

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

FIRST APPEAL NO.1411 OF 2019

Rajwantibai w/o Surendrasing Thakur,
Age :- Major, Occ. Household,
R/o Nanda Tanda, Tq. Soygaon,
Dist. Aurangabad.

... Appellants
(Orig. Claimants)

VERSUS

1. The State of Maharashtra
Through Collector,
Aurangabad, Tq. & Dist. Aurangabad
2. The Special Land Acquisition Officer,
Jaikwadi Project -2, Aurangabad
Tq. & Dist. Aurangabad.
3. The Executive Engineer,
Minor Irrigation, Local Division,
Aurangabad.

... Respondents
(Orig. Respondents)

...

Advocate for Appellant : Mr. D.A. Bide h/f. Mr. Wayal Vitthal B
AGP for Respondent: Mr. R.B. Bagul

...

CORAM : MANGESH S. PATIL, J.

DATE : 17.12.2019

JUDGMENT :

Heard both the sides.

2. This is an appeal by the original claimant being aggrieved and dissatisfied by the dismissal of the reference preferred by him under Section 18 of the Land Acquisition Act, 1894.

3. The learned advocate for the appellant submits that for genuine reasons the appellant was unable to remain present before the reference court when the reference was taken up for hearing and for this sole reason, holding that she had failed to lead any evidence, the reference has been dismissed by the impugned judgment and order. The learned advocate submits that in fact, once reference was made by the Land Acquisition Officer to the civil court under Section 18, it was obligatory on the part of the reference court to have come out with some award. Mere dismissal of the reference because of the absence of the claimant, is not expected. The impugned judgment and award suffers from this gross illegality which can only be rectified by remanding the matter. He places reliance in the cases of **Vitthal Madan Patil Vs. State of Maharashtra and Ors.; 2018 (6) Mh.L.J 286**, and **Appasaheb s/o Mohanrao Chede Vs. State of Maharashtra and Anr.; 2011 (2) ALL MR 255**, wherein, in similar set of facts, by referring to the earlier decision of this Court, the appeals were allowed. He therefore requests that the same course be adopted.

4. The learned A.G.P. submits that the reference court was left with no alternative but to proceed to pass the impugned judgment and order for failure of the appellant to lead any evidence. No fault can be found with the reference court. Even if now the matter is to be remanded, as a condition the appellant be held not entitled to claim any interest for the period from the date of the decision of the reference upto.

5. Suffice for the purpose to observe that apparently, because of

the absence of the appellant before the reference court it proceeded to pass the impugned judgment and order holding that there was no evidence led by her. There is absolutely no reference touching the merits of the claim being put up by the appellant.

6. It is trite that in view of the specific provisions of the Land Acquisition Act as has been laid down in catena of decisions including the decisions referred to herein above, it is obligatory on the part of the reference court to decide the reference on merits even if the claimant does not come forward or does not lead evidence. It has to objectively examine the award passed by the Land Acquisition Officer and is expected to come to an independent conclusion as to sufficiency or otherwise of the compensation awarded by the Land Acquisition Officer. Deviating from such well settled legal position, the learned Judge of the reference court by the impugned judgment and award has simply dismissed the reference for the sole reason that the appellant was absent and had not led evidence. The approach of the reference court is clearly faulty and the fault can be rectified by remanding the reference court decision afresh.

7. However, simultaneously, one cannot forget the fact that the appellant herself is responsible for the situation she is in. A valuable time has been spent in prosecuting this appeal when it is obligatory on the part of the acquiring body to shoulder the heavy burden to pay statutory benefits. It is in view such state of affairs in my considered view, the appellant cannot be allowed to reap the benefits of her own wrong, by claiming interest for

the intervening period.

8. The appeal is partly allowed.

9. The impugned judgment and order is quashed and set aside. The reference is remanded back to the reference court for decision afresh by extending opportunity to both the sides to lead evidence. The parties to appear before the reference court on 13.01.2020. There shall be no need for the reference court to issue any notice. The appellant shall co-operate the reference court in deciding the reference as expeditiously as possible without seeking adjournments. The appellant shall not be entitled to claim any statutory benefit and interest for the period from 04.01.2018 till date.

(MANGESH S. PATIL, J.)

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