

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.572 OF 2021

Dhondiram Mahadev Pandre @ Pandhare
(since deceased) through LRs
Chandabai Dhondiram Pandre @ Pandhare and Ors. ...Appellants

vs.

The Special Land Acquisition Officer
No. 9, Sangli and Ors.

...Respondents

Mr. Tejpal Ingale, for the Appellants
Mr. Y.Y. Dabake, AGP for the Respondent-State.

CORAM : N. J. JAMADAR, J.

DATE : DECEMBER 08, 2021

P.C.:

. This appeal is directed against the judgment and order dated 22nd August, 2013 passed by the learned Joint Civil Judge, Senior Division, Sangli in Land Acquisition Reference No. 81 of 2008, whereby the reference made at the instance of original claimant Dhondiram Pandhare in respect of compensation for the land bearing Revisional Survey No.347/1A, admeasuring 03-H. 02-R situated at village Khojanwadi, Tal. Jath, Dist. Sangli acquired by the respondents, came to be rejected.

2. The Reference Court was persuaded to reject the reference for the reason that, despite ample opportunity, the original claimant who passed away after the impugned judgment and award, failed to

lead evidence. The Reference Court further noted that the respondents passed pursis (Exhibit 32 and 33) apprising the Court that they do not wish to lead evidence. Therefore, the matter was posted for submissions. However, neither the claimant nor the advocate for the claimant turned up and, thus, for want of evidence in respect of the claim of the claimant that compensation had not been awarded in accordance with the then prevailing market value of the acquired land, cannot be said to have been substantiated.

3. Mr. Ingale, the learned counsel for the appellant invited the attention of the Court to the fact that respondent No. 3 acquiring body had not appeared in response to the notice of the application for condonation of delay and by an order dated 17th November, 2021 this Court condoned the delay and the appeal came to be posted for admission today.

4. Mr. Ingale, learned counsel for the appellants further submits that the appellants had served the notice on respondent No. 3 of today's hearing and affidavit of service is also filed.

5. In view of the limited nature of controversy, the appeal is taken up for hearing finally at the stage of admission.

6. Heard Mr. Ingale, learned counsel for the appellants and Mr. Dabake, learned AGP for respondent Nos. 1 and 2.

7. The learned counsel for the appellants submitted that the Reference Court ought not to have rejected the reference on the ground that no evidence was led by the claimant. It was incumbent upon the Reference Court to decide the reference on merits and the same could not have been rejected for default in leading evidence and advancing submissions in support of the claim.

8. Learned counsel for the appellants further urged that the reference made at the instance of the brother of the original claimant Mr. Shrirang i.e. Land Acquisition Reference No. 31 of 2009, arising out of the adjacent land came to be allowed and the respondents were ordered and directed to pay the claimants the compensation at the enhanced rate of Rs. 95,000/- per acre by judgment and award dated 28th September, 2017. In the circumstances, the appellants would suffer irreparable loss if the claim is disallowed for the reason that no evidence was led by the original claimant, urged Mr. Ingale.

9. It is trite law that a reference under Land Acquisition Act, can

not be decided otherwise than on merits. The Reference Court was enjoined to consider the matter on merits and decide the reference. Rejection of the reference for default on the part of the claimant was not in consonance with law. A useful reference, in this context, can be made to the judgment of the Supreme Court in the case of **Khazan Singh (Dead) by Lrs. vs. Union of India**¹ wherein the legal position was enunciated thus:

6. Section 18 of the Act empowers a person interested in the land to move by a written application to the Collector requiring that the matter be referred for determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested. If the application for reference is in order the Collector is bound to make a reference of it to the Court. Section 20 of the Act enjoins on the Court to "proceed to determine the objection". The Court shall after holding such inquiry as may be necessary pass an award. Section 26 of the Act reads thus:

"26. Form of Awards.- (1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of Section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub- section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2, clause (2) and Section 2, clause (9), respectively, of the Code of Civil Procedure, 1908."

7. The provisions above subsumed would thus make it clear that the Civil Court has to pass an award in answer to the reference made by the Collector under Section 18 of the Act. If any party to whom notice has been served by the

1 (2002) 2 Supreme Court Cases 242.

Civil Court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the concerned party. But non-participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference for default.

9. In the light of aforesaid legal position, the learned counsel for the appellants was justified in making a prayer for remitting the matter back to the Reference Court for determination of the claim on merits.

10. The learned AGP Mr. Dabake, would urge that in case the matter is remitted back to the Reference Court, the respondents shall not be saddled with liability to pay the interest on the enhanced amount of compensation, in the event the claim is allowed.

11. The learned counsel for the appellants submitted that the appellants would not insist for award of interest on the enhanced amount of compensation from 21st October, 2011, the day on which the Reference Court directed that the matter be listed for the evidence of respondents. The learned counsel has tendered an affidavit of Mr. Suresh Dhondiram Pandre, appellant No.1E, affirming that the appellants would not claim interest for the intervening period. Paragraph 3 of the said affidavit reads as under:

3] I undertake to this Court that in case the matter is remanded back to the Reference Court at Sangli by restoring the said Reference Application bearing Land Acquisition No. 81 of 2008 and the Appellants/ original claimants permitted to lead evidence in support of their claim before the Reference Court, then considering the lapse of period after the impugned decision dated 22/08/2013 by the Reference Court, they will not claim any interest on the enhanced amount if any awarded by the Reference Court from said date i.e. 22/08/2013 till the decision of said Reference Application.

12. The aforesaid submission of the appellants seems reasonable. Resultantly, the appeal deserves to be partly allowed. Hence, the following order:

ORDER

- 1] The appeal stands partly allowed.
- 2] The impugned judgment and order dated 22nd August, 2013 stands set aside.
- 3] Land Acquisition Reference No. 81 of 2008 stands restored to the file of the Reference Court.
- 4] The parties shall appear before the Reference Court on 17th January, 2022. There shall be no need to issue notice to the parties by the Reference Court.
- 5] The Reference Court shall make an endeavour to decide the Reference as expeditiously as possible, after providing an effective opportunity of hearing to the parties.

6] The appellants shall not seek adjournment and shall cooperate the Reference Court in the expeditious disposal of the reference.

7] By way of abundant caution, it is clarified that this Court had not entered into the merits of the reference and all contentions of all the parties are kept open for consideration by the Reference Court.

8] All concerned shall act on an authenticated copy of this order.

(N. J. JAMADAR, J.)