

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.607 OF 2019

1. Laxman s/o Dattarao Borade,
(Ramrao Dattarao Borade)
Age 50 years, Occupation Agriculture,
2. Ankushrao s/o Sahebrao Borade,
Age 45 years, Occupation Agriculture,

Both R/o Ambhoda (Kh.) Tq.Mantha
Dist. Jalna.

...Appellants.

VERSUS

1. The Executive Engineer,
Minor Irrigation (Local Sector),
Division Jalna, Now Executive
Engineer Irrigation Division,
Near Motibag, Jalna Dist.Jalna.
2. The State of Maharashtra,
Through Dist. Collector, Jalna
Dist. Jalna.
3. The Special Land Acquisition Officer,
Gavthan Collector Office,
Jalna Dist. Jalna.

...Respondents.

....
Mr. V. M. Humbe, Advocate for appellants.
Mr. A. M. Phule, Addl. Government Pleader for
respondents No.1 to 3.
....

CORAM : SMT.VIBHA KANKANWADI, J.
Date : 03-06-2019.

ORDER :

1. Present appeal has been filed by the original claimants
challenging the Judgment and award dated 05-01-2017 passed by

4th Joint Civil Judge, Senior Division, Jalna in Land Acquisition Reference No.712 of 2011, whereby the reference made under Section 18 of the Land Acquisition Act 1894 for enhancement of the compensations by the appellant – original claimants came to be rejected.

2. The appellants have come with a case that, the respondents have published notification under Section 4 of the Land Acquisition Act on 26-08-2004 in respect of acquisition of their land bearing Gut Nos.161 and 162 to the extent of 2 H 5 R and 1 H 5 R situated at village Ambhoda (Kh) Tq. Mantha Dist. Jalna for percolation tank. The award was passed on 16-01-2006 and they have received compensation under protest on 29-07-2006. They filed LAR No.712 of 2011 for enhancement of compensation. They contended that, the Special Land Acquisition Officer has not applied correct principles in categorization of the land. They had prayed for granting compensation @ of Rs.1700/- per R, thereby claiming amount of Rs.4,27,810/- including compensation for fruit bearing trees, with solatium and interest.

3. The original respondents No.1 and 2 had filed written statement and supported the reasons given by the Special Land Acquisition Officer.

4. Issues came to be framed. It appears from the record that,

after the issues were framed time and again matter was adjourned for adducing evidence by the petitioners / claimants. They did not remain present, and therefore, order was passed to proceed the matter without the oral evidence. Thereafter, the respondents No.1 and 2 did not adduce any evidence and filed evidence to close pursis. As such the learned Trial Court did not find any evidence to increase the amount in the compensation, the reference was dismissed. Hence, this appeal.

5. Heard Mr. V. M. Humbe, learned Advocate for appellants and Mr. A. M. Phule, Additional Government Pleader for respondents No. 1 to 3.

6. It has been vehemently argued in support of the appeal by the learned advocate for the appellants that, proper opportunity was not given to the appellants to lead evidence by the learned Trial Court. The appellants could have demonstrated as to how the Special Land Acquisition Officer erred in not considering the principles to arrive at just and fair compensation. When opportunity was not given to lead evidence, the Judgment and award passed by the reference Court is liable to be quashed and set aside, and matter deserves to be remanded for fresh decision. It was contended that, the acquired land was given compensation of Rs.68,000/- but no proper assessment as regards land being irrigated was ever considered by

Special Land Acquisition Officer. In fact the rate at which the compensation was granted i.e. @ Rs.650/- per R was too meager considering the market value. The land revenue was not revised by the Government since last about fifty years, and therefore the compensation which was based upon the land revenue assess was a wrong criteria.

7. Per contra, the learned Additional Government Pleader submitted that, proper opportunity was given to the appellants to lead evidence, however the appellants were negligent, they did not remain present. Under such circumstance, the learned Trial Court had no option but to consider whether there is any material on the basis of which compensation can be enhanced.

8. The perusal of the Roznama would show that, the issues came to be framed on 28-07-2016 and thereafter the matter was fixed for list of witnesses on 08-08-2016. On that day application was given for adjournment on behalf of the claimants, it came to be granted. Thereafter on 11-08-2016, 01-09-2016, 21-09-2016, 04-10-2016 and 21-10-2016 applications for adjournment were given at Exhibits 14 to 18, they all were granted. On these dates the claimants were absent however their advocate was present. Thereafter on 03-11-2016, 19-11-2016 and on 01-12-2016 the claimants as well as advocate were absent. When the matter was on 09-11-2016 though

the claimants were absent advocate was present, no application for adjournment was given still the matter came to be adjourned on 19-11-2016. Ultimately on 06-12-2016 order was passed below Exhibit 01 regarding closure of evidence of the claimants. It cannot be out of place to mention here that, since the reference cannot be dismissed in default and it could have been decided on the basis of the documents produced, the learned Trial Court was justified in passing the said order below Exhibit 1 on 06-12-2016. Thereafter, on 21-12-2016 though claimants were absent their advocate was present but there was no attempt to get the order below Exhibit 1 set aside. The learned advocate for the claimant could have definitely got idea or knowledge regarding passing of the order of closure of evidence on behalf of the claimants. On 21-12-2016 respondents No.1 and 2 filed pursis stating that they do not want to lead evidence and the matter was kept on 02-01-2017 for arguments. On 02-01-2017 again the claimants were absent, however their advocate was present. Respondents and learned AGP were absent and therefore there was no arguments advanced, and therefore, the matter was posted for pronouncement of Judgment. Accordingly the Judgment has been pronounced on 05-01-2017. All these details are intentionally mentioned to show that, every opportunity was given by the Trial Court to the claimants to lead evidence, however not even in this appeal memo any reason has

been given on behalf of the appellants as to why they remained absent. In fact their advocate was continuously remaining present and he has sought adjournments also. Therefore, it cannot lie in the mouth of appellants that proper opportunity has not been given. Perusal of the adjournment applications would also give a picture that, without collection of evidence it appears that the reference was filed by the claimants. They filed the reference first and in fact if we considered the petition itself then Land Acquisition Reference was examined and order to be registered on 24-11-2011. The issues as aforesaid were framed on 28-07-2016. That means, the appellants had every opportunity to collect the documentary evidence to base their claim for enhancement of the compensation within the aforesaid five years. The adjournment applications claimed that, they could not get evidence for sale instances and therefore the matter should be adjourned. The adjournment was accordingly granted. Still for another almost about further six months the claimants did not move to collect the evidence and place it before the reference Court. Under such circumstances when there was absolutely no support to the claim made by the claimants in the form of either sale instances or document showing that it is irrigated land etc. etc., the learned Trial Court was justified in dismissing the reference. There is no merit in the first appeal as no case is made out to remand the matter and even on merits there is nothing as it

can be seen from the record and proceedings. Hence, following order.

ORDER

- 1) The first appeal is hereby dismissed.
- 2) No order as to costs.
- 3) Decree be drawn accordingly.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.