

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 206 OF 2013

01 Sandipan s/o Namdev Pawar,
age: 48 years, Occ: Agriculture,

02 Vashishtha s/o Namdev Pawar,
age: 44 years, Occ: Agriculture,

03 Angad s/o Namdev Pawar,
age: 35 years, Occ: Agriculture,

04 Jagannath s/o Namdev Pawar,
age: 30 years, Occ: Agriculture,

All R/o Pusara, Tq. Wadwani,
District Beed.

Appellants

Versus

01 The State of Maharashtra,
through the Collector, Beed,
District Beed.

02 The Executive Engineer,
Minor Irrigation Division,
Zilla Parishad, Beed,
District Beed.

Respondents

Mr. D.R. Jayabhar, advocate for appellants.
Mr. S.P. Deshmukh, AGP for respondent no. 1.
Mr. U.B. Bondar, advocate for respondent no. 2.

CORAM : M.S. SONAK, J.
DATE : 31st JANUARY, 2018

ORAL JUDGMENT:

1 Heard. Admit. Learned Counsel for the parties agree
that this appeal can be disposed of finally at this stage itself.

2 On perusal of the impugned judgment and award dated 05.07.2012, it appears that the learned Reference Court was under mis-impression that it was sitting in appeal over the award made by the Special Land Acquisition Officer. From perusal of paragraphs no.9 and 10 of the impugned judgment and award, this impression is fortified. There is no independent consideration of the evidence produced by the parties before the Reference Court.

3 In **Chimanlal Hargovinddas Vs. Special Land Acquisition Officer**, Poona &U another, AIR 1988 SC 1652, the Hon'ble Supreme Court has held that the Reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the Court. So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court. The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

4 In this case, the parties have produced material before the Reference Court. However, without considering such material, the Reference Court has dismissed the claim by observing that such material was also present before the Land Acquisition Officer and there is no infirmity in the reasoning of the LAO.

5 Since, this is not a correct approach, the impugned judgment and award dated 05.07.2012, is liable to be set aside and is hereby set aside. The matter is remanded to the Reference Court for fresh decision on the basis of material already produced on record by both the parties.

6 The appeal is accordingly allowed in the aforesaid terms. There shall be no order as to costs.

7 Parties to appear before the Reference Court on 20th February, 2018 at 10.30 a.m. and to produce authenticated copy of this order. The Reference Court is directed to dispose of the Reference on its own merit and in accordance with law, as expeditiously as possible and in any case, within six months from the date of production of an authenticated copy of this order.

(M.S. SONAK)
JUDGE