

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

31 FIRST APPEAL NO.4583 OF 2017

1. Ramgopal Gulabchand Soni
since deceased through his Legal Heirs,
- 1-A. Ramprasad s/o Ramgopal Soni,
Age : 73 years, Occu. Retired from service,
- 1-B. Rambilas s/o Ramgopal Soni,
Age : 70 years, Occu. Retired from service,
Both R/o "Matruchaya" Moti Nagar,
Latur, Dist. Latur.

... APPELLANTS
(Lrs. of Orig. Claimant)

VERSUS

1. The State of Maharashtra,
through the Collector,
Latur, Tq. & Dist. Latur.
2. Executive Engineer,
Medium Project, at Latur
Tq. & Dist. Latur.
3. Bhagwandas s/o Ramgopal
Soni, Age : 65 years, R/o :
"Matruchaya" Moti Nagar,
Latur.
4. Hanumanas s/o Ramgopal
Soni, Age : 62 years, R/o :
"Matruchaya" Moti Nagar,
Latur.

... RESPONDENTS
(Orig. Opponents)

...

Advocate for Appellants : Mr.V. B. Patil
AGP for the Respondent – State : Mr. S. S. Dande
Advocate for Respondent No. 2 : Mr. Anil M. Gaikwad

...

CORAM : KISHORE C. SANT, J.

DATE : 25.09.2023

ORDER :-

1. Heard.
2. This appeal is filed challenging judgment and order dated 26.07.2010 passed by the learned Civil Judge, Senior Division Nilanga in LAR No. 78/1998 (Old No. 436/1989).
3. The reference Court by way of the said judgment dismissed the reference mainly for want of evidence by the claimant in support of the claim, in spite of giving sufficient chances. It is the case of the appellant that though they were trying hard for giving evidence, they could not get sufficient time to collect necessary material in support of their case. It is submitted that if given a chance they would give evidence without further delay. The main prayer is, therefore, to remand the reference back to the Reference Court. Considering that the appellant is the person whose land is acquired by the respondent, this Court finds that his case needs to be considered sympathetically.
4. The learned Advocate also relied upon judgment of this Court in First Appeal No. 2502 of 2016. Considering the judgments in First Appeal No. 2501 of 2016, and First Appeal No.2697 of 2016, it appears that in all these judgments, this Court has consistently taken a view

that in such circumstances the reference needs to be remanded for giving sufficient opportunities to the claimants. In the judgment in the case of ***Ramanlal Deochand Shah, 2013 AIR SCW 4591***, wherein the Honourable Apex Court has held that it is the duty of the Court to do justice to the parties by giving second opportunity to the claimants to prove their case. While remanding the matter in paragraph 14, the Honourable Apex Court has held that in such circumstances, the owner/claimant would not earn interest for the period between the date of the judgment of the reference Court and the date of order by the Honourable Apex Court, Paragraph No.14 reads as under :-

“14. The failure or the omission to lead evidence to prove the claim appears in the above context to be a case of some kind of misconception about the legal requirement as to evidence needed to prove cases of enhancement of compensation. We do not in that view see any reason to deny another opportunity to the landowners to prove their cases by adducing evidence in support of their claim for enhancement. Since, however, this opportunity is being granted ex debito justitiae, we deem it fit to direct that if the Reference Court eventually comes to the conclusion that a higher amount was due and payable to the appellant-owners, such higher amount including solatium due thereon would not earn interest for the period between the date of the judgment of the Reference Court and the date of this order. These appeals are with that direction allowed, the judgments and orders impugned in the same modified to the extent that while the enhancement order by the Reference

Court shall stand set aside, the matters shall stand remanded to the Reference Court for a fresh disposal in accordance with law after giving to the landowners opportunity to lead evidence in support of their claims for higher compensation. No costs.”

5. This Court, thus, finds that in view of the view taken by the Honourable Apex Court and in view of the judgments passed in First Appeal, this Court holds that the present appeal also needs be remanded back and the same is remanded back to the reference Court.

6. On remand, the reference Court shall make endeavor to dispose of the reference within a period of one year from the date of receipt of this order. Liberty is granted to the appellants -original claimants to lead the evidence without making further delay, so as to enable the Court to dispose off the reference within one year. Needless to say that the claimants -appellants shall not be entitled to interest from 26.07.2010 till today i.e. 25.09.2023.

7. Thus, this appeal stands allowed and disposed off accordingly.

(KISHORE C. SANT)
JUDGE

shp/-