

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9058 OF 2023

Sayed Mohammed Shah A. H.

Kadri Decd Thru Lhrs

Sayed Wajid Ali Shah Kadri & Ors.

...Petitioners

Versus

The State Of Maharashtra

Thru Special Land Acquisition

Officer, Metro Centre No. 3,

Panvel.

..Respondent

—————
Mr. Shriram S. Kulkarni & Mr. Gaurav Ugale for the Petitioners.

Mr. P. P. Pujari, AGP, for the State.
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Coram : Sharmila U. Deshmukh, J.

Date : July 28, 2023.

P. C. :

1. The challenge in the Petition is to the order dated 7th June, 2023 passed below Exhibit-63 in LAR No. 347 of 2000 declining to set aside the order of no cross of the witness who was the valuer and keeping the matter for judgment.

2. Heard Mr. Shriram S. Kulkarni learned counsel appearing for the Petitioners and Mr. P. P. Pujari, AGP, learned counsel appearing for the Respondent.

3. Learned counsel appearing for the Petitioners submits that the claimant who is the Petitioner in the present case had instituted LAR No. 347 of 2000 which was previously numbered as LAR No. 252 of 1990. He would submit that the reference was earlier dismissed on merits as against which Appeal was filed and the matter was remanded. He would further submit that the claimant had filed his affidavit of evidence and was duly cross-examined. He would further submit that on 28th April, 2022 the affidavit of evidence in Lieu of Examination-in-chief was filed. However, the witness could not remain present for the cross-examination due to the personal difficulty and on 21st February, 2023 the evidence was closed by the Trial Court. He would further submit that an Application was moved below Exhibit-63 for setting aside the order which came to be rejected by the impugned order dated 7th June, 2023. Another submission which has been canvassed by the learned counsel appearing for the Petitioner is that on the said date the junior associate of the advocate on record was present to argue the Application below Exhibit-63, however, the reference Court did not permit the junior associate to argue the matter for the reason that her *vakalatnama* was not filed. He would submit that it is a consistent practice in the Court of Maharashtra that junior counsel

from the chamber of the advocate on record attend the matters and it is not mandatory for the junior associates of the chamber to file *vakalatnama* when the advocate on record has given an authority letter in that respect.

4. He seeks to rely on the decision of this Court in the case of ***Jayant Madhav Chitale v. Garware Wall Ropes Ltd. & Ors Reported in AIR 1997 Bombay 126***. He would emphasis that the refusal to permit the junior advocate to argue the matter is contrary to the provisions of the CPC.

5. Considered the submissions.

6. By the impugned order, the reference Court has closed the evidence on the ground that there is a grave negligence on part of the Applicant and that there is no reason to reopen the evidence or to set aside the order. The reference Court ought to be sensitive to the fact that reference was for determining the compensation for acquisition of the property and the purpose of the Land Acquisition Act is to ensure that appropriate compensation is paid to the land owners whose private property has been acquired by the State. It is also in the interest of the State Government that its citizens are meted out justice especially when their private properties are acquired by the State for public purpose. It is

for this reason that in the catena of decision it has been held that the reference has to be decided on merits and cannot be dismissed for default, and the provisions of the Land Acquisition Act provides for contents of the award. For that purpose considering the salutary object behind the Land Acquisition Act which includes determining the appropriate compensation, the deposition of the valuer plays crucial factor. Even if there is delay in the cross-examination, the reference Court is required to take into consideration all the above facts and lenient view ought to be taken of the matter.

7. In the present case, the valuer whose affidavit of evidence was filed before the reference Court has also filed an affidavit in this Court stating that as her parents who are at Karnataka required medical assistance due to hospitalization, she was require to attend to her parents at Karnataka. The reference Court has observed that even previously the applicant had failed to lead evidence and judgment was pronounced, however, matter was remanded back. The reference Court ought to have taken into consideration that the affidavit of evidence of the claimant was filed and cross-examination was over and it was the second witness who was in the box who had already filed her affidavit of evidence and as such, opportunity was required to be given to lead evidence so that the

compensation can be appropriately determined.

8. As regards the denial of permission to the junior associate of the advocate on record to argue the Application below Exhibit-63, the said position was under consideration of this Court in the case of ***Jayant Madhav Chitale*** cited (supra). This Court considered the provisions of Order 3 Rule 4(5) of the CPC and the proviso thereof which provided that the requirement of filing of memorandum of appearance does not apply to an advocate who has been engaged by an advocate on record who has filed his memorandum of appearance. A note of caution was cited in the said decision that it is expected of the Trial Court to keep the said provision in mind. This Court also observed that the Court in such circumstances cannot insist on the pleader to file memorandum of appearance. In the present case, the contention is that the junior associate was possessing the authority letter of the advocate on record but was not permitted to argue on the Application. The provisions of Order 3 Rule 4(5) is required to be kept in mind while dealing with such situations.

9. In light of the above the impugned order dated 7th June, 2023 is hereby quashed and set aside. By reason of the setting aside of the order, the Application below Exhibit-63 stands allowed and the claimant is

permitted to lead further evidence in the matter.

10. Writ Petition stands allowed.

[Sharmila U. Deshmukh, J.]