

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

FIRST APPEAL NO. 940 OF 2017

Vitthal Madan Patil,
Age: 35 yrs, occu. Agri.
R/o : Kolsur, Tq. Omerga,
Dist. Osmanabad.

...APPELLANT
(Ori. Claimant)

V E R S U S.

1. The State of Maharashtra,
Through Collector,
Osmanabad.
2. The Special Land Acquisition Officer,
Osmanabad, Krashna Khore
3. The Executive Engineer,
Krushna Khore Development Valley,
Omerga, Dist. Osmanabad.

...RESPONDENTS
(Ori. Respondents)

....

CORAM : K.K. SONAWANE, J.

RESERVED ON : 6th JUNE, 2018.

PRONOUNCED ON: 18th JUNE 2018.

JUDGMENT :-

1. Heard.
2. **Admit.** With consent of learned counsel for both sides, the matter is taken for final hearing on merit at the stage of admission.
3. This first appeal is directed against the impugned judgment and award dated 01-03-2013, passed by the learned Civil Judge, Senior Division, Omerga, District Osmanabad, dismissing the Land Acquisition Reference No. 134 of 2008 (Old LAR No. 152 of 2005). There was Reference Petition under section 18 of the Land Acquisition Act, 1894

(for short "Act of 1894") filed by the appellant-claimant for enhancement of compensation awarded by the Special Land Acquisition Officer (for short, "SLAO") for his acquired land bearing Survey No. 39/6 admeasuring 01 Hectare, 60 R. situated at village Kolsur, Taluka Omerga, District Osmanabad. The land was acquired by the respondents- State of Maharashtra for construction of Kolsur Medium Project, Tahsil Omerga.

4. The facts relevant to the present matter are that, the land in question situated at Kolsur admeasuring 01 Hectare, 60 R was placed under acquisition pursuant to the notification under Section 4 of the Act of 1894 published on 26-12-1996 for construction of Kolsur Medium Project. After compliance of procedural formalities, the SLAO declared the Award under Section 11 of the Act of 1894 and awarded Rs.45,235/- towards compensation to the appellant-claimant for his acquired land. But, the applicant-claimant did not satisfy with the amount of compensation offered by the SLAO. He, therefore, applied for enhancement of compensation and made Reference Petition under section 18 of the Act of 1894. Accordingly, matter was referred to the Court of Civil Judge, Senior Division, Osmanabad for determination of correct market value of the land under acquisition.

5. After receipt of notice of the reference petition, appellant-original claimant caused his appearance through learned counsel Shri. D. A. Birajdar. But, in view of establishment of new Court of Civil Judge, Senior Division at Omerga, the Reference Petition filed on behalf of appellant-claimant came to be transmitted to the newly

established Court of Civil Judge, Senior Division, Omerga for its disposal in accordance with law. Learned counsel Shri. Birajdar on behalf of appellant-claimant filed the *pursis* and seeks continuation of his authority as an Advocate for the appellant into the matter. But, thereafter, no one else turned up into the matter nor any sort of evidence adduced on behalf of appellant to facilitate trial Court to determine the market value of the acquired land.

6. Taking into consideration the continuous absence of appellant-original claimant, the learned Reference Court proceeded to adjudicate the petition in absence of claimant and dismissed the same. The learned Reference Court while rebuffing the relief claimed on behalf of claimant in Land Acquisition Reference No. 134 of 2008 observed in paragraph No. 17 of the Judgment, as under :-

"17. In order to adjudicate the real controversy in question the Court has to scrutinize the award while adjudicating upon the grievance put forth by the claimant. The claimant though challenge the award, but failed to produce on record copy of Award and sale instances as well as E-statement to compare the market value. The claimant except by filing reference petition and allegation therein, he failed to produce on record any iota of evidence to weigh his grievance and in absence of the same, I hold that claimant has totally failed to prove his claim that the L.A.O. who has awarded the compensation was unjust, unfair and inadequate, as the claimant failed to substantiate his claim and further hold that the market value, which was awarded by the L.A.O. was proper and just at the time of notification under Section 4 of the Act. Therefore, claimant is not entitled to claim any enhanced

compensation as prayed by him, accordingly, I answered issue Nos. 1 and 2 in the negative and proceed to pass the following order.”

7. Being dis-satisfied with the impugned findings of rejection of claim for enhancement of the compensation, appellant-original claimant preferred the present appeal to redress his grievance.

8. Mr. Kale, learned counsel for the appellant-claimant submits that the impugned judgment and order passed by the learned Reference Court is erroneous, illegal and not within the purview of law. The learned Reference Court dismissed the reference petition for want of evidence on the part of claimant. It has been alleged that the claimant failed to produce on record any iota of evidence to prove his claim for compensation. According to learned counsel Mr. Kale, the finding of dismissal of reference petition expressed by the learned Reference Court would be treated as dismissal of reference petition in default. The law does not permit to dismiss the reference petition filed under section 18 of the Act of 1894 on the technical ground of failure to adduce evidence. The Reference Court should have considered the material on record to ascertain the prevailing market rate of the acquired land during the period of notification published under section 4 of the Act of 1894. But, the learned Reference Court dismissed the reference petition under pretext that the claimant remained absent and did not adduce any evidence to show that proper compensation was not paid to him and appellant is entitled to get more compensation than the amount fixed by the SLAO.

9. In support of his contention, the learned counsel has relied upon the exposition of law laid down in the cases of -

- (1) ***Shivaji Rajaram Telang Vs. The State of Maharashtra and connected matters*** (First Appeal No. 1736 of 2015) decided on 1st April, 2016,
- (2) ***Appasaheb Mohanrao Chede Vs. State of Maharashtra and another*** reported in **2012(1) Bom. C.R. 458**, and
- (3) ***Arjun Shankar Waghmare and another Vs. State of Maharashtra*** reported in **2011(2) Bom C.R. 860**.

10. The learned AGP for respondents – State of Maharashtra raised objection and submits that the impugned judgment and award passed by the learned Reference Court would be an award within the ambit of law. The reference Court considered the attending circumstances on record and proceeded to dismiss the reference petition for want of sufficient evidence on the part of claimant. There was no material available on record before the Reference Court for appreciation in this case. The claimant was negligent to pursue the reference petition filed on his behalf. Therefore, no interference is warranted in the impugned judgment and award at the instance of claimant.

11. Undisputedly, Section 18 of the Act of 1894 empowers a person interested in the land to file a written application to the Collector requiring that the matter be referred for determination of the Court, whether his objection be to the measurement of the land, the

amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. If the application under Section 18 of the Act of 1894 for reference is in order the Collector is bound to make a reference of it to the Court. Section 20 of the Act enjoins on the court to "proceed to determine the objection". The court shall after holding such inquiry as may be necessary pass an award as contemplated under section 26 of the Act of 1894. The provisions of section 26 of the Act of 1894 would be read as under:

"26, Form of Awards- (1) Every award under this Part shall be in writing signed by the Judge and shall specify the amount awarded under clause first of sub-section (1) of Section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2 clause (2) and Section (2) clause (9), respectively, of the Code of Civil Procedure Code, 1908."

12. It is evident from the aforesaid provisions of law that the Civil Court has to pass an award in answer to the reference made by the Collector under Section 18 of the Act of 1894. In case, party to whom notice of reference petition has been served by the Civil Court did not participate in the enquiry, it would be at the risk of concerned party because an award passed by the concerned Civil Court may be detriment to the party concerned. But, non-participation of any party

would not confer jurisdiction on the Civil Court to dismiss the reference petition for want of prosecution. Their Lordship of Honourable Supreme Court in the case of - ***Khazan Singh(dead) through L.Rs. Vs. Union of India*** reported in ***2002(2) Mh.L.J. 259*** delineated the legal guidelines that the reference under section 18 of the Act of 1894 cannot be dismissed for default.

13. In the matter in hand, the appellant-claimant has preferred the reference petition under section 18 of the Act of 1894, which came to be referred to the Civil Court for determination of market value of the acquired land. But, the appellant -claimant remained absent and did not adduce any evidence on record. Therefore, the learned Reference Court observed that the appellant-claimant failed to substantiate the claim for enhancement of compensation amount awarded by the SLAO, and consequently, the learned Reference Court dismissed the claim. It would be reiterated that, as referred supra, the adjudication of reference petition by the Civil Court has to be regarded as an award within the meaning of section 26 of the Act of 1894 irrespective of the fact that enhancement of compensation came to be awarded or not. It is incumbent on the part of Civil Court to consider the material on record, even if the party is absent and has failed to adduce evidence. It is to be noted that unless the material on record is considered and appreciated the amount determined being market value would not be specified in the award of Reference Court as envisaged under clause *First* of section (1) of Section 23 of the Act of 1894. It must includes the amount awarded under respective clauses of sub-section of section 23 of the Act of 1894 together with grounds of

award. The order passed by the Civil Judge comprising specific market value determined after due exercise as prescribed under Section 23 of the Act of 1894, only would be regarded as an award under section 26 of the Act of 1894.

14. In the instant case, the learned Reference Court failed to consider the material whatever available on record to determine the fair, correct and genuine market value of the acquired land. The Civil Court should have undertaken exercise to arrive at the conclusion that the amount determined by the SLAO would be just, proper and reasonable value for the land under acquisition. The Reference Court did not painstaking to elucidate as to how the compensation awarded by SLAO was just, proper and reasonable. In such circumstances, the impugned judgment and award would not be construed as adjudication of dispute within ambit of law. It cannot be treated as an award under section 26 of the Act of 1894. It is settled principle of law that, when Reference is made to the Civil Court, it is bounden duty of the Civil Court to determine the amount of compensation payable for the land under acquisition. Albeit, the Court has no jurisdiction to refuse for determination of the amount of compensation even where the claimant remains absent or where he is present, but fails to adduce evidence. It is mandatory for the Civil Court to apply its judicious mind and make an award under Section 26 of the Act of 1894. It is improper and erroneous to adopt superficial approach to make confirm the award declared by the Land Acquisition Officer under Section 11 of the Act of 1894 blindly only on the ground that the claimant failed to adduce evidence to substantiate his claim.

15. It is worth to mention that as per exposition laid down in the case of ***Chimanlal Hargoinddas Vs. Special Land Acquisition Officer, Poona and another*** reported in ***AIR 1988 Supreme Court, 1652***, a reference petition under section 18 of the Act of 1894 is not an appeal against the award and it cannot be treated as judgment of the trial Court open or exposed to challenge before the court of hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilized by him for making his valuation cannot be considered 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. The Court has to treat a reference as an original proceeding before it and determine the market value afresh on the basis of material produced on record. Therefore, it is not reasonable expectation from the Civil Court to refuse determination of compensation amount on the ground that the claimant failed to produce the copy of award, E-statement etc. for appreciation. But, it was for the SLAO, who has prepared the documents for giving offer to the claimant about market value of the land to supply relevant documents to the Court for assessment. No doubt, the claimant has right to controvert the document of the SLAO produced on record by adducing evidence relevant to determine the market value. But, the Court cannot compel the claimant to produce the documents, which are prepared by the SLAO for determination of market value. Therefore, the observations of the learned Reference Court in paragraph No. 13 of

the Judgment – cum – award as referred above in regard to non production of copy of award, E-statement etc. appears to be fallacious and not appropriate one.

16. In the above premises, it is imperative to relegate back the present proceeding of LAR No. 134 of 2008 (old No. 152 of 2005) for enquiry afresh to facilitate the concerned Reference Court to pass an award within frame work of section 26 of the Act of 1894. The appellant-claimant has already approached to this court by filing the present appeal. It would just and proper in the interest of justice to afford the claimant and respondent - State a reasonable opportunity to lead evidence, if any, in the reference petition to enable the Reference Court to determine the correct and reasonable market value of the acquired land in this case.

17. Accordingly, the appeal stands allowed. The impugned judgment and award dated 01-03-2013, passed by the learned Civil Judge, Senior Division, Omerga, District Osmanabad, in Land Acquisition Reference No. 134 of 2008 (Old LAR No. 152 of 2005) is hereby quashed and set aside. The proceeding of Land Acquisition Reference No. 134 of 2008 (Old LAR No. 152 of 2005) be relegated back to the concerned Reference Court for its adjudication on merit, after due enquiry afresh within ambit of law. The parties to the proceeding i.e. claimant and respondents are at liberty to adduce evidence in support of their claim and shall co-operate the Reference Court for expeditious hearing into the matter. It is stipulated that the Reference Court shall adjudicate the present Reference Petition at the

earliest within a period of six months from the date of receipt of writ of this Court.

18. It is worth to mention that the proceeding of LAR No. 134 of 2008 (Old LAR No. 152 of 2005) was pending since the year 2005, and due to continuous absence on the part of claimant, the learned Reference Court was constrained to adjudicate the reference petition by passing the impugned judgment and order dated 01-03-2013. In view of lackadaisical attitude on the part of claimant, it would just and proper not to allow the claimant to avail the statutory benefit of interest, solatium, etc. as prescribed under the Act of 1894 for further period onwards March, 2013. Hence, in case, the Reference Court arrived at the conclusion to grant enhancement of compensation, if any, in favour of claimant, the benefit of statutory amount of solatium, third component, interest, etc. as provided under the Act of 1894 shall not be made payable to the claimant for further period i.e. after the decision of the impugned judgment and award dated 01-03-2013 i.e period onwards March, 2013.

19. In view of aforesaid discussion, appeal stands disposed of in above terms. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE