

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH AT NAGPUR**

FIRST APPEAL NO. 384 OF 2009

Shri Chandrabhan S/o. Nimbaji Aher,
Aged about 67 years, Occu.: Agriculturist,
R/o. Village Kinhola (Panera),
Tahsil Motala, District Buldhana.

... Appellant

.. Versus ..

State of Maharashtra,
Through the Collector, Buldhana,
Tahsil and District Buldhana.

...Respondent

Shri K.P.Sadavarte, Advocate for appellant.
Shri M.A.Kadu, A.G.P. for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 27/01/2023

JUDGMENT

By preferring this appeal, the appellant (original claimant) has challenged the judgment and award dated 12/07/2007 passed by learned 2nd Joint Civil Judge, Senior Division, Buldhana in Land Acquisition Case No. 265/1998, by which, the reference is dismissed, as the claimant failed to adduce the evidence.

2. The brief facts of the case in nutshell are as under:-

The appellant/claimant who is permanent resident of village Kinhola (Panera), Tah. Motala, District Buldhana was the owner of Gut No. 274 admeasuring 0.79 H.R. alongwith one Well, four Mango trees and other two trees. The above said property was acquired by Government of Maharashtra for the purpose of percolation tank at village Kinhola (Panera). The Special Land Acquisition Officer, Buldhana had acquired the said land. Accordingly, the notification under Section 4 of the Land Acquisition Act was published. Thereafter, the notification under Section 6 of the L.A. Act was published in the Govt. Gazette on 20/03/1997. The notification under Section 12(2) of the L.A. Act was also published on 16/11/1995 and the award is passed on 25/11/1997. On perusal of the notice/notification, the claimant orally as well as in a written form objected and not accepted the rate assessed by the Land Acquisition Officer towards the compensation. By objecting the said notice/notification under Section 12(2) of the L.A. Act, the claimant prayed for compensation @ Rs. 1,00,000/- per hector, however, the Land Acquisition Officer had not considered the same and fixed the

price @ Rs. 28,000/- per hector. The claimant has accepted the amount of compensation under protest.

3. Being aggrieved and dissatisfied with the rate assessed by the Land Acquisition Officer, the claimant had preferred the reference bearing Land Acquisition Case No. 265/1998. The said land acquisition case was preferred to learned Joint Civil Judge, Senior Division, Buldhana for adjudication. The notice of the said reference was issued to the respondent (LAO). The respondent had contested the reference application by filing Written Statement. It was submitted by the respondent that, the fair compensation amount is granted to the claimant and there is no reason to interfere with the same, hence, the reference application deserves to be dismissed.

4. On perusal of the rival pleadings, the learned reference Court framed the issues. After framing of the issues and after giving sufficient opportunity, the claimant failed to adduce the evidence, therefore, on the basis of the evidence which was available before the Reference Court, the Reference Court has dismissed the petition/reference by assigning the reason that, the burden is on the claimant to prove the claim but he has not adduced any evidence and has not taken any pain to file the copy

of impugned award on the record, thus, the claimant has not produced any material on record to determine the market value of the acquired land and hence, the petition is dismissed.

5. Being aggrieved and dissatisfied with the said judgment of learned Joint Civil Judge, Senior Division, Buldhana, the present appeal is preferred by the appellant on the ground that the learned Trial Court (Reference Court) has dismissed the petition erroneously without considering that, the land of the claimant was acquired and very meagre amount was awarded towards the compensation. The Land Acquisition Officer has acquired the land for the purpose of percolation tank after issuing necessary notification. The appellant had objected the same and alternatively prayed for compensation of Rs. 2,29,000/- for acquired land but the Land Acquisition Officer has granted Rs. 28,496/- towards compensation to the present appellant vide its Award dated 25/11/1997 which is unjust and unfair. The Land Acquisition Officer has not considered the fertility and potentiality of the land while awarding the compensation. Therefore, the claimant had preferred the reference before learned Reference Court, but the Reference Court has not considered the fact, and in other matters which were referred to

the Permanent Lok Adalat, the Reference Court has awarded the compensation @ Rs. 1,000/- per Guntha/Are. As the land of the appellant is also acquired by the same notification and therefore, he is also entitled to receive the compensation @ Rs. 1,000/- per Guntha/Are. The learned Reference Court completely ignored the fact that, out of the same award, the other villagers preferred the reference which were settled before the Lok Adalat. In view of that, the present appellant is also entitled to receive the compensation by the same rate. But the learned Reference Court erroneously dismissed the petition. Therefore, the order of the learned Joint Joint Civil Judge, Senior Division, Buldhana deserves to be set aside, alternatively, the appellant prayed for remand of the case by granting an opportunity to the appellant to lead evidence to substantiate his claim and decide the matter afresh.

6. Heard Shri K.P. Sadawarte, learned counsel for the appellant and Shri Kadu, Asst. Government Pleader for the respondent. Learned Counsel Shri Sadawarte vehemently submitted that the learned Reference Court has considered the reference filed by another villager whose land was acquired by the same notification for the same purpose. The other land

references were kept in the Permanent Lok Adalat for settlement. In Lok Adalat, the compensation @ Rs. 1,000/- per Guntha/Are was awarded to the another villager. The present appellant is also entitled for compensation at the same rate but the learned Reference Court has ignored the same. He submitted that the appellant is illiterate villager and failed to adduce the evidence but merely because he failed to adduce the evidence, the learned Reference Court cannot reject his reference so also the compensation cannot be denied on that ground. Hence, the order of the learned Reference Court is liable to be set aside. He further submitted that the Court below should not have dismissed the reference merely on technicalities. The land acquisition reference ought to have been decided on merits. On the other hand, Shri Kadu, learned A.G.P. for the State objected the prayer of remand on the ground that the reference is of year 1998 and it has been decided in the year, 2007. The present appeal is filed in the year 2009 and the appellant is not at all diligent, hence, the appeal cannot be remanded back to the learned Reference Court for adjudication, so the appeal deserves to be dismissed, as no grounds are made out to remand the matter for deciding afresh.

7. Heard both the sides and perused the record. The findings recorded by the Trial Court show that the appellant failed to adduce the evidence and therefore, the learned Reference Court came to the conclusion that, it is the duty of the applicant to produce the material evidence on record to determine the market value of the acquired land. The findings of the Trial Court also show that, when a reference is made to the Court, it is its duty to determine the amount of compensation on the basis of evidence adduced by the applicants, however, the claimant remained absent. Where the claimant remains absent or fails to adduce the evidence, it is not open to the Court to dispose of the reference stating that the claim of the claimant is dismissed or that the reference is rejected. It is further observed that the Court can decide the reference on the basis of evidence which is available on record. Thus, the findings of the Trial Court show that, as the appellant has not adduced any evidence to show that the award passed by the Special Land Acquisition Officer suffers from material defect, dismissed the reference.

8. This Court has dealt with this issue in the case of ***Kawadu Madhav Bansod V/s. State of Maharashtra*** reported in ***2004(1)***

ALL MR 651, wherein it is held by this Court in para no. 7, which reads thus;

“it is true that the adjudication made by the Civil Court on the reference has to be regarded as an award, whether an enhance compensation is given or not. But in that event the Court should consider the material on record, even if the party is absent and has failed to adduce evidence. Unless the material on record is considered the order cannot be said to be an adjudication. In the instant case the ground given for dismissal of reference by the Civil Court is that the applicant (present revision petitioner) remained absent and did not adduce any evidence to show that a proper compensation was not paid to him and that he is entitled to more compensation than paid. The above order clearly shows that the reference was dismissed only for the reason of failure of the applicant (present revision petitioner) to adduce evidence. Thus the material on record is not considered by the Civil Court. It is not considered as to how the compensation awarded by the Land Acquisition Officer was correct. So the order cannot be taken to be an adjudication and therefore same cannot be treated to be an award. The order passed by the Civil Judge, Senior Division, Yavatmal also cannot be treated to be a dismissal of the reference in default. The learned

counsel for the revision petitioner submitted that the case could not be dismissed in default also.”

9. In view of the above decision, this Court has earlier taken a view that, while considering the reference in absence of the claimant, the learned Reference Court has to consider all the material on record on the basis of which the Land Acquisition Officer had assessed the compensation. It is to be considered, how the compensation awarded by the Land Acquisition Officer was correct. In the present case also, by observing that the appellant failed to adduce the evidence as he remained absent and the reference was dismissed shows that the learned Reference Court had not considered on what basis the Land Acquisition Officer had come to the conclusion that the award passed by the Land Acquisition Officer was correct.

10. After giving due consideration and the observations made in the case of ***Kawadu Madhav Bansod*** (supra), no reason for me to take a different view. The Court below should have given fair opportunity to the appellant to adduce the evidence. On failure of the appellant to adduce the evidence, the learned Reference Court should have considered the material on the basis of which the Land Acquisition had assessed the compensation amount and

whether that compensation amount is correct. The findings recorded by the Trial Court nowhere shows that this aspect was considered by the learned Reference Court. In view of that, the judgment and award passed by the Reference Court in L.A.C. No. 265/1998 dated 12/07/2007 is hereby quashed and set aside and the matter is remitted back to the learned Joint Civil Judge, Senior Division, Buldhana. The liberty to the appellant to file an application before the Court below for adducing the evidence is given.

11. At the same time, the appellant appears to be negligent in attending the Court proceedings and to adduce the evidence, therefore, the learned Trial Court shall consider the aspect of the interest at the time of final decision of the reference. In the above circumstances, I proceed to pass the following order:-

ORDER

- (1) Appeal is allowed.
- (2) The Judgment and Decree dated 12/07/2007 passed by learned 2nd Jt. Civil Judge, Senior Division, Buldhana in Land Acquisition Case No. 265 of 1998 is hereby quashed and set aside.

- (3) The matter is remitted back to the learned Joint Civil Judge, Senior Division, Buldhana. The learned Civil Judge shall give an opportunity to both sides to adduce evidence.
- (4) The parties to appear before learned Joint Civil Judge, Senior Division, Buldhana on 06/02/2023.
- (5) The appeal stands disposed of.

(Urmila Joshi-Phalke, J.)

B.T. Khapekar