

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

9 FIRST APPEAL NO.1425 OF 2019
WITH CA/13620/2019 IN FA/1425/2019

**MAINUDDIN SARFODDIN SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND ORS**

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Advocate for Appellant : Mr. Chillarge Subhash S.
AGP for Respondents 1 & 2 : Mr. S. P. Deshmukh.
Advocate for Respondent No. 3 : Mr. Boinwar S.N. h/f Mr. Swami Mahesh.

CORAM : MANGESH S. PATIL, JJ.

DATE : 25/11/2019

PER COURT :

Heard finally with the consent of the parties.

2. The learned advocate for the appellant who is the original claimant has filed the Civil Application and has sought to produce a copy of the sale-deed to demonstrate that he does have a sale instance to justify his claim for enhancement of compensation under the Land Acquisition Act.

3. As has been submitted by the learned advocate for the appellant/original claimant, the impugned judgment and award apparently shows that the reference Court has emphasized on failure of the appellant to prosecute the reference with expected zeal he had not turned up and even a notice was issued to him on Court motion dated 13.06.2016 (Exhibit 8) which was duly served to him and still he did not turn up for hearing. By observing that there was nothing before it to demonstrate that the

compensation fixed by the Land Acquisition Officer was inadequate it answered the Issue No. 1 about inadequacy of compensation in the negative. For the same reason, for want of material he recorded his inability to assess the compensation by answering the Issue No. 2 as 'did not survive'. It is under these circumstances, the learned advocate for the appellant by referring to the decision in the case of ***Narayan Deorao Gore (died) through L.Rs. Vs. State of Maharashtra; 2011(3) Mh.L.J. 592*** submits that a similar course be followed and the matter be remanded back to the Reference Court for decision afresh more so when it had failed to examine the reference on merits. The learned advocate submits that even if the appellant was not present, it was expected of the Reference Court to have decided the reference on merits. Having failed to do so the reference may be remanded with direction to decide it afresh by extending opportunity to the appellant and even the respondents.

4. The learned A.G.P. submits that the applicant himself is to blame for the situation he is in. The Reference Court clearly demonstrated as to how strenuous efforts were taken to procure his presence but in vain. The conduct of the appellant before the Reference Court was highly objectionable and it was left with no alternative but to dispose of the claim as dismissed.

5. The learned A.G.P. further submits that even if the matter is now to be remanded, the appellant should not be allowed to claim any interest for

the period interregnum since it was his fault to not to appear before the Reference Court for prosecuting the reference which has resulted in the present situation.

6. A bare look at the impugned judgment and award clearly demonstrates that the Reference Court has merely pointed out the conduct of the appellant of not prosecuting the reference in spite of service of notice on Court motion. But conspicuously, when it was expected of the Reference Court to have decided the reference on its own merits, it has miserably failed to examine and decide the reference. It has merely pointed out as to how it was within limitation but simply by referring to the absence of the appellant it ought not to have refused to indulge in the scrutiny of the reference on merits. That having not been done, irrespective of the conduct of the appellant, it is a fit case where the matter deserves to be remanded to the Reference Court which was the situation in the case of ***Kawadu Madhav Bansod Vs. State of Maharashtra and another; 2004(1) Mh.L.J. 980*** and in the case *Narayan Gore (supra)* . The same course needs to be adopted even in the matter in hand.

7. However taking into account the fact that the appellant himself is responsible for the creation of the situation, even if now he is allowed to lead evidence before the Reference Court to justify his claim for enhancement, in my considered view, as has been rightly submitted by the learned A.G.P he cannot be allowed to claim any interest for the period

consumed from the date of the impugned judgment and award till date.

8. The First Appeal is partly allowed. The impugned judgment and award is quashed and set aside. The reference is remanded to the Reference Court for decision afresh by extending an opportunity to the both the sides to lead evidence and by keeping open all the points. However the appellant shall not be entitled to claim any interest from the date of the award i.e. 16.07.2016 till date.

9. The parties to appear before the Reference Court on 06.01.2020. There shall be no need for the Reference Court to issue fresh summons.

10. The Civil Application is disposed of.

(MANGESH S. PATIL, J.)

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