

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6830 OF 2022

1. Raghunath Gopinath Sakhare
Age- 92 years, Occ- Retired Govt. servant
R/o. Vaijapur, Tq. Jaijapur,
District- Aurangabad now r/o Nanded,
Taluka and District Nanded.
R/o. Saraswati 'Plot No. 2'
Maniknagar, Taroda Road,
Nanded- 431605.
2. Narayan S/o Gopinath Sakhare
Died through L.Rs.
- 2a] Dilip S/o Narayan Sakhare
Age- 67 years, Occ- Agril.,
- 3b] Shrikant S/o Narayan Sakhare
Age- 62 years, Occ- Agril.
Both R/o. Vaijapur Tq. Vaijapur,
District- Aurangabad.

...PETITIONERS
[Orig. Claimants]

Versus

1. The State of Maharashtra
Through the Sub Divisional Officer,
(Land Acquisition) Vaijapur,
Tq. Vaijapur, District. Aurangabad.
2. The Executive Engineer,
Nandur Madhameshwar Canal Division,
Vaijapur, Tq. Vaijapur,
District- Aurangabad.

...Respondents
[Orig. Respondents]

Mr. D.A. Bide, Advocate for the petitioners.
Mr. P.N. Kutti, AGP for respondent No. 1.
Mr. S.B. Patil, Advocate for respondent No. 2.

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 2nd AUGUST, 2023

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. This petition filed under Article 226 and 227 of the Constitution of India, seeks following reliefs:

A] Rule may kindly be issued.

B] The record and proceeding of the case may kindly be called for;

C] By issuing appropriate writ, order or directions the order passed below Exh. 35 in L.A.R. No. 272/1996 dated 29/04/2022 passed by the learned Joint Civil Judge, Senior Division, Aurangabad (Exh. "K") may kindly be quashed and set aside.

D] By issuing appropriate writ, order or directions the order passed below Exh. 1 in L.A.R. No. 272/1996 dated 29/04/2022 passed by the learned Joint Civil Judge Senior Division, Aurangabad (Exh. "L") may kindly be quashed and set aside.

E] By issuing appropriate writ, order or directions the order dated 09/12/2017 passed in first appeal No. 1449/2008 by the panel of Lok-Adalat held in this Hon'ble Court (Exh. "G") may kindly be quashed and set aside to the extent of case of the present petitions.

F] By issuing appropriate writ, order or directions the learned Joint civil Judge Senior Division, Aurangabad may kindly be directed to restore the impugned proceeding in its original

stage and to decide the same as per the directions of this Hon'ble Court's order dated 12/04/2016 passed in first appeal No. 772/2016 (Exh. "E")

3. Facts in brief leading to this petition are as follows:

Petitioners' land admeasuring 4 Hectare 5 Are, situated at Vaijapur, was acquired for construction of Narangi-Sarangi Medium Project, Vaijapur, District- Aurangabad. On 30.03.1994 award was declared under section 11 of the Land Acquisition Act 1894. Petitioners received amount of compensation on 20.04.2000, under protest and petitioners filed Land Acquisition Reference No. 321/1994 (New No. 272/1996) under section 18 for enhancement of compensation amount. Award enhancing the amount of compensation was passed in the reference on 20.04.2000.

4. State Government by filing First Appeal No. 1449/2008 challenged the award passed by the Reference Court.

5. In the meanwhile, acquiring body/respondent No. 2 challenged the award by filing First Appeal No. 772/2016, on the ground that it was not made party to the reference. After hearing the parties, by order dated 12.04.2016, this Court [Coram: V.K. Jadhav, J.] allowed the first appeal, in following

terms;

"13. In view of above, I pass the following order:-

I. The impugned judgment and award is quashed and set aside.

II. The matter is remitted to the Reference Court for deciding the same afresh.

III. The appellant shall be added as respondent in the Reference.

IV. The parties shall appear before the Reference Court on 29.04.2016.

V. As all the parties are before this court, no separate notice is necessary to be issued.

VII. The appellant shall file written statement, if any, by 7.6.2016.

VIII. The claimants are also entitled to lead additional evidence, if they choose to.

IX. The acquiring body i.e. the appellant and the State may also adduce evidence if they choose to.

X. Taking into account the fact that the matter is remitted back to the Reference court and the matter is old, the Reference court shall decide the same expeditiously and preferably within six months from the date of appearance of the parties.

XI. The record and proceedings, if any, be sent back immediately.

XII. The amount already withdrawn by the claimants shall be retained by them and the same will be subject to the award that would be passed by the Reference court afresh.

14. In the light of the above, the first appeal is accordingly disposed of, however, with no order as to costs.

6. Accordingly, Land Acquisition Reference No. 272/1996 was remanded back to the Reference Court and it was reopened. First appeal filed by the State along with other first

appeals from the same award were placed before the National Lok Adalat held on 09.12.2017. In the group of first appeals, following order is passed by National Lok Adalat.

"2. The State Government is represented by AGP Shri. B.V. Virdhe. The claimants are represented by Adv. Shri. V.D. Gunale, Adv. Shri. A.b. Kale, and Adv. Shri. S.K. Adkine.

3. Learned AGP Shri Virdhe submitted that, in view of the policy decision taken by the State Government vide Government Resolution No. संकीर्ण-२०१४/प्र.क्र.४१/भाग-१/अ-४ दि. ०३ नोव्हेंबर २०१६ with Government Corrigendum dtd. 23rd February, 2017, the copies of which are annexed to the present order, the State has decided to settle these appeals finally. The learned AGP further submitted that, the market rates as are determined by the reference Court in all these matters are within the outer limit as prescribed in the aforesaid Government Resolution. The learned AGP further submitted that, the Government is ready to deposit the amount of compensation as per the Awards passed by the reference Court, wherein the amount is yet not deposited, within the period of one year wherein the acquisitions are under Employment Guarantee Scheme and in other matters within six months from the date of this order.

4. The learned Counsel appearing for the claimants thereupon submitted that, if the State Government deposits the amount of compensation within one year where the acquisitions are under Employment Guarantee Scheme and in other matters within the period of six months, the claimants will not claim the interest of the said period of one year or six months as the case may

be. The learned Counsel for the claimants further submitted that, when the Government has decided to settle these appeals, the claimants will also not claim the cost of these appeals.

5. In view of the above, with consent of the parties present before the Lok Adalat accompanied by their Counsel, the following order is passed.

ORDER

i) The Awards impugned in the present appeals are maintained.

ii) The State Government shall deposit the amount of compensation as per the Awards passed by the reference Court, wherein the amount is yet not deposited or not deposited in the full, within one year if the acquisitions are under Employment Guarantee Scheme and in other matters within the period of six months from the date of this order.

iii) If the amount is deposited within the period of one year or six months as the case may be, the State Government shall not be liable to pay the interest on the amount of compensation of the said period of one year or six months as the case may be, failing which, the allowance so given to the State shall stand automatically withdrawn unless with consent of the claimants the time to deposit the amount is got extended by the appellants from the Court.

iv) It would be open for the claimants to withdraw the amounts already deposited and which may be deposited hereinafter.

v) The appeals stand settled and hence disposed of in the aforesaid terms without any order as to the costs.

vi) The appellants shall be entitled for the refund of Court fees in accordance with law.

vii) Pending Civil Application, if any, stand disposed of."

7. After the order of National Lok Adalat, acquiring body/respondent No. 2 filed application Exhibit-35 in Land Acquisition Reference No. 272/1996 seeking disposal of the reference in view of the order passed by National Lok Adalat. On that application State/Respondent No. 1 filed say that since the First Appeal No. 1449/2008 filed by the State challenging the award was settled before the National Lok Adalat on 09.12.2017 and entire amount is withdrawn by the claimants and reference is finally adjudicated and decree is satisfied, the claim raised by the claimants is hit by the principle of *res-judicata*, and therefore application filed by the acquiring body deserves to be allowed.

Petitioners opposed the said application on the ground that, this Court has remanded the matter back to the Reference Court as per the order passed in First Appeal No. 772/2016 and permission is granted to them to lead evidence and therefore, the petitioners may be permitted to lead evidence in support of their claim. Reference Court allowed the application Exhibit-35 and disposed of the reference, in view of the order passed by National Lok Adalat on 09.12.2017, in First Appeal No. 1449/2008. Petitioners have challenged the order of National Lok Adalat as well as the order passed by the Reference Court, in the present petition.

8. Heard the learned advocate for the petitioners, learned Assistant Government Pleader for respondent No. 1 and learned advocate for respondent No. 2. Perused the memo of writ petition, its annexures and the impugned orders.

9. Learned advocate for the petitioners challenged the impugned orders contending that the petitioners were not present before the National Lok Adalat and they have not consented for settlement. It is further submitted that along with the petitioners, their brother had filed reference for enhanced compensation, which was allowed. State filed appeal against the said order and for non compliance of office objections, State's appeal was dismissed. Thereafter, his reference was heard on merits by the Reference Court and enhanced compensation was awarded. Petitioners are also therefore entitled for prosecuting the reference for enhanced compensation, in view of the order passed by this Court in First Appeal No. 772/2016.

10. Learned Assistant Government Pleader for respondent No. 1 argues that the petitioners have challenged the order passed by the Reference Court in this petition which the petitioners ought to have challenged in the first appeal. He further submits that though the petitioners were aware of the

award passed by National Lok Adalat, they have never challenged it, till the Reference Court held against them and their reference is rightly disposed of in view of the order of National Lok Adalat. He therefore, submits that there is no merit in the writ petition and writ petition is liable to be dismissed with costs.

11. Learned advocate for the acquiring body/respondent No. 2 submits that the petitioners are signatories to the compromise before the National Lok Adalat and/or their advocate has consented to the compromise recorded by National Lok Adalat and on the basis of said consent National Lok Adalat has passed award. In that view of the matter, there is no merit in the writ petition and the same may be dismissed.

12. It is a matter of record that by order dated 12.04.2016, First Appeal No. 772/2016, filed by Respondent No. 2/acquiring body is allowed by this Court and the impugned judgment and award passed in Land Acquisition Reference No. 272/1996 is quashed and set aside and the matter was remanded back to the Reference Court for deciding the same afresh. The acquiring body/Respondent No. 2 was directed to be added as respondent in the reference and claimants were held to

be entitled to lead evidence, if they choose to. Liberty was also given to acquiring body and State to adduce evidence. Thus, position emerges from the record is that by order dated 12.04.2016, award passed in Land Acquisition Reference No. 272/1996 was already quashed and set aside by this Court.

13. Admittedly, National Lok Adalat was held on 09.12.2017, in which compromise was recorded and order was passed, thereby confirming the award challenged in the First Appeal No. 1449/2008 filed by respondent No. 1. State Government was directed to deposit amount of compensation as per the award passed by the Reference Court. It is further clear that on 09.12.2017, when the National Lok Adalat confirmed the award in appeal filed by State, the award was already quashed and set aside by this Court on 12.04.2016, and reference was remanded back to the Reference Court. Therefore, the award which was confirmed by National Lok Adalat, was not in existence on the date on which it was confirmed by National Lok Adalat.

14. It is unfortunate that neither the petitioners nor State Government brought this fact to the notice of the National Lok Adalat. In these peculiar facts, the order passed by National

Lok Adalat is a nullity and *void ab initio* and cannot be sustained.

15. While disposing of the reference by the impugned order, the Reference Court has recorded perverse finding that National Lok Adalat has already confirmed the award. While passing the impugned order, Reference Court has ignored the order passed by this Court in First Appeal No. 772/2016, dated 12.04.2016, by which award passed in Land Acquisition Reference No. 272/1996 was already quashed and set aside and the reference was remanded back for fresh consideration by adding acquiring body as party respondent to the reference. On the basis of this order the reference was reopened

16. In the light of aforesaid reasons, both the impugned orders are unsustainable. Hence, the following order:

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 09.12.2017 passed by National Lok Adalat in First Appeal No. 1449/2008, is hereby quashed and set aside.
- (III) Impugned order dated 29.04.2022, passed by learned Joint Civil Judge, Senior Division, Aurangabad, below Exhibit-35, in Land Acquisition Reference No. 272/1996, is

hereby quashed and set aside.

- (IV) Reference Court is directed to conduct proceeding of reference in accordance with law and dispose it of within a period of six months from the date of receipt of writ of this order.

Rule is made absolute to the above extent.

[NITIN B. SURYAWANSHI, J.]