

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

FIRST APPEAL NO.2690 OF 2019

1. Bhaurao s/o. Sambhaji Anpat (died)
Through legal heirs,
2. Subhash s/o. Bhaurao Anpat,
Age : Major, Occ. Agri.,
3. Udhav s/o. Bhaurao Anpat,
Age : Major, occ. Agri.

r/o. Hastepokhari, Tq. Ambad,
Dist. Jalna

..Appellants

Vs

1. The State of Maharashtra,
Through Collector,
Dist. Jalna
2. The Special Land Acquisition Officer,
M.I.W., Dist. Jalna
3. The Executive Engineer,
Minor Irrigation Division,
Dist. Jalna

..Respondents

Mr.A.B.Jagtap, Advocate h/f. Ms.S.A.Jagtap, Advocate for appellants
Mr.K.S.Patil, AGP for respondent nos.1 and 2
Mr.M.C.Swami, Advocate for respondent no.3

**CORAM : R.G. AVACHAT, J.
DATE : AUGUST 10, 2021**

ORDER :-

Heard.

2. The challenge in this appeal is to the judgment and award dated 04.02.2014 passed by learned Joint Civil Judge, Senior Division, Jalna, in Land Acquisition Reference No.2162 of 2010. By the impugned judgment and award, the L.A.R. preferred by the appellants herein came to be dismissed. The original claimants have, therefore, preferred present appeal.

3. Heard.

4. Mr.A.B.Jagtap, learned counsel for the appellants, would submit that the reference Court has dismissed the reference as good as dismissed for default. He submits that in the case of **Khazan Singh (dead) by L.Rs. Vs. Union of India, 2002(2) All MR 273**, Hon'ble Supreme Court observed that the Civil Court has to pass an award in answer to the reference made by the Collector under Section 18 of the Land Acquisition Act. Learned counsel, therefore, urged for setting aside the impugned order and to remit the matter back to the reference Court for deciding it on merit.

5. Learned counsel for the acquiring body would, on the other hand, submit that public money is involved. The appellants were not diligent. They did not lead any evidence before the

reference Court. The reference Court, therefore, did not have any option but to dismiss the reference on the basis of the evidence before it. He, therefore, urged for dismissal of the appeal.

6. The land of the appellants has been acquired way back in 1999. Being dissatisfied with the quantum of compensation awarded by the Land Acquisition Officer, the appellants preferred L.A.R. (2162 of 2010). Reading of the impugned judgment and order indicates that the reference Court framed issues in September, 2009. The appellants filed on record affidavit of evidence along with some sale instances. They, however, did not appear before the reference Court thereafter. The reference Court, therefore, dismissed the L.A.R. vide the impugned judgment and order. The reference Court observed that neither the appellants nor their Advocate remained present for hearing of the L.A.R. It was, therefore, necessary to give decision on scrutiny of the documents on record. It has, however, been observed that it was the responsibility of the appellants to prove that the S.L.A.O. has not granted adequate compensation and therefore, they are entitled for enhancement. It has been further observed that since the appellants did not participate in the proceedings before the reference court, it had no option but to dismiss it for want of evidence.

7. The reference Court ought to have appreciated the evidence in the matter, which was in the nature of 7/12 extract and some sale instances. Suffice it to say that the L.A.R. has been dismissed as good as for default of the appellants to appear and produce evidence in support of their claim. In this factual backdrop, the impugned judgment and order is required to be set aside.

8. There is, however, other aspect of the matter. It is the appellants who are found to be negligent. Even the appeal has been preferred five years after the impugned judgment was passed. This Court, therefore, vide its order dated 26.07.2019, condoned the delay, on condition that the appellants would not be entitled to the component of interest, if any, for the delayed period of 1729 days.

9. From the impugned judgment and order, it is evident that in September, 2009, issues were framed. For about three years, the appellants did not produce any evidence. It is only in August, 2012, affidavit of evidence was produced along with some sale instances. The appellants, thereafter, did not remain present before the reference Court. It would, therefore, be a fit case to observe that the appellants would not be entitled for the component

of interest, if any, from the first date of hearing of the L.A.R., i.e. from 24.09.2009 till date the First Appeal was filed, i.e.28.01.2019.

10. In this view of the matter, the First Appeal is allowed in terms of the following order:-

(i) The appeal is allowed.

(ii) The impugned judgment and award is hereby set aside. The matter is remanded back to the reference Court for deciding it on merit after affording the appellants a reasonable opportunity of hearing.

(iii) If the reference is allowed, the appellants shall not be granted interest on enhanced compensation for the period from 25.09.2009 till 28.01.2019.

[R.G. AVACHAT, J.]

KBP