

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 444 OF 2017

Vasant Dhundiraj Joshi	...	Applicant
V/s.		
Special Land Acquisition Officer	...	Respondent

- Mr.S.M. Kamble for the Applicant.
- Mr.Yogesh Dabke, A.G.P. for the Respondent/State.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 26th FEBRUARY, 2018.

P.C. :

1] Heard learned counsel for the Applicant and learned A.G.P. for the Respondent/State.

2] By this Civil Revision Application, the Applicant is challenging the judgment and order dated 31st March, 2017, passed by the Civil Judge Senior Division, Alibag in L.A.R. No.65 of 2003. By the said order, the trial Court has rejected the said L.A.R., which was filed by the present Applicant seeking enhancement of the compensation.

3] The impugned judgment and order passed by the trial Court goes to show that, as the Applicant herein, remained absent,

from time to time, and did not attempt to produce evidence before the trial Court, the trial Court has in paragraph No.(9) in its order was constrained to observe that, the reference before it was required to be decided on the basis of the documents produced before it. Accordingly, the trial Court has considered the decisions produced in the case and after having regard to the geographical situation, held that the compensation awarded by the Land Acquisition Officer was just and legal and the Applicant has not shown how it is not appropriate and correct. Accordingly, the trial Court has rejected the reference filed by the Applicant.

4] Learned counsel for the Applicant has therefore relied upon the judgment of the Karnataka High Court in the case of *M.S. Ramiah Vs. Special Land Acquisition Officer, 1974 AIR(Kar) 122*, to point out that in the said case also in the similar set of facts, it was held that,

“whether the claimant remains absent or does not produce evidence, it is not open to the Court to dispose of the reference stating that the claim of the claimant is dismissed or that the reference is rejected. The Court has to pass an award in the manner provided under Section 26. For making such an award, the Court has necessarily to rely on the materials contained in the award of the Land Acquisition Officer under Section 11 and the evidence of

the Land Acquisition Officer, if any, tendered before the Court. Ordinarily the burden is on the claimant to show that the compensation offered by the land Acquisition Officer is inadequate and therefore he has to lead evidence in support of the claim for enhancement of compensation. But there may be cases where on the face of the award made under Section 11 the amount offered by the Land Acquisition Officer can be held to be arbitrary. If on the basis of the data furnished in the award of the Land Acquisition Officer, the Court finds that the market value of the land has not been determined in accordance with settled principles of valuation, the Court has to determine the compensation in accordance with such principles on the basis of the data available on record. Therefore, the Court has apply its mind and make an award and cannot blindly confirm the award of the Land Acquisition Officer.”

5] Accordingly, it was held that as the order passed by the concerned Court disposing of the reference does not show that concerned Court has applied its mind and determined the compensation of the land acquired, the order does not confirm to the requirements of Section 26 of the Land Acquisition Act and therefore, the remedy of the Appellant was to appeal against the said order. The application under Order 9 Rule 9 of C.P.C. was held to be misconceived.

6] Here, in the case as stated above, the trial Court has not considered the application for enhancement of the compensation amount, filed before it, as required under Section 26 of the Land Acquisition Act. It was for the trial Court to consider the data furnished before it and also on the basis of the said data, to find out how the compensation determined by the Land Acquisition Officer was just, legal and correct. The impugned order passed by the trial Court merely goes to show that the trial Court has only on the basis of the decisions, which are also not quoted or cited in the judgment, held that, considering the geographical position of the suit land, the amount of compensation awarded by the Land Acquisition Officer is correct. However, that is not the order, which is required to be passed or the award which is required to be pronounced in the manner provided under Section 26 of the Land Acquisition Act and therefore, such order needs to be set-aside, so that the trial Court can decide the reference on merits. This Court has already held in *Kawadu Madhav Bansod Vs. State of Maharashtra, 2004 1 AllMR 651*, that against the rejection of the L.A.R., a Revision is maintainable.

7] In view thereof, Civil Revision Application is allowed. The impugned order passed by the trial Court is set-aside. The matter is

remanded back to the trial Court for fresh hearing. The trial Court is directed to give an opportunity to the Applicant and also to the Respondent to lead evidence in support of the respective contentions and decide the present reference in accordance with law.

[DR.SHALINI PHANSALKAR-JOSHI, J.]