

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

First Appeal No. 01483 of 2019

District : Aurangabad

Trimbak Jaiwant Jagdale
(Died) per L.Rs.,

1. Ambadas Trimbak Jagdale
(Died).

2. Smt. Prayagbai Ambadas
Jagdale.

3. Babasaheb Ambadas Jagdale.

4. Badrinath Ambadas Jagdale.

5. Abasaheb Ambadas Jagdale.

All are agriculturists,
R/o. Ankushnagar,
Post Vadigodari,
Taluka Ambad, Dist. Jalna

.. Appellants

versus

The State of Maharashtra,
Through Special Land Acquisition
Officer,
Jayakwadi Project, Aurangabad.

.. Respondent

.....

Mr. M.P. Harjule, Advocate, for the appellants.

*Mr. A.M. Phule, Assistant Government Pleader, for
the respondent.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 10TH JUNE 2019

ORAL JUDGMENT :

Heard learned Advocate for the appellant as well as learned Assistant Government Pleader for respondent.

02. Present appellant is the original claimant who had filed L.A.R. No. 226 of 1978. It came to be decided by learned 2nd Extra Assistant Judge, Aurangabad, on 31st August 1979. Present appellant / claimant had come with a case that he is the owner of agricultural land bearing Survey no.19 admeasuring 24 Acres 21 Gunthas. The said land was acquired by the Government for Jayakwadi Project and award was passed by the Special Land Acquisition Officer on 26-03-1974. The amount that was awarded was to the extent of Rs. 26,977.50 paise, whereas by reference, the appellant claimed amount of Rs. 51,502.50 paise.

03. It has been submitted on behalf of the appellant, that the learned reference Court did not pass a judgment as required under law. Reasons were not given. Assessment of the claim of the claimant was not at all made and, therefore, there is perverse finding or conclusion.

04. Per contra, learned Assistant Government Pleader submitted that the reasons have been stated by the learned reference Court in L.A.R. No. 261 of 1978 and, therefore, taking into consideration the

similar grounds, it was held by the reference Court, that the claimants have failed to prove the inadequacy of the award.

05. Taking into consideration the rival submissions, following points arise for determination:-

(A) Whether the impugned judgment by learned 2nd Extra Assistant Judge, Aurangabad, dated 31-08-1979 can be said to be a lawful judgment ? and

(B) Whether the matter deserves remand ?

Findings and reasons for the same are given herein below.

06. Both the points are taken up together for discussion for the simple reason that from the perusal of the judgment itself, it can be seen that the basic formant of the judgment has not been adhered to. The judgment coupled with the operative order runs literally in six lines. There are absolutely no reasons assigned separately as regards the points raised by the present claimants. No doubt, taking into consideration the fact that the matter was very old, parts "B" to "D" were destroyed and under such circumstance, it cannot be gathered as

to whether an opportunity was given to the claimants to lead evidence. If opportunity would have been given, then definitely that could have been reflected in the judgment. There is absolutely no appreciation of the evidence that was led by the claimant. Even if for the sake of arguments it is accepted that there might be common grounds in many of the references and they could have been put in a group, yet, at the most, what was expected was a common judgment in all the matters. When separate judgment is given, definitely the Courts are expected to give reasons in that particular matter. Here, in this case, it is stated that *"For the reasons stated in the judgment kept on record and proceedings of L.A.R. No.261 of 1978"*, it was held that *"The claimants have failed to prove the inadequacy of the award"* and then the reference has been dismissed. It is most ever cryptic judgment which cannot be said to be as per law. Though parts "B" to "D" have been destroyed, yet, reflection of the said record absolutely cannot be found in the impugned judgment. Under such circumstance, there is no other option but to remand the matter.

07. Since the matter deserves remand, there is absolutely no necessity to make any kind of comment on the merits of the case. So also, in view of the fact that parts "B" to "D" have been destroyed, it is hard to arrive at a conclusion that the dismissal of

the reference on the merits could not have been justified.

08. Hence, the following order :-

(a) The appeal is partly allowed.

(b) The judgment and award passed in L.A.R. No.226 of 1978 by 2nd Extra Assistant Judge, Aurangabad, dated 31st August 1979, is hereby set aside.

(c) L.A.R. No.226 of 1978 is restored to the file of District Court, Aurangabad. Taking into consideration the fact, that parts "B" to "D" have been destroyed, endeavour should be made by the Presiding Officer, to whom matter would be assigned, to reconstruct the file and then proceed and dispose of the matter as per provisions of law. Needless to say, that taking into consideration that the reference is very old, utmost preference should be given to dispose of the same as early as possible.

(d) In the circumstances of the case, there shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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