

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2769 OF 2017

- 1] Ashok S/o Eknath Toge,
Age : 40 years, Occu. : Agriculture,
R/o.: Chikalbid, Taluka Wadawani,
District Beed
 - 2] Baliram S/o Eknath Toge,
Age : 37 years, Occu. : Agriculture,
R/o : Chikalbid, Taluka Wadawani,
District Beed
 - 3] Dadasaheb S/o Eknath Toge,
Age : 33 years, Occu.: Agriculture,
R/o : Chikalbid, Taluka Wadawani,
District Beed
- .. Appellants

VERSUS

- 1] The State of Maharashtra,
Through Collector, Beed,
District Beed
 - 2] The Executive Engineer,
Minor Irrigation Division,
Head Quarter at Ambajogai,
Taluka Ambajogai,
District Beed
- .. Respondents

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Mr. S.S. Gangakhedkar, Advocate for appellants
Mr. A.M. Phule, AGP for respondent no.1
Respondent no.2 served - absent

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

ORAL JUDGMENT :

1. Heard learned counsel for the appearing parties.

2. Appellants' 2 Hectare and 30 Are land situated at village Chikalbid, Taluka Wadawani, District Beed had been taken in possession even before acquisition proceedings have been initiated. Section 4 notification had been issued in 1999 and award had been passed in 2004. The amount of compensation paid under the award by special land acquisition officer being inadequate, reference had been filed bearing L.A.R. no. 52 of 2005 in civil court. The appellants, as such, are before this court in first appeal.

3. Mr. Gangakhedkar, learned counsel appearing for appellants submits that perusal of impugned order in present matters 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 appellants are 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, therefore, submits that a good cause is getting lost due to dismissal of reference for want of evidence.

5. Learned counsel Mr. Gangakhedkar submits since 2005, 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 appellants 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 appellants, land acquisition reference had been decided for want of evidence on behalf of the appellants. He submits that delay caused in filing the appeal has been condoned under order dated 04-07-2017 passed by this court, clarifying that the appellants would not be entitled for interest of the delayed period in the event compensation is enhanced and the appellants accordingly have also filed undertaking before this court.

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 claimants' case. He, therefore, submits that opportunity be given to appellants to lead evidence in support of their claim.

7. Learned counsel for appellants states that appellants would not claim any benefit of delay caused in making approach in first appeal as per order dated 04-07-2017 and submits that the undertaking subsequently has been given by them.

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 appellants. 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 2005 till 2009 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 04-07-2017 and also to the undertaking filed by appellants, it appears to be expedient to direct reference court to decide reference on its own merits subject to appellants producing evidence in support of their claims and further also that appellants would not be entitled to claim interest for the delayed period, as referred to in the order passed by this court dated 04-07-2017 and the undertaking filed by the appellants.

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