

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

First Appeal No. 0771 of 2016

District : Aurangabad

The Executive Engineer,
N.M.C. Division, Vaijapur,
Taluka Vaijapur,
District Aurangabad

.. Appellant
(Original
appellant/
Acquiring
Body)

versus

01. The State of Maharashtra,
Through Collector,
Aurangabad.

02. Somnath s/o. Gopinathappa
Sakhare (Died),
Through Legal Heirs :

02-A] Dipak s/o. Somanath
Sakhare,
Age : 62 years,
Occupation : Agriculture.

02-B] Shobha w/o. Nandkumar
Ghodegaonkar,
Age : 65 years,
Occupation : Household.

02-C] Malati w/o. Ravindra
Hapse,
Age : 50 years,
Occupation : Household.

All R/o. Vaijapur,
Taluka Vaijapur,
District Aurangabad.

.. Respondents
(No.01 -
Original
respondent
&
No.02 -
Original
petitioner/
Claimant)

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Mr. V.R. Sonvalkar, Advocate, for the appellant.

*Mr. A.M. Phule, Assistant Government Pleader,
for respondent no.01.*

*Mr. D.A. Bide, Advocate, for respondents
no.02-A to 02-C.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 18TH OCTOBER 2019

JUDGMENT :

01. The present appeal is filed by the acquiring body. The original claimant had filed reference under Section 18 of the Land Acquisition Act, 1894 [For short, "L.A. Act"] bearing L.A.R. No.271 of 1996, being dissatisfied with the amount of compensation awarded by the Special Land Acquisition Officer [For short, "S.L.A.O."]. The reference Court i.e. Joint Civil Judge (Senior Division), Aurangabad, has partly allowed the reference by judgment and award passed on 20-04-2000. Aggrieved thereby, the present appeal is filed.

02. The notification under Section 4 of the L.A. Act was issued on 04-03-1993. The award was passed on 30-03-1994. The reference under Section 18 of the L.A. Act was filed on 21-09-19094. Accordingly, the evidence was led by the claimants before the reference Court and the reference Court delivered the judgment and award on 20-04-2000.

03. The present appellant, being the acquiring body, by executive instructions, was constituted on 17-08-1998. As per the Government Resolution, by virtue of which the present appellant was constituted, the appointed date was 01-10-1998.

04. The S.L.A.O. has awarded compensation of the acquired lands at the rate of Rs. 540/- per R. The reference Court enhanced the compensation to Rs. 1,237/- per R.

05. Heard learned Advocate Mr. V.R. Sonvalkar appearing for the appellant. Heard learned AGP Mr. A.M. Phule appearing for respondent no.01. So also, heard learned Advocate Mr. D.A. Bide appearing for respondents no.02-A to 02-C.

06. Learned Advocate for the appellant, relying on the judgment of the Hon'ble Apex Court in *U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. & another* [AIR 1995 SC 724(1)] and another judgment of the Hon'ble Apex Court in *Agra Development Authority Vs. Special Land Acquisition Officer* [2001(2) SCC 646] submits that the matter be remitted back to the reference Court and allow the acquiring body to put forth its case.

07. Learned Advocate appearing for respondents no.02-A to 02-C - claimants, submits that the

reference Court has considered the sale instances on record and has passed the award. The appellant has been constituted on 17-08-1998 i.e. much after the award is passed by the S.L.A.O. and filing of the reference under Section 18 of L.A. Act before the reference Court. As such, they are not necessary parties nor they have any right to agitate. The totality of the evidence has been considered. The State has opposed the references by filing written statement and cross examining the claimants and their witnesses.

08. It is submitted that the objections under Section 28-A of the L.A. Act filed by the other claimants are pending and the same are not being disposed of as the appeal is pending. As such, it was submitted that instead of admitting the appeal, the matter be remitted back or in the alternative, the respondents may file on record such evidence which they would like to produce so that the same can be considered in the appeal itself. The learned Advocate submits that he is instructed to state that the appellant would like to cross examine the claimants and their witnesses regarding the said sale deed.

09. With the assistance of learned Advocates for respective parties, I have gone through the judgment of the reference Court.

10. It appears that the claimants have withdrawn the amount in the year 2001 itself. They are also not prejudiced by remand of the matter.

11. Hence, the following order :-

(a) The appeal is partly allowed.

(b) The judgment and award passed in L.A.R. No. 271 of 1996, by Joint Civil Judge (Senior Division), Aurangabad, on 20-04-2000, is quashed and set aside. The matter is remitted to the reference Court for deciding the same afresh.

(c) The appellant shall be added as respondent in the reference.

(d) The parties shall appear before the reference Court on 03rd December 2019. As all the parties are before this Court, no separate notice is necessary to be issued.

(e) The appellant shall file written statement, if any, by 06-01-2020. The claimants are also entitled to lead additional evidence, if they choose to. The acquiring body i.e. the appellant and the State may also adduce evidence, if they choose to.

(f) Taking into account the fact that the matter is remitted back to the reference Court and the matter is old, the reference Court shall decide the same expeditiously and preferably within six months from the date of appearance of the parties.

(g) The record and proceedings, if any, pertaining to the present matter, be sent back immediately.

(h) The amount already withdrawn by the claimants shall be retained by them and the same will be subject to the award that would be passed by the reference Court afresh.

(i) There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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