

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Revision Application No. 59 of 2015
[Shankar Marotti Gajbhaiya, Amravati Vs. State of Mah. & others]
AND
Civil Revision Application No.60 of 2015
[Shankar Marotti Gajbhaiya, Amravati Vs. State of Mah. & others]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Civil Revision Application No. 59 of 2015 :

Mr. K. P. Mahalle, Adv., for the Applicant.
Ms. G. R. Tiwari, AGP for non-applicant nos. 1 and 2.
Mr. M. M. Agnihotri, Adv., for non-applicant no.3.

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CORAM : A. S. CHANDURKAR, J.

DATE : 31st January, 2018

01. In both these Civil Revision Applications filed under Section 115 of the Code of Civil Procedure, 1908, the judgment of the Reference Court in proceedings under Section 34 of the Maharashtra Industrial Development Corporation Act, 1861 read with Section 18 of the Land Acquisition Act, 1894 [for short, "the Act of

1894"] is under challenge. By the impugned judgment, the Reference Court has recorded a finding that the amount of compensation awarded by the Land Acquisition Officer while acquiring the land of the applicant was proper.

02. Shri M. M. Agnihotri, learned counsel for the non-applicant no.3, raised an objection to the maintainability of the Civil Revision Applications on the ground that the reference proceedings were not simplicitor dismissed for want of prosecution. The Reference Court had considered the material on record and then concluded that the compensation awarded was adequate. According to him, the remedy of preferring an appeal under Section 54 of the Act of 1894 was available and the Revision Applications were not maintainable.

Learned Asstt. Govt. Pleaders appeared for non-applicant nos.1 and 2. They supported the contentions as urged on behalf of the non-applicant no.3.

03. Shri K. P. Mahalle, learned counsel for the applicant, submitted that the Reference Court committed an error in dismissing the reference proceedings. According to him, proper opportunity was not given to the applicant to lead evidence on record and on account of absence of the claimant, the Reference came to be dismissed. Relying upon the judgment in **Kawadu Madhav Bansod Vs. State of Maharashtra & another** [2004 (1) Mh. L.J.980] , it was

submitted that the adjudication by the Reference Court could not be treated as an award and hence Revision Applications were maintainable. He also submitted that even in the absence of the claimant, it was the duty of the Reference Court to examine the material on record and award fair compensation.

04. Perused the judgment of the Reference Court. The same indicates that in both the proceedings, written arguments filed in Land Acquisition Case No. 100 of 2000 were relied upon in support of the claim for enhancement. The Reference Court has observed that though the claimant had filed affidavit in lieu of evidence, he was not present for cross-examination. The aspect of comparable sale instances was taken into account and the sale instances of village Nandgaonpeth were discarded on the ground that the acquired land was situated at village Sawardi. The certified copy of the award not being filed was taken into consideration after which the Reference Court concluded that the compensation awarded was adequate.

05. In *Kawadu Madhav Bansod* [supra], the reference proceedings came to be dismissed by the Reference Court on account of absence of the claimant and his counsel. No evidence was also adduced by the claimant. In that context, it was observed that the reference proceedings had been dismissed only on account of failure of the claimant to adduce evidence. It was held

that in those facts, the remedy of filing a Revision Application was available.

06. In the present case, however, it is seen that the claimant filed his affidavit in lieu of evidence. Though he did not remain present for his cross-examination, the Written Notes of Arguments filed in another reference proceedings were relied upon. The Reference Court then found that the sale instances relied upon were not of the same village and discarded the same. It, thus, recorded a finding that the compensation awarded was proper. In the light of observations made by the Reference Court, it can be said that the proceedings are not dismissed only on the ground that the claimant was absent. The material on record has been considered and not accepted. Whether these observations are correct can be examined in appropriate proceedings. Hence, the ratio of the decision relied upon by the learned counsel for the applicant does not support his contention.

07. I find that in the light of aforesaid adjudication by the Reference Court, the remedy under Section 54 of the Act of 1894 is available to the applicant. If he is aggrieved by the amount of compensation that has been maintained by the Reference Court, said remedy can be availed. Hence, it is not necessary to examine the correctness of the observations made by the Reference Court in the impugned order.

08. In view of aforesaid, it is held that the Civil Revision Applications are not maintainable. The applicant is at liberty to avail the statutory remedy under Section 54 of the Act of 1894 in accordance with law. It is clarified that this Court has not examined the correctness of the observations made in the impugned order. It is open for the applicant to seek benefit of filing of the present proceedings while praying for condonation of delay.

09. Civil Revision Applications are disposed of in aforesaid terms.

Judge

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