

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

FIRST APPEAL NO. 46 OF 2022 [FAST/30705/2018]
WITH
CIVIL APPLICATION NO.13960 OF 2021 IN FA/46/2022
WITH
CIVIL APPLICATION NO. 2212 OF 2020 IN FA/46/2022

Maharashtra State Electricity
Distribution Company Ltd.
(Government of Maharashtra
Undertaking)
Through the Executive Engineer (Civil)
Sub Division, Hingoli,
Tq. & Dist. Hingoli.

.... Appellant.

Versus

1. Babanrao S/o. Bahirji (Died L.R.)
Damodhar S/o Babarao Shinde
Age : 55 years, Occu.: Agril.,
R/o Kalamnuri, Tq. Kalamnuri,
Dist. Hingoli.

2. The State of Maharashtra
Through the Collector,
Hingoli.

3. The Additional Special Land
Acquisition Officer, Kalamnuri,
Tq. Kalamnuri, Dist. Hingoli.

.... Respondents.

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Mr. A.S. Shelke, Advocate for the Applicant
Mr. S.S. Dargad, Advocate for the Respondent No.1
Mr. S.G. Sangle, AGP for Respondent Nos.2 and 3

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CORAM : SHRIKANT D. KULKARNI, J.

DATE : 10th JANUARY, 2022

ORAL JUDGMENT :-

1. Heard finally at admission stage with the consent of learned counsel appearing for respective sides.

2. Heard Mr. Avishkar Shelke, learned counsel for the applicant / acquiring body, Mr. S.S. Dargad, learned counsel for respondent no.1 and Mr. Sangle, learned counsel for respondent nos. 2 and 3. Perused the impugned judgment and award passed in L.A.R. No. 9/1998 dated 31.08.2005.

3. Mr. Avishkar Shelke, learned counsel for the appellant / acquiring body vehemently submitted that the impugned judgment and award passed by the Reference Court in L.A.R. No.9/1998 is bad in law and liable to be quashed and set aside. He submitted that the proceedings under Section 18 of the Land Acquisition Act, 1894 came to be decided by the Reference Court in absence of the appellant, who is the acquiring body. The land came to be acquired for the purpose of installation of 33/11 KV Electricity Sub-station of M.S.E.D.C.L. As such, participation and involvement of the appellant / acquiring body in the reference proceedings was necessary to adjudicate the claim for enhancement of

compensation. However, the appellant was not arrayed as a party respondent in the Reference proceedings and ultimately Reference Court awarded exorbitant compensation.

4. Mr. Shelke submitted that the Special Land Acquisition Officer has determined the compensation of the acquired land at Rs 120/- per R. The Reference Court has awarded compensation at Rs.2058/- per R, which is approximately seventeen times more. The reference Court has awarded the compensation on the basis of per square feet without making any deductions as required. It is necessary to quash and set aside the impugned judgment and award passed by the Reference Court in L.A.R. No. 9/1998. The matter needs to be remanded to the Reference Court for decision afresh by giving an opportunity to the appellant / acquiring body to appear and contest the claim of enhancement.

5. Mr. Shelke, learned counsel for the appellant / acquiring body submitted that in view of Constitution Bench decision of the Hon'ble Supreme Court in case of *Uttar Pradesh Awas Evam Vikas Parishad Vs. Gyan Devi (dead) By L.Rs. and another, Etc.* reported in *1995 AIR (SC) 724* as well as decision in case of *Abjul Rasak Vs. Kerala Water Authority* reported in *2002 AIR (SC) 817*, the

acquiring body is a necessary party to the reference proceedings under Section 18 of the Land Acquisition Act, 1894. But the claimant has not impleaded the acquiring body as a party respondent in the proceedings and ultimately the claim went ahead and disposed of in absence of the acquiring body.

6. By placing reliance on the above said citations, Mr. Shelke, learned counsel for the appellant / acquiring body urged to allow the appeal with prayer to remit the matter to the Reference Court for decision afresh after impleading the present appellant as a party respondent.

7. Mr. S.S. Dargad, learned counsel for the original claimant / respondent no.1 strongly opposed to allow the appeal. He submitted that the acquired land is adjacent to Hingoli-Nanded State highway. The Reference Court has rightly taken into consideration this aspect and accordingly considered the potential of the land in the category of N.A. land and determined the amount of compensation coupled with attending circumstances. The claimant has made the necessary parties i.e. State of Maharashtra and Additional Special Land Acquisition Officer for adjudication of the reference under Section 18 of the Land

Acquisition Act, 1894. As such there was no defect in the proceedings initiated by the claimant under Section 18 of the L.A. Act. He supported the findings recorded by the Reference Court. He submitted that there is no merit in the appeal and liable to be dismissed.

8. It is undisputed position that the appellant / acquiring body was not made a party to the proceedings of L.A.R. No.9/1998 initiated by the original claimant under Section 18 of the L.A. Act. The State of Maharashtra and the Additional Special Land Acquisition Officer, Kalamnuri, District Parbhani were the party respondents to the proceedings under Section 18 of the Act.

9. On going through the Constitution Bench judgment of the Hon'ble Supreme Court in case of ***Uttar Pradesh Awasth Vikas Parishad Vs. Gyan Devi (dead) By L.Rs. and another, Etc.*** (supra), the Hon'ble Supreme Court has held in para 25 as under :-

“25. To sum up, our conclusions are :

1. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation.

2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will be taken up.
3. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.
4. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.
5. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

6. The local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.
7. In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the court.
8. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court the local authority, they should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.
9. Since a company for whom land is being acquired has the same right as a local authority under Section 50(2), whatever has been said with regard to a local authority would apply to a company too.”

10. The same view also find place in case of *Abjul Rasak Vs. Kerala Water Authority* (supra). In case of *Neyvely Lignite Corporation Vs. Special Tahsildar (Land Acquisition) Neyvely* reported in *1995 AIR(SC) 1004* , the same view has been taken by the Hon'ble Supreme Court.

11. Having carefull analysis of the above stock of citations, upon which Mr. Shelke, learned counsel for the appellant / acquiring body has placed reliance, the legal position is very much clear in view of Order 1 Rule 10 of the Civil Procedure Code coupled with provisions of the Land Acquisition Act, 1894.

12. In the present case, the land belonging to the original claimant came to be acquired for the construction of 33/11 K.V. Sub-station by the appellant / acquiring body. As such, the appellant / acquiring body was the interested and proper party in the proceedings under Section 18 of the L.A. Act. However, original claimant seems to have not made the appellant / acquiring body as a party respondent in the proceedings under Section 18 of the L.A. Act. The proceedings were decided in absence of the acquiring body who was necessary party in view of Order 1 Rule 10 of the Civil Procedure Code.

13. In case of *Neyvely Lignite Corporation Vs. Special Tahsildar (Land Acquisition) Neyvely* (supra), the Hon'ble Supreme Court has held that the appellant for whose benefit the land is acquired, is the person interested within the meaning of Section 3(b) of the L.A. Act. The beneficiary for whose benefit the land is acquired is a person interested and has a right to be heard by the Collector or the Court under Section 18 of the L.A. Act, and if the compensation is enhanced, he is entitled to take cognizance / grievance by filing an appeal and defend the award, when the award is made under Section 11 of the L.A. Act.

14. Having regard to the legal position made clear by the Hon'ble Supreme Court in above referred stock of citations, though the appellant / acquiring body was a necessary party to the proceedings under Section 18 of the L.A. Act, not made as a party respondent. No opportunity to defend the claim of enhancement of the compensation initiated by the original claimant. The reference Court seems to have awarded the compensation approximately by seventeen times more than the rate given by the Special Land Acquisition Officer.

15. Having regard to the above reasons and discussion, the decision rendered by the Reference Court in L.A.R. No. 9/1998 is bad in law and liable to be quashed and set aside by allowing the appeal.

16. It is pointed out by Mr. Dargad, learned counsel for the original claimant that the notification under Section 4 of the L.A. Act came to be published long back in the year 1982 and the award under Section 11 of the L.A. Act came to be passed by the Special Land Acquisition Officer on 29.07.1983. The proceedings under Section 18 of the L.A. Act came to be disposed of on 07.01.1998. He submitted that it was a pretty old land acquisition proceedings and the original claimant has only received the amount of compensation determined by the Special Land Acquisition Officer under protest. He submitted that these aspects need to be considered while deciding this appeal.

17. I found merit in the submissions of Mr. Dargad, learned counsel for respondent no.1 by looking to the old acquisition proceedings, which relates back to the year 1982. He further pointed out that the appellant / acquiring body has deposited the entire amount under the impugned judgment and award and he

has also moved an application for withdrawal of amount and the same is awaiting decision.

18. Mr. Shelke, learned counsel for the appellant submitted that at the most, the original claimant may be allowed to withdraw 25% of the amount deposited by the acquiring body / appellant.

19. Having regard to the submissions of Mr. Shelke, learned counsel for the appellant/ acquiring body and Mr. Dargad, learned counsel for respondent no.1 / original claimant, it would be just and proper if the original claimant is allowed to withdraw 40% of the amount with accrued interest thereon deposited by the appellant / acquiring body, which would meet the ends of justice. At the same time, it is necessary to fix time schedule so that after remanding the matter to the Reference Court, matter can be disposed of in a time bond manner.

20. In view of the above, I proceed to pass the following order.

ORDER

- (i) The appeal stands allowed.
- (ii) The impugned judgment and award passed in L.A.R. No.9/1998 by the Civil Judge, Senior Division, Hingoli dated 31.08.2005 is hereby quashed and set aside.

- (iii) The proceedings of L.A.R. No. 9/1998 is restored to the file of the Civil Judge, Senior Division, Hingoli and remitted back for decision afresh within six months from the date of receipt of writ of this Court.
- (iv) The original claimant shall add the present appellant / acquiring body as a party respondent in the proceedings initiated by him under Section 18 of the Land Acquisition Act, 1894 within a period of fifteen (15) days from putting the appearance before the Reference Court.
- (v) The Reference Court shall start further exercise of completing the pleadings of both the sides within a period of two months thereafter. The Reference Court shall start the exercise of recording of evidence after two months on completion of pleadings and recasting of the issues, if any, and conclude the trial after giving an opportunity of hearing to the parties concerned within four months thereafter. The Reference Court shall decide the reference in a span of six months from the date of receipt of writ of this Court.
- (vi) Both the parties shall cooperate the Reference Court for expeditious disposal of the reference in a scheduled period.

- (vii) The original claimant / Respondent no.1 is permitted to withdraw 40% of the amount with accrued interest thereon deposited by the appellant / acquiring body with this Registry.
- (viii) Remaining 60% balance amount with accrued interest thereon shall be transmitted to the Court of Civil Judge, Senior Division, Hingoli, District Hingoli as early as possible.
- (viii) Civil Application No.13960 of 201 for withdrawal of amount stands disposed of in above terms.
- (ix) The first appeal is accordingly disposed of
- (x) No order as to the costs.
- (xi) In view of disposal of the first appeal, civil application No.2212 of 2020 also stands disposed of.
- (xii) The Registrar (Judicial) is requested to send the copy of this judgment to the concerned Reference Court for information and necessary compliance.

[SHRIKANT D. KULKARNI]
JUDGE