

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

FIRST APPEAL No. 3758 of 2017

1. Rajaram S/o Dalsingh Lodwal, age 50 years
2. Jayram S/o Rajaram Lodwal, age 25 years
Both agriculturists by occupation and
R/o Malegaon Taluka Vaijapur District Aurangabad.

...APPELLANTS

VERSUS

1. The State of Maharashtra
Through The Special Land Acquisition Officer,
Collector Office, Aurangabad
2. The Executive Engineer,
Irrigation Division No.1, Sinchan Bhawan,
Aurangabad.

...RESPONDENTS

Mr N.J. Pahune Patil, Advocate for appellants.

*Mr Shashibhushan P. Deshmukh, Assistant Government Pleader
for Resp.No.1*

Mr B.R. Surwase, Advocate for respondent No.2.

CORAM : SUNIL P. DESHMUKH, J.

DATE : 16th April 2018

ORDER :

Heard learned Counsel for appearing parties.

2. After hearing parties, it transpires that evidence in examination-in-chief by claimant and one witness Dr.Vishnu had been led, yet pursuant to order dated 9th December 2016 it appears that the witnesses had not been present for cross-examination by the Acquiring Body and the State.

3. Learned Counsel for appellants submits that may be that witnesses were absent on some dates after their examination-in-chief was over but it is also not the case that the Counsel for other side had been present for their cross-examination immediately on submission of examinations-in-chief. He submits that due to unavoidable circumstances, the witnesses could not be presented subsequently for their cross-examination by the Acquiring Body and the State. He submits that their absence had not been deliberate but had been under inevitable and unavoidable circumstances. There had been no deliberate intention.

4. Learned Counsel for appellants submits that in companion land acquisition references, compensation has been enhanced by the Reference Court and some of matters have been settled in Lok Adalat and said documents were also placed on record, which do not find place in the order.

5. In the circumstances, on instructions, he submits that claimants would not claim any benefit of interest over enhanced amount from 11th September 2015 to the date of presenting this First Appeal. He submits that claimants do not want to take undue benefit from the circumstances. He, therefore, urges for remanding the matter in order to enable

claimants to lead evidence.

6. Learned Counsel for respondents, however, submits that in the absence of witnesses making themselves available for cross-examination, the impugned order can hardly be said to be unjustifiable. He further submits that there is no documentary evidence placed on record by appellants despite affording them sufficient opportunity. The learned Counsel purports to resist request for remanding the matter to the Reference Court.

7. Though the learned Counsel for respondents has submitted so, the respondents are not in a position to challenge veracity of contents in the application that due to inevitable and unavoidable circumstances, the witnesses could not be made available for cross-examination.

8. Taking overall view in the matter, particularly, looking at the submission that appellants would not claim any benefit of interest over enhanced amount from 11th September 2015 to the date of presenting this First Appeal and keeping in view the considerations those have made in the decision of the Supreme Court in the case of Dhiraj Singh (D) Tr. Vs. Haryana State reported in (2014) 14 SCC 127, the appeal may be allowed, setting aside the

judgment and award passed by the Reference Court, remanding the Land Acquisition Reference to its original position as before 9th December 2016, and to proceed with the matter expeditiously.

9. In the circumstances, the judgment and award impugned is set aside and the matter is remanded to the Land Acquisition Reference Court where it was pending and, the concerned Reference Court to proceed with the matter expeditiously and to dispose of the same within a period of six months from the date of appearance of parties before it.

10. Parties to the Land Acquisition Reference shall appear before the Reference Court on 26th June 2018 and abide by the schedule given by Reference Court. There will be no necessity to issue notices to respondents on remand.

10. The First Appeal is allowed in aforesaid terms and is, accordingly, disposed of.

**(SUNIL P. DESHMUKH)
JUDGE.**