

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

22 FIRST APPEAL NO. 720 OF 2015
WITH CA/10190/2017

1. Sow.Kantabai w/o Uttamrao Shinde
Age: 57 years, Occu.: Household & Agri.
R/o.Bachegaon, Tq.Dharmabad, Dist.Nanded.
2. Pradeep s/o Uttamrao Shinde
Age: 33 years, Occu.: Agri
R/o.Bachegaon, Tq.Dharmabad, Dist.Nanded.
3. Jaisingh s/o Ganeshrao Bachegaonkar
Age: 27 years, Occu.: Agri.
R/o.Bachegaon, Tq.Dharmabad,
Dist.Nanded.

..Appellants

VERSUS

1. The State of Maharashtra
Though District Collector, Nanded.
2. Dy.Collector (Land Acquisition),
Upper Penganga Project, Nanded.
3. The Executive Engineer,
Upper Penganga Project, Div. No.6,
Nanded.

..Respondents

...

Advocate for Appellants : Mr.M.D.Narwadkar and

Mr.S.K. Dhabekar

AGP for Respondent Nos.1 & 2 : Mr.K.N.Lokhande

Advocate for Respondent No.3 : Mr.S.G.Bhalerao

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CORAM : M.S.SONAK, J.

DATE : 15.1.2018

ORAL JUDGMENT :-

1) Heard Mr.M.D.Narwadkar learned counsel for the appellants, Mr.K.N.Lokhande learned AGP for the respondent Nos.1 and 2 and Mr.S.G.Bhalerao for respondent No.3.

2) In this case, the parties were already put to notice that the appeal will be taken up for final hearing at the stage of admission itself. Records and proceedings were also called for.

3) Since the appellants were dissatisfied with the amount of compensation awarded to them by the Land Acquisition Officer, they applied for a reference under Section 18 of the Land Acquisition Act, 1894, seeking for enhancement in compensation. Reference was actually made to the Reference Court and the same was numbered as

L.A.R. No.49 of 2012.

4) The Reference Court framed and answered the Issues in the following manner.

"ISSUES

FINDINGS

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| <i>1 Do the claimants prove that compensation awarded to them by respondent No.2 is inadequate ?</i> | <i>In the affirmative</i> |
| <i>2 Do they prove that they were neither present nor represented before respondent No.2 when the award was made ?</i> | <i>In the affirmative</i> |
| <i>3 Do they prove that 14 R excess land is acquired by respondent No.2 without payment of compensation against it ?</i> | <i>In the affirmative</i> |
| <i>4 Is the reference within limitation ?</i> | <i>In the affirmative</i> |
| <i>5 Are the claimants entitled to enhanced compensation ? If yes, at what rate ?</i> | <i>In the affirmative</i> |
| <i>6 What order and award ?</i> | <i>The petition is dismissed as not maintainable."</i> |

5) In the aforesaid circumstances, it is clear that most of the issues came to be answered in favour of the appellants. The Reference Court has held that the

reference was applied for within the period of limitation and therefore, was validly made and required to be disposed of on merits. The Reference Court has held that the compensation awarded by the Land Acquisition Officer to the appellants was inadequate. Further, the Reference Court has determined the market value as on the date of issuance of Section 4 Notification as Rs.5,95,081/- per hectare. After deciding all these issues in favour of the appellants, however, the Reference Court has chosen to dismiss the Reference as not maintainable by holding that this is a case of mis-joinder of causes of action.

6) The Reference Court has reasoned that the three appellants have no relation with one another and since their lands were separate, each of the appellants should have applied for a reference separately. On this sole basis, the entire Reference has been rejected.

7) In the peculiar facts and circumstances of the

present case, neither the reasoning nor the approach of the Reference Court can either be sustained or appreciated. In the first place, it is quite clear that Sow.Kantabai Uttamrao Shinde (appellant No.1) is a widow of Late Uttamrao Shinde and Pradip Uttamrao Shinde (appellant No.2) was the son of deceased Uttamrao Shinde. Since, their lands came to acquired, they applied for reference well within the period of limitation. There is nothing wrong in these two appellants making any joint application for reference. There is no dispute that two sets of Court fees were paid by these two appellants. The rejection by the Reference Court, was therefore not justified.

8) Learned counsel for the appellants submits that even appellant No.3, Jaisingh Ganeshrao Bachegaonkar is in relation of appellant Nos.1 and 2. However, Mr.S.G.Bhalerao learned counsel for respondent No.3 submits that appellant No.3 has absolutely no relation

with the two appellants and therefore could not have joined in the reference applied for by appellant Nos.1 and 2.

9) Though, there may be substance in the submission of Mr.Bhalerao learned counsel, in the facts and circumstances of the case, it cannot be said that this was a valid ground to dismiss the Reference as not maintainable. The land of appellant No.3 was also acquired under the same Notification as the lands of appellant Nos.1 and 2. All the appellants have paid the Court fees as prescribed. At the highest, the joinder of the appellant No.3 to the Reference proceedings instituted by the first two appellants may have been a irregularity. Such irregularity in the peculiar facts of the present case was not sufficient to deprive them of enhanced compensation. The references could have been ordered to be split and disposed of accordingly. On the basis of such technicalities or procedural requirements,

substantive reliefs should not have been denied to the appellants.

10) In the present case, there is no dispute that the lands of the three appellants have been acquired. The plea of the appellants is for compensation as per the market value on the date of issuance of Section 4 Notification. The appellants have already lost their lands and now that the Reference Court has already determined market value, there is no reason to deprive the appellants of the same on the basis of some technical consideration. When technical consideration and substantial justice are pitted against one another, then later must be permitted to prevail, particularly, when the appellants have already lost their lands and they are only claiming for compensation in accordance with law.

11) In this case, the Land Acquisition Officer had determined the compensation by fixing the market value @

Rs.5,28,000/- per hectare. The Reference Court in the impugned Award has enhanced this compensation to Rs.5,95,081/- per hectare. Taking into consideration extent of land acquired this is not any substantial increase. Infact, the State Government has taken a policy decision vide Government Resolution dated 3.11.2016 (as amended from time to time) not to institute or pursue appeal against the orders where the compensation enhanced by the Reference Court is less than four times the compensation amount as per the Ready Reckoner Rates prevailing on the date of issuance of Section 4 Notification. Normally, the rates determined by the Land Acquisition Officer correspond to the Ready Reckoner Rates on the date of issuance of Section 4 Notification. In this case, the enhancement is only from Rs.5,28,000/- per hectare to Rs.5,91,081/- per hectare. There is no reason to deprive the appellants this enhanced rate.

12) For all the aforesaid reasons, this appeal is allowed. The impugned Award to the extent it holds that the Reference was not maintainable for mis-joinder of causes of action, is hereby set aside. The rest of the Award dated 31.10.2014, is however, restored and upheld. This means that the Reference of the appellants is hereby allowed and market value of the acquired lands is now fixed @ Rs.5,95,081/- per hectare. The respondents are directed to rework the compensation and statutory benefits on the basis of the enhanced value now determined and pay enhanced compensation to the appellants within a period of 12 weeks from today.

13) The appeal is allowed, however, there shall be no order as to costs.

14) Civil Applications pending, if any, are also disposed of.

[M.S.SONAK, J.]