

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1652 OF 2014

Mrs. Kundala w/o Subhas Mahajan ...Appellant

Versus

The Special land Acquisition Officer
No. 9 Ahmednagar, & the Collector,
Ahmednagar and others ...Respondents

...

Mr. Paresh B. Patil, Advocate for appellant
Mr. A. S. Shinde, Assistant Government Pleader for respondents
no. 1 to 4

...

CORAM **SUNIL P. DESHMUKH &**
: **R. G. AVACHAT, JJ.**
DATE: **25th MARCH, 2019**

ORDER :

1. Present first appeal has been preferred under section 54 of the Land Acquisition Act, 1894 against judgment and order dated 2nd May, 2014 in Land Acquisition Reference bearing no. 47 of 2010 (Old no. 128 of 2010) whereunder claim of present appellant - claimant had been rejected for failure of claimant to

prove compensation awarded by respondent no. 1 to be inadequate and improper and to prove entitlement to enhancement as well as reference being barred by limitation.

2. Learned counsel for appellant Mr. Patil submits that since reference has been pending for long time, it had become difficult for the appellant to constantly follow the the pending proceeding. He submits that while lawyer had been engaged, the matter has been lingering on for quite some time. The lawyer also had missed out on dates in the matter and in the process no evidence could be led by the court. Responsibility would not be attributable to appellant alone.

3. Learned counsel Mr. Patil emphatically submits that considerations which had weighed, for holding reference being barred by limitation are absolutely erroneous. He submits that factual position would show that while award had been passed on 22nd June, 2009, reference had in fact, been lodged with Special Land Acquisition Officer / Collector on 4th August, 2009, after notice under section 12(2) of the Land Acquisition Act, had been served on the appellant on 26th June, 2009 for said purpose, he refers to and relies on the endorsement at page no. 22 of the first appeal which, according to him, shows that the reference had been lodged on 4th August, 2009.

4. Learned counsel goes on to submit that the date which had weighed with the court as per the schedule, referring to remittance of reference under letter dated 11th January, 2010. Schedule 'A', item 4 of the same, shows the date of application under section 18 of the Land Acquisition Act to collector is 27th October, 2009. He submits, date 27th October, 2009 has no relevance as factual position from the documents emerges that reference had, in fact, been filed on 4th August, 2009 and particularly having regard to clause 11, land acquisition reference is being submitted within prescribed period of limitation as notice under section 12 (2) has been received on 26th June, 2009. He submits that this is evident from reference judgment, similarly by schedule 'A' and communication dated 11th January, 2010. He, therefore, urges to allow first appeal.

5. Learned Assistant Government Pleader appearing for respondents, however, submits that there had been no due prosecution before the reference court. Appellant had right to lead evidence but had not prosecuted the matter diligently. It was not the case before the court about reference being filed on 4th August, 2009. He submits that communication dated 11th January, 2010 would show that the reference had been lodged

on 27th October, 2009. According to learned Assistant Government Pleader, no documentary evidence has been placed on record before the court to buttress the submission that reference has been made on 4th August, 2009 including endorsement on page no. 22 of first appeal. He, therefore, submits that the reference court had rightly rejected the same, holding it having been filed beyond prescribed period of limitation. In support of it, reference court has relied on the case of *Bahadur Singh vs. Special Land Acquisition Officer, Pune & Anr.* (2009 (1) Mh.L.J. 236) as appearing at page 45 of writ petition. He, therefore, submits that first appeal does not carry any substance.

6. Having heard learned counsel appearing for the parties as aforesaid and upon perusal of impugned judgment it would appear that learned Judge of reference court has framed points for determination as on page 41 and has given findings thereon. It emerges that learned Judge has purportedly gone on merits of the the matter as well as considered the issue of limitation holding that it was barred. By now it is well settled that if the matter is to be considered on merit, the question of limitation would not have any bearing and if the matter is to be considered and decided on the issue of limitation, in such case, merit

could seldom be consideration. In view of aforesaid, it particularly appears that impugned judgment has been rendered unsustainable.

7. Having regard to aforesaid emerging position, it appears to be expedient in order to have fair and proper opportunity to the parties, the matter be remitted to reference court restoring it to the position as would be existing immediately before impugned judgment and order had been passed.

8. Keeping all the points open for the parties, impugned judgment and order, therefore, is set aside. Land Acquisition Reference bearing no. 47 of 2010 (Old no. 128 of 2010) is restored to the file of civil judge, senior division, Kopargaon to the position as had been subsisting immediately before impugned order had been passed, for considering afresh after granting proper opportunity to the parties.

9. Having regard to that the reference is quite old, reference court to proceed with the matter expeditiously.

10. With aforesaid, first appeal stands disposed of

[R. G. AVACHAT]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE