunanda w/o Uttamrao Avate
age 45 years, occ. agriculture
r/o at postPalaswadi, Tq. Khultabad
Dist. Aurangabad.

Appellants.

Versus

1. The State of Maharashtra
through the Collector,
Auragabad.
2. Maharashtra Industrial Development
Corporation
Through Superintending Engineer
Old M.I.D.C., Railway Station Road,
Aurangabad.

Respondents

Smt. Lata Bade and Mr. P.K. Palve, advocates for appellants.
Mr. A.M. Phule, AGP for respondent no. 1.
Mr. S.S. Dande, advocate for respondent no. 2.

CORAM : M.S. SONAK, J.
DATE : 1st FEBRUARY, 2018

ORAL JUDGMENT :

1. In all these appeals, challenge is to the common judgment and award dated 11.08.2000 made by the reference court, dismissing the references merely on the ground that the appellants, failed to appear before the reference court and lead any evidence in support of their claim of enhancement.

2. From perusal of the award, it is seen that all the issues which were framed came to be answered against the appellants on the sole ground that the appellants neither appeared nor lead any evidence before the reference court. There is no discussion whatsoever, on the merits of the matter on in the context of whatever material that was available on record.

3. Smt. Lata Bade, learned counsel for some of the appellants submits that there was change of almost six Presiding Officers. She submits that there was not merely change in the Presiding Officers, but, references were earlier posted before the Additional District Judge thereafter before the Civil Judge, Senior Division, Civil Judge, Junior Division and so on. She further submits that normally, there is a practice that when there is a change in the forum and not merely change in the Presiding Officer of the forum, notices are issued to the parties or their advocates. She submits

that atleast some notices are put up in the District Bar Association office. She submits that since no such procedure was followed, appellants and their advocates lost track of the matter and could not appear before the right forum at right time. She submits that appellants have obviously got nothing by not appearing before the reference court. She submits that most of the appellants have lost their lives and have been paid only meager compensation by the Land Acquisition Officer. She submits that even though right to property, is no longer a fundamental right under Article 197 of the Constitution of India, nevertheless, right to property is constitutional right as guaranteed under Article 300 A of the Constitution of India. She submits that right to property is also upheld to be a human right by decision of the Hon'ble Supreme Court. She submits that deprivation of opportunity to put forth their case before the reference court would amount to deprivation of appellants property. She submits that no prejudice will be occasioned to respondent-State if, the impugned award is set aside and opportunity is granted to the appellants to lead evidence and establish appropriate market value of the acquired land as on the date of issuance of notification under section 32 of the Maharashtra Industrial Development Act, 1960. On the contrary, she submits that grave and irreparable prejudice will occasion if the appellants are deprived of even this opportunity. She submits that the appellants have lost their lands and have not received compensation commensurate to the market rate as on the date of issuance of section 4 notification.

4. Mr. Dande, learned counsel for respondents submits that several opportunities were granted to appellants to put forth their

case before the reference court. However, the appellants failed to avail of such opportunities. Mr. Dande submits that it is now too late for the appellants to complain about lack of opportunity. He submits that if at this point of time, the impugned awards are set aside and the matters are remanded to the reference court, respondent-State will have to defend the references. He submits that in case, reference court choses to grant any enhancement then, respondent-State will be unnecessarily burdened with the liability not only for payment of compensation at enhanced rate but also for payment of statutory benefits and interest for the entire period commencing from the date of the award. He submits that respondents in no manner are responsible for all this delay and therefore, any order which will potentially fasten liability for payment of interest upon respondents would be harsh and unjustified in the facts and circumstances of the case. He therefore submits that these appeals may be dismissed or, in case, this Court is inclined to set aside the impugned award and remand the references for fresh adjudication, suitable direction be issued depriving the appellants interest atleast for half period on delay, for which, appellants are responsible.

5. Upon due consideration of the rival contentions and on perusal of record, this is a fit case to grant appellants yet another opportunity to make good their claim for enhancement of compensation ad pleaded before the reference court. References, can normally not be dismissed for default. However, if the reference court is convinced with the predicament that the appellants lead no evidence whatsoever in support of claim for enhancement, the reference court can do no better than rejecting

the references by holding that the applicants failed to make out the case for enhancement. In *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer*, AIR 1988 SCC 1652, the Hon'ble Supreme Court has held that the court has to treat the reference as original proceeding before it and to determine the market value afresh on the basis of material produced before it. Claimant is in the position of a plaintiff who has to show that the price offered for his land under the award is inadequate on the basis of material produced before the Court.

6. The reason why the appellants deserve yet another chance is because it is possible that the appellants or their advocate may have missed the track of the matter on account of frequent changes in the forum. Judicial notice can be taken of the fact that references were earlier posted for adjudication before the Additional District Judge and thereafter, before the Civil Judges, Senior Division. The matters were infact posted before various Civil Judges Senior Division. In these circumstances, it is possible that though initially notices were served upon appellants and the appellants had also engaged advocate to appear on their behalf, but appellants and their advocates might have lost track of these matters. The appellants would nothing to gain from not diligently pursuing such references. It is possible that there may have been some lapses on the part of appellants or their advocates. However, since the explanation is plausible one or is not put forth as some kind of dilatory strategy, utmost consideration is required to be shown to the appellants.

7. In Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Coke & Chemicals Ltd. & others, (2007) 8 Supreme Court Cases 705, the Hon'ble Supreme Court has held that right to property is to be regarded as human right. Relevant observations in this regard at paragraphs 53 to 56 read as follows :

53. The right to property is now considered to be not only a constitutional right but also a human right.

54. The Declaration of Human and Civic Rights of 26-8-1789 enunciates under Article 17:

"17. Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid."

Further under Article 17 of the Universal Declaration Rights, 1948 dated 10-12-1948, adopted in the United Nations General Assembly Resolution it is stated that :
(i) Everyone has the right to own property alone as well as in association with others. (ii) No one shall be arbitrarily deprived of his property.

55. Earlier human rights were existed to the claim of individuals right to health, right to livelihood, right to shelter and employment etc. but now human rights have started gaining a multifaceted approach. Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be rad in consonance with human rights. As President John Adams (1797-1801) put it :

"Property is surely a right of mankind as real as liberty."

Adding,

"The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence."

56. Property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law.

The Hon'ble Supreme Court in the case of **Bhusawal Municipal Council Vs. Nivrutti Ramchandra Phalka and others**, (2015) 14 Supreme Court Cases 327 has held that fundamental right of a farmer to cultivate his land is a part of right to livelihood. In this case, the Hon'ble Supreme Court has described the plight of an agriculturist who loses his land to acquisition for public project and thereafter, is required to litigate in order to receive paltry amount of compensation. Relevant observations at paragraphs 16 to 21 read as follows :

16. The judicial process of the court cannot subvert justice for the reason that the court exercises its jurisdiction only in furtherance of justice. The State/authority often drags poor uprooted claimants even for payment of a paltry amount up to this Court, wasting the public money in such luxury litigation without realising that the poor citizens cannot afford the exorbitant costs of litigation and, unfortunately, no superior officer of the State is accountable

for such unreasonable conduct. It would be apt to quote the well-known words of Justice Brennan :

"Nothing rankles more in the human heard than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness."

17. The fundamental right of a farmer to cultivate his land is a part of right to livelihood. "Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity." India being predominantly an agricultural society, there is a "strong linkage between the land and the person's status in the social system".

"10..... A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised citizens.

11. For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic."

(Vide Mahanadi Coalfields Ltd. V. Mathias Oram, SCC p. 273, paras 10 & 11 and State of

M.P. v. Narmada Bacaho Andolan.)

18. A farmer's life is a tale of continuous experimentation and struggle for existence. Mere words or a visual can never convey what it means to live a life as an Indian farmer. Unless one experiences their struggle, that headache, he will never know how it feels. The risks faced by the farming community are many : they relate to natural calamities such as drought and floods; high fluctuations in the prices of input as well as output, over which he has no control whatsoever; a credit system which never extends a helping hand to the neediest; domination by middlemen who enjoy the fruits of a farmer's hard work; spurious inputs, and the recent phenomenon of labour shortages, which can be conveniently added to his tale of woes. Of late, there have been many cases of desperate farmers ending their lives in different parts of the country. The principles of economics provide for the producer of a commodity to determine his prices but an Indian farmer perhaps is the only exception to this principle of economics, for even getting a decent price for their produce is difficult for them.

19. Economic growth through the 1990s had made India a more market-oriented economy, but had failed to benefit all Indians equally. The problems that plagued the farmers several decades ago are still glaringly present today; there is little credit available. What is available is very expensive. There is no advice on best practice in conducting agriculture operations. Income through farming is not enough to meet even the minimum needs of a farmer family. Support systems like free health facilities from the Government are virtually non-existent. The drama of millions leaving their homes in search of jobs which are non-existent, of villages swiftly losing able-bodied adults, leaving behind the old, hungry and vulnerable. Families break up as their members head in diverse directions.

20. We do not see any justification in the appellant approaching this Court with an object to get an interim order so as not to make any payment of enhanced amount of compensation. Such attitude not only amounts to high-handedness and arbitrariness on its part, rather it may cause serious prejudice to the respondents. The excuse that the appellant Council has paucity of fund cannot be accepted as a justified cause to entertain the petition. If the land is to be acquired, law requires prompt payment of compensation. In case the party by whom or for whom the land is acquired is not in a position to make the payment of compensation, the person aggrieved becomes entitled to get the land restored. Payment of compensation as per award under Section 11 or the 1894 Act, cannot be sufficient security to serve the interest of the person interested pending adjudication of appeal against the Reference Court's award.

21. In view of above, the appeals are devoid of any merit. In such a fact situation, the Court cannot sit limply and allow the defaulter to get scot-free and force the person seeking protection to lose hope. The Court cannot adopt an indifferent and passive attitude in such circumstances. The appellant is directed to make the payment of the enhanced amount of compensation within a period of ten weeks from today, failing which it must restore the possession of the suit land to the persons aggrieved who in turn would refund the entire amount received as compensation. With these observations, the appeals are dismissed.

8. Considering the matter from the aforesaid perspective, it is only appropriate that appellants are given yet another chance to make good their claim for enhancement of compensation. Accordingly, it will be appropriate to set aside the impugned

judgment and award and to remand the matters to the reference court for fresh adjudication in accordance with law and on its merit.

9. However, there is merit in the submission of Mr. Dande that in case, reference court comes to the conclusion that enhancement is due then, the entire liability for payment of interest right from the date of award till the date of actual payment, cannot, in the facts and circumstances of the case, be fastened upon the respondents. Mr. Dande has urged that atleast respondents, in the facts of this case, cannot be held responsible for all such delay. At the same time, the entire blame also cannot be apportioned on the appellants. The appellants had instituted their appeal well within the period of limitation and as pointed out by Smt. Bade, applications were also made from time to time seeking remand before the reference court. Taking into consideration this aspect and, with a view to balance the equities, it is directed that in case, the reference court comes to the conclusion that appellants are entitled to compensation at enhanced rate then, on the enhanced compensation, the appellants, will not be entitled to claim interest for atleast half the period from the date of the impugned award till the date of disposal of these appeals. this means that in case, the reference court comes to the conclusion that appellants are entitled for enhanced compensation then, upon such enhanced compensation, the appellants will not be entitled to claim interest for half period between 14.08.2000 till 01.02.2018 i.e. interest for approximately nine years.

10. In **Ramanlal Deochand Shah Vs. State of Maharashtra**

and another, AIR 2013 Supreme Court 3452, the Hon'ble Supreme Court accepted the position that where the claimant does not lead evidence to prove that the amount of award by the Collector or Land Acquisition Officer does not represent the true market value of the property as on the date of the preliminary notification, the reference Court will be helpless and will not be justified in granting any enhancement. However, at the same time, the Hon'ble Supreme Court noted that failure or omission to lead evidence to prove the claim appear to be a case of some kind of misconception about the legal requirement as to evidence needed to prove cases of enhancement of compensation. Accordingly, the Hon'ble Supreme Court held that there was no reason to deny another opportunity to the landowners to prove their case and adduce evidence in support of their claim for enhancement. The Hon'ble Supreme Court therefore, granted yet another opportunity to the landowners but while doing so, the Hon'ble Supreme Court made following observations, which are now italicised for emphasis.

14. The failure or the omission to lead evidence to prove the claim appears in the above context to be a case of some kind of misconception about the legal requirement as to evidence needed to prove cases of enhancement of compensation. We do not in that view see any reason to deny another opportunity to the landowners to prove their cases by adducing evidence in support of their claim for enhancement. *Since, however, this opportunity is being granted ex debito justitiae, we deem it fit to direct that if the Reference Court eventually comes to the conclusion that a higher amount was due and payable to the appellant-owners, such higher amount including solatium due thereon would not earn interest for the period between the date of the judgment of the*

Reference Court and the date of this order. These appeals are with that direction allowed, the judgments and orders impugned in the same modified to that extent that while the enhancement order by the Reference Court shall stand set aside, the matters shall stand remanded to the Reference Court for a fresh disposal in accordance with law after giving to the landowners opportunity to lead evidence in support of their claims for higher compensation. No costs.

11. In this case also, taking into consideration the circumstances referred to in paragraphs 5 and 6 of this order, the appellants, deserve yet another opportunity for leading evidence. The prejudice, if any, to the respondent-State, will be considerably reduced if a direction is made to the effect that if the reference Court eventually comes to the conclusion that higher amount was due and payable to the appellants-owner, such higher amount including solatium due thereon, would not earn interest thereon for atleast half the period from the date of the impugned award till the date of disposal of the appeals. This is because, in the facts of the present case, the appellants, had instituted their appeals within the period of limitation. However, for the reasons, not entirely attributable to either of the parties, it has taken 18 years for disposal of these appeals. Taking into consideration this aspect and, in order to balance the equities, a direction as regards liability to pay interest is required to be made.

12. Appeals are partly allowed to aforesaid extent. The impugned judgment and award are set aside. References are remanded to the reference court for fresh adjudication in accordance with law. Reference court will grant opportunity to all

the parties to lead their evidence and thereafter dispose of references on merit and in accordance with law. Reference court to endeavour to dispose of reference as expeditiously as possible and, in any case, within a period of one year from the date of production of authenticated copy of this order before the reference court. Reference court to take note of the direction as regards interest as aforesaid.

13. Parties to appear before the reference court on 5th March, 2018 and produce authenticated copy of this order. In case any of the parties do not appear on the aforesaid date, reference court is requested to issue notice to such party and only thereafter, proceed with the references.

14. Pending civil application, if any, does not survive and stands disposed of. Disposal of such civil applications will not be a bar to the applicants from filing civil application seeking similar relief before the reference court. It is however, made clear that such civil applications shall be disposed of on their own merit and in accordance with law. All contentions of the parties in that regard are kept open.

(M.S. SONAK, J.)