

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2694 OF 2019

SHIVAJI RAYBHAN INGALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Appellant : Mr. A.M. Hajare
AGP for Respondent Nos.1 and 2 : Ms. D.S. Jape
Advocate for Respondent No.3 : Mr. S.G. Sangle

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CORAM : S.G. DIGE, J.
DATE : 15th July, 2022

ORDER :

. Heard learned Counsel for appellant and learned Counsel for respondent No.3.

2. Learned Counsel for appellant submitted that, claimant had filed reference petition before the learned reference Court. In the said petition, claimant had added respondent No.3 as Executive Engineer, Minor Irrigation Division Local Sector, Aurangabad. Accordingly, the notice was issued to respondent No.3, which was served but none appears for respondent No.3. Hence, matter

proceeded ex-parte against respondent No.3. Learned Counsel for appellant further submits that, it was the fault of the original claimant to add respondent No.3 as party. It should have been The Executive Engineer, Minor Irrigation Division No.1, Aurangabad hence, requested to remand back the matter for proper adjudication as contesting party is respondent No.3.

3. Learned Counsel for appellant further submits that, original reference was filed at Aurangabad but thereafter, the matters was transferred to Vaijaupur so there was communication gap between lawyer and appellant. Hence, appellant could not put the evidence before the learned Reference Court.

4. Learned Counsel for respondent No.3 submitted that, this Court may pass appropriate orders.

5. I have heard both the learned Counsel and perused judgment and award passed by the learned Civil Judge, Senior Divison, Vaijapur in L.A.R. No. 439 of 2010. The learned Trial Court has observed that, claimant has not

adduced the oral as well as documentary evidence. Further there is no sale instance on record to compare the market price of the acquired land at the time of publication of notification under Section 4 of the Land Acquisition Act. Claimant failed to prove that, the nature of acquired land was either perennially irrigated or seasonally irrigated. In absence of any positive evidence to that effect it cannot be said that, the claimant is entitled to enhance compensation for the acquired property. Accordingly, the learned Trial Court has dismissed the reference of original claimant/appellant.

6. In my view, appellant had filed reference petition before the learned Reference Court for enhancement of compensation. Appellant is poor farmer, sufficient chance needs to be given to adduce evidence in respect of his claim as the matter was originally filed at Aurangabad and thereafter it was transferred to Vijapur Court. Hence appellant did not get chance to adduce evidence. Respondent No.3 was wrongly added as party before the learned reference Court, it is necessary to correct it,

hence, I pass the following order :-

ORDER

- a. Matter is remanded back to the learned Reference Court for fresh hearing. Appellant shall appear before the learned Reference Court.
- b. Record and proceedings be sent back to the learned reference Court.
- c. Learned reference Court shall decide the matter on its own merits after considering the evidence laid by both the parties. If the parties failed to adduce evidence the learned Reference Court shall pass appropriate orders.
- d. If learned Reference Court considers enhancement of amount in that case, appellant is not entitled for the interest and statutory benefits for the delayed period i.e. from 25th February, 2017 till today, as he is seeking remand of matter.

(S.G. DIGE, J.)