

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

974 FIRST APPEAL NO. 258 OF 2018

NAMDEV SITARAM ATTARDE (MAHAJAN)
VERSUS
THE SPECIAL LAND ACQUISITION OFFICER, U.T.P.H. NO.1, JALGAON
AND ORS.

WITH

FIRST APPEAL NO. 259 OF 2018

SHAMKANT CHAVDAS BHANGALE SINCE DECEASED, THROUGH
LEGAL HEIRS NARENDRA SHAMKANT BHANGALE AND ANR.
VERSUS
THE SPECIAL LAND ACQUISITION OFFICER, U.T.P.H. NO.1, JALGAON

WITH

FIRST APPEAL NO. 260 OF 2018

KAUTIK DAMU BHANGALE SINCE DECEASED, THROUGH LEGAL
HEIR GALUDAS KAUTIK BHANGALE SINCE DECEASED THROUGH
LEGAL HERIS SHASHIKALA GALUDAS BHNGALE AND ORS.
VERSUS
THE SPECIAL LAND ACQUISITION OFFICER, U.T.P.H. NO.1, JALGAON

WITH

FIRST APPEAL NO. 261 OF 2018

VASANT ZIPRU CHAUDHARI SINCE DECEASED, THROUGH LEGAL
HEIRS JITENDRA VASANT CHAUDHARI AND ORS.
VERSUS
THE SPECIAL LAND ACQUISITION OFFICER, U.T.P.H. NO.1, JALGAON

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Mr. G.V. Wani, Advocate for Appellants.
Mr. P.M. Kulkarni, AGP for Respondent No.1.
Ms. Chaitali Choudhary-Kutt, Advocate for Respondent No.2 in all Fas.
Ms. Vaishali Patil Jadhav, Advocate for Respondent No.3 in FA Nos.259,
260 & 261/2018

974 FIRST APPEAL NO. 305 OF 2018

KHUSHAL CHAVDAS BHOLE
VERSUS
THE SPECIAL LAND ACQUISITION OFFICER, U.T.P.H. NO.1, JALGAON

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Mr. G.V. Wani, Advocate for Appellants.
Mr. A.M. Phule, AGP for Respondent No.1.
Ms. Chaitali Choudhary-Kutt, Advocate for Respondent No.2.
Ms. Vaishali Patil Jadhav, Advocate for Respondent No.3.

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CORAM : P.R. BORA, J.

DATED : 29th JANUARY, 2019

PER COURT:-

1. Since all these appeals are arising out of the same acquisition proceedings, I have heard the common arguments in all these appeals and I deem it appropriate to decide all these appeals by a common reasoning.

2. Shri. G.V. Wani, the learned counsel appearing for the appellants in all these appeals, submitted that the Reference Court has dismissed the Reference Applications on the sole ground that the claimants did not enter into the witness box or adduce any evidence in order to substantiate their claim. The learned counsel submitted that because of some miscommunication between the claimants and their lawyer who appeared on behalf of them before the Reference court, the claimants could not adduce the necessary evidence. The learned counsel further submitted that the claimants are ready to proceed

with the matter expeditiously, if this Court remits the matters to the Reference Court for deciding the same afresh. Learned counsel further submitted that the claimants have a very good case on merits and if they are not provided with an opportunity to adduce evidence on their behalf to substantiate their claim, great prejudice is likely to be caused to all of them. Learned counsel, in the circumstances, prayed for setting aside the impugned judgments and awards and remit the matters to the Reference Court for deciding it afresh.

3. The learned counsel appearing for the acquiring body as well as the learned AGP appearing for the State, both have opposed the request so made by Shri Wani, appearing on behalf of the appellants. The learned AGP submitted that in case the Court is inclined to remit the matters to the Reference Court, the burden of interest shall not be saddled on the acquiring body and in turn on the State Government for the period which has been consumed because of the inaction on the part of the claimants.

4. I have given due consideration to the submissions made by the learned counsel appearing for the appellants and the learned counsel appearing for the acquiring body as well as the learned AGP. Perusal of the impugned judgment and awards reveal that the Reference Court has dismissed the Reference Applications on the ground that the claimants did not enter into witness box and did not adduce evidence in support of their claim. The Reference

Court, in fact, could not have dismissed the Reference Applications on the aforesaid ground. Though it is true that the inaction on the part of the claimants is explicit, the reasons as has been assigned by Shri Wani that there was a communication gap between the claimants and the counsel appearing on their behalf before the Reference Court deserves to be considered. Moreover, it appears to me that the Reference Applications need to be decided on merits and as such an opportunity requires to be given to the claimants to prove their claim before the Reference Court. While accepting the request of the appellants, the submissions made on behalf of the respondents that the burden of interest shall not be saddled on the acquiring body or the State also deserve to be considered.

5. The record reveals that the concerned Land Acquisition References were registered on 19.03.1999 and remained pending for 16 years, mainly because of inaction on the part of the claimants. Thereafter, the period of about a year was consumed by the claimants in approaching this Court. In the circumstances, though I am giving an opportunity to the claimants to prosecute their Reference Applications on merits, it would not be unjust if the claimants are disentitled for claiming interest of 12 years out of 19 years i.e. from the date of filing of the Reference Applications till today. It would meet the ends of justice since the burden of the interest for the said period of 12 years would not be

saddled on the State.

6. In view of the above, the following order is passed:

ORDER

[I] The judgments and orders passed in the LAR No.272/2005 and LAR No.273/2005 decided on 08.01.2016 and in LAR No.269/2005, LAR Nos.270/2005 and 271/2005 on 18.06.2016 are hereby quashed and set aside.

[ii] The matters are remitted to the Reference Court to decide the said matters afresh by giving due opportunity to the claimants to adduce necessary evidence in support of their respective claims.

[iii] Needless to state that the respondents would have equal opportunity to rebut the contentions raised on behalf of the appellants and also to adduce evidence on their behalf, if they so desire.

[iv] It is clarified that in the event, the Reference Applications are allowed by the Reference Court and the amount of compensation is enhanced, the appellants shall not be entitled for the interest on the enhanced amount of the compensation of 12 years out of the period between filing of the Reference Applications i.e. 19.03.1999 till decision of the said Reference Applications.

[v] Record and Proceedings be sent back to the Reference Court forthwith.

[vi] Parties to appear before the Reference Court on 04.03.2019.

[vii] All appeals stand disposed of accordingly.

**(P.R. BORA)
JUDGE**

Sudhir Rane