

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

**68 APPEAL FROM ORDER NO.14 OF 2022
WITH CA/8372/2022 IN AO/14/2022**

**BHASKAR BALASAHEB KHUPASE
VERSUS
RANGNATH BAPURAO KHUPSE AND ORS**

Mr. Sudhir R. Chavan, Advocate for the
appellant
Mr. Ravindra V. Gore, Advocate for respondent
No. 1
Mr. Sujhit A. Patil, Advocate for respondent
No.7A to 7E
Mr.P.M. Kulkarni, AGP for the respondents/State

CORAM : S. G. DIGE, J.

DATE : 01st August, 2022

P. C.

1. Being aggrieved and dissatisfied by the impugned judgment and order dated 17-02-2022 passed by the learned Principal District Judge, Parbhani in RCA No.18/2019, thereby remanding the matter back by setting aside the judgment and decree passed in favour of the appellant herein in RCS No.370/2015, the appellant preferred this appeal.

2. Brief facts of the case are as under:

a] The appellant filed civil suit bearing No. RCS No.370/2015 for declaration and perpetual injunction against the respondents herein. It is the case of the appellant (original plaintiff) that he is the owner and possessor of the land Survey No.143, presently Gut No.491 area admeasuring 1-H 54-R, situated at village Singnapur, Tq. & Dist. Parbhani. Bapurao Chandroji Khupse and Sheshrao Chandroji Khupse (contesting party) were also owners and possessors of the agricultural land admeasuring 1-H 54-R in land Gut No. 491. Out of the said land, the land of Bapurao Chandroji Khupse and Sheshrao Chandroji Khupse, was acquired by the respondent No.3 admeasuring 1-H 15-R for Jaikweadi Canal Project vide award dated 27-03-1982. The compensation amount of Rs.3,450/-

paid by the acquiring body was accepted by Bapurao. Bapurao recorded his name in the occupancy column in collusion with the revenue authorities. The suit filed by the appellant is decreed.

b] The respondent No.1 herein preferred the RCA NO.18/2019 before the learned District Judge, Parbhani. After hearing the parties, the learned District Judge set aside the judgment and order passed by the learned Civil Judge Senior Division and remanded back the matter for fresh trial. Said order is under challenge.

3. It is the contention of the learned counsel for the appellant that the learned District Judge has not considered the fact that sufficient opportunities were given to the respondents before the trial court to lead the evidence, in spite of that respondents did not

choose to file written statement or lead the evidence. The respondent No.1 had cross-examined the witness of plaintiff. After considering the evidence on record, the learned trial court has decreed the suit of the appellant. The appellate court has not considered all these aspects and remanded the matter. The District Judge should have considered the fact that the order passed by the learned trial court is reasoned order. Hence, requested to allow the appeal.

4. It is the contention of learned counsel for the respondent No.1 that the compensation amount for the acquisition of land is taken by Rustum Khupse, father of respondent No.1 has not received any amount of compensation. Respondent No.1 had filed an application for setting aside the no written statement order before the trial court, but it

was rejected. Hence, respondent No.1 did not get proper opportunity to put his case. All these facts are considered by the learned District Judge and has passed the order to remand the matter for fresh hearing. Hence, the order passed by the learned District Judge is legal and valid.

5. The learned AGP submits that this court may pass appropriate order.

6. I have heard all the learned counsels and perused the order passed by the learned District Judge, Parbhani.

7. It is the contention of the appellant that the land of respondent No.1 was acquired for Jaikwadi Project. The respondent No.1's father got the compensation for said acquisition. During life time of father of

respondent No.1, he never raised any objection for not receiving said compensation. After demise of father, respondent No.1 has raised point that his father did not get compensation for acquisition. The Land Record Office communicated to the Talathi to reduce a portion of land of Shri. Rustum appearing on 7/12 extract. It is illegal.

8. Admittedly, respondent No.1 did not file written statement before the trial court. He is contesting party. If respondent No.1's father has received compensation or not for acquired land is disputed question. Hence, in my view, considering the peculiar facts of the case, evidence needs to be recorded of both the parties and I pass the following order:-

ORDER

a] The appeal is partly allowed.

b] Liberty is granted to both the

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parties to lead the evidence and amend their pleadings, if they desire.

c] The respondent No.1 shall pay cost of Rs.5,000/- to the appellant.

d] The respondent No.3-Special Land Acquisition Officer shall file his written statement before the trial court.

e] The appeal is disposed of in above terms.

[S. G. DIGE, J.]

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