

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1383 OF 2019
ALONGWITH
INTERIM APPLICATION NO. 1 OF 2019
IN
FIRST APPEAL NO. 1383 OF 2019

**Smt.Sulochana Prabhuling Birajdar & Ors. Appellants/
Applicants**

VERSUS

**Maharashtra State Electricity Distribution
Company Ltd. & Ors. Respondents**

Mr.R.S.Alange, a/w. Mr.Ajit Alange for the Appellants/Applicants.

Mr.A.R.Patil, Additional Government Pleader for the Respondent nos.
2 to 4 – State.

Mr.Ravi Prabhuling Birajdar - Appellant no.4 present in person.

CORAM : R.D. DHANUKA, J.

DATE : 21st FEBRUARY, 2020

P.C.

Interim Application No.1 of 2019 is filed by the applicant in this First Appeal under Order 41 Rule 27 of the Code of Civil Procedure, 1908 *inter alia* praying for direction to lead additional evidence. It is the case of the applicants in the interim application that at the relevant time, proof annexed to the Interim Application was not available with the applicants, the applicants could not produce any such proof in support of the claim for enhancement of the compensation. It is the case of the applicants that the evidence is now available and can be tendered in the present appeal.

2. A perusal of the impugned order passed by the Reference Court rejecting the Land Acquisition Reference No.49 of 2010 filed by the applicants clearly indicates that the said reference is rejected only on the ground that the appellants have not filed on record any sale deed in respect of the lands sold at the relevant time from the vicinity of Village Kumbhari of which consideration amount was Rs.6 lacs or Rs.4 lacs per hectare. It is also held by the Reference Court that since there was no evidence by the applicants to prove that the prevailing market price of the acquired land was as per his claim on the basis of any documentary evidence, no relief could be granted by the Reference Court in favour of the applicant.

3. Since it is the case of the applicants that such proof was not available when the matter was heard by the Reference Court and is now available, in my view, in the interest of justice would be met with if the impugned order dated 27th August, 2018 passed by the Reference Court is set aside and the matter is remanded back for consideration afresh.

4. The impugned order dated 27th August, 2018 is thus set aside. Land Acquisition Reference No.49 of 2010 is restored to file before the Reference Court for deciding the reference afresh. The applicants would be at liberty to lead the additional evidence before the Reference Court which is relied upon by the applicants in the Interim Application No.1 of 2019. It is made clear that this court has not expressed any views on the matter whether such evidence proposed to be relied upon by the applicants would assist the applicants or not and the same would be considered on its own merits subject to proof.

5. Mr.Patil, learned A.G.P. for the respondents submits that since the matter is being remanded at the instance of the applicants, the applicants shall not be entitled to recover any interest under section 28 of the Land Acquisition Act, 1894 for the period during which the said Land Acquisition Reference No.49 of 2010 was pending and till such time, the same is decided.

6. Mr.Alange, learned counsel for the applicant on the other hand strongly placed reliance on the judgment of Supreme Court in case of ***Dhiraj Singh (Dead) Through Legal Representatives and Others vs. State of Haryana and Others, (2014) 14 SCC 127*** and also in case of ***Ratti Ram vs. Union of India and Another, (2016) 11 SCC 110*** in support of the submission that under section 28 of the Land Acquisition Act, the entitlement of the applicants to the payment of interest cannot be denied.

7. Mr.Patil, learned counsel for the respondents distinguishes both these judgments on the ground that the facts before the Supreme Court were totally different.

8. Insofar as the issue of interest raised by the learned counsel for the appellants/applicants under section 28 is concerned, it is not the case of the appellants that the evidence which is sought to be relied upon now in the interim application filed under Order 41 Rule 27 was already produced before the Reference Court and was not considered. It is the specific case of the applicants that the applicants could not produce such evidence when the evidence was made before the Reference Court and such evidence is now made available. The Reference Court has rejected the reference merely on the ground that

the appellants could not produce any evidence in support of the claim that the compensation awarded by the Special Land Acquisition Officer was on the lower side and not in accordance with the prevailing market price.

9. Insofar as judgment of the Supreme Court in case of ***Dhiraj Singh (Dead) Through Legal Representatives and Others*** (supra) is concerned, Supreme Court in the said judgment has held that the equities can be balanced by denying the interest in favour of the appellants for the period for which they did not approach the court. The substantive rights of the appellants should not be allowed to be defeated on the technical grounds by taking hyper-technical view of self-imposed limitations. In that case there was delay on the part of the claimant to file application for enhancement. There was delay in filing Letters Patent Appeal.

10. In my view, the principles laid down by the Supreme Court in the said judgment can be extended to the facts at hand. The respondents were not responsible for not producing the relevant evidence before the Reference Court when the oral evidence was led by the appellants before the Reference Court. The respondents cannot be made to suffer for such laches on the part of the appellants.

11. Insofar as the judgment of Supreme Court in case of ***Ratti Ram*** (supra) relied upon by Mr. Alange, learned counsel for the appellants is concerned, Supreme Court in the said judgment has considered a situation where the reference proceedings were stayed at the instance of the appellants themselves. Considering the fact that the proceedings were stayed, Supreme Court held that the liability to pay interest has

gone from the date of reference and cannot be deprived of. In this case, the respondents were not responsible for the fact that the appellants was not producing the relevant evidence before the Reference Court. The judgment of Supreme Court in case of **Ratti Ram** (supra) is clearly distinguishable with the facts of this case and shall not advance the case of the applicant.

12. I, therefore, pass the following order :-

(a) The impugned order dated 27th August, 2018 passed by the learned Civil Judge, Senior Division, Solapur in Land Acquisition Reference No.49 of 2010 is set aside.

(b) Land Acquisition Reference No.49 of 2010 is restored to file.

(c) The Reference Court shall decide the said proceedings afresh and in accordance with law without being influenced by the observations made and the conclusion drawn in the order dated 27th August, 2018 after considering the evidence that would be produced by the appellants and also by the respondents.

(d) The Reference Court shall make an endeavour to dispose off the reference within six months from the date of the first hearing.

(e) At this stage, Mr.Alange, learned counsel for the applicants on instruction from his clients states that his

clients would file an undertaking in writing before the Reference Court to the effect that his client would not claim any interest under section 28 from the date of filing reference i.e. Land Acquisition Reference No.49 of 2010 till the claim for enhancement for claim is finally decided. Undertaking is accepted. An undertaking in writing shall be filed by the appellants before the Reference Court within two weeks from today with a copy to be served upon the respondent's advocate.

(f) The parties are directed to remain present before the reference court on 2nd March, 2020 at 11.00 a.m. without fail.

(g) The Reference Court to fix the further dates on such date.

(h) The parties shall co-operate with each other and with the Reference Court in disposing off the reference expeditiously as directed aforesaid.

(i) In view of the disposal of the First Appeal, all pending civil applications, if any, do not survive and are accordingly disposed of.

[R.D.DHANUKA, J.]