

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.545 OF 2022

Abarao s/o Dhondbarao Deshmukh,
Aged about 63 years, Occ. Cultivator,
R/o Hivra (Rohila), Tq. and Dist. Washim.

APPELLANT

// VERSUS //

1. The State of Maharashtra through
the Collector, Washim.
2. The Special Land Acquisition
Officer No.2, Washim, Dist. Washim.
3. The Executive Engineer,
Minor Irrigation Division (Construction),
Washim, Dist. Washim.

RESPONDENTS

Mr. G. R. Kothari, Advocate for the appellants.
Ms. T. Udeshi, AGP for respondents.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 15/02/2023

ORAL JUDGMENT

1. Admit.
2. The present appeal is finally heard with the consent of the
learned counsel for the parties.
3. By preferring this appeal, appellant (original claimant) has
challenged judgment and Award dated 6.2.2019 passed by the learned

Civil Judge Senior Division, Washim in Land Acquisition Case No.208/2013, by which the reference is dismissed, as the claimant failed to adduce the evidence.

4. The brief facts of the case in nutshell are as under.

The claimant was the owner and possessor of 1 H. 62 R. land from land Gat No.62/4 situated at village Hivra (Rohila) Tq. and District Washim. The Special Land acquisition Officer acquired 1 H. 62 R. land vide Award No.47/47/1996-97 dated 14.3.2000, for Small Irrigation Scheme, Hivra (Rohila), Tq. and District Washim. The Special Land Acquisition Officer awarded total compensation of Rs.92,478/- to the claimant.

5. As per the contentions of the claimant, the acquired land was fertile. He was taking crops like Cotton, Udid, Mug, Soybean, Wheat etc. and was getting annual income of Rs.25,000/- to Rs. 30,000/- per acre per year. It is further stated that there were 75 Ber trees, 30 Chandan trees, 25 Babul trees and 400 to 500 Bihad trees. The Special Land Acquisition Officer has not considered the fertility and potentiality of the acquired land and awarded inadequate compensation to the acquired land. The claimant has accepted the compensation under protest.

6. Being aggrieved and dissatisfied with the said award, the present reference was preferred by the appellant. However, it is observed by the reference Court that claimant does not take any efforts to substantiate his claim. He had not made oral or documentary evidence. The issues framed long back but the claimant does not lead any evidence. It is observed by the reference Court that the claimant failed to discharge the onus lying on him, as such it cannot be said that the compensation awarded by the Special Land Acquisition Officer is inadequate and reasonable. It is further held that as the claimant failed to adduce any evidence, therefore reference deserves to be dismissed.

7. By observing the same, Land Acquisition Officer had dismissed the reference. Being aggrieved with the said, present appeal is preferred by the original claimant on the ground that the reference Court had not considered the entire material on record while dismissing claim. It is submitted by the learned Advocate Mr. Kothari for the appellant that now the reference Court has considered the aspect of the enhancement of the compensation and the now the issue is covered by the judgment passed by the reference Court in Land Acquisition Reference No.207 of 2013 and prayed for the remand of the matter.

8. On perusal of the pleadings of the claimant and after

hearing the learned AGP for the respondent Nos.1 and 2, following point arise for my determination.

- (i) Whether the claimant has made out the case to remand the matter for reconsideration?

9. Heard learned Advocate Mr. Kothari for the claimant/appellant, he submitted that merely because the claimant failed to adduce the evidence, reference Court cannot dismiss the reference. But learned Court has to consider entire material on record, while dismissing the reference. On the other hand, learned AGP for the respondent Nos.1 and 2 submitted that claimant has to prove the fertility and potentiality of the land which was acquired, as claimant failed to adduce the evidence, in support of the enhancement of the compensation, therefore reference Court has rightly dismissed the reference and no interference is called for.

10. Heard both the sides. Perused the record.

11. The findings recorded by the learned 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 appellant 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 the duty to determine the amount of compensation on the basis of evidence adduced by the claimant, however, after sufficient opportunity, claimant failed 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 by the Court that as the appellant/claimant failed to adduce the evidence, nothing is on record to show that Special Land Acquisition Officer has awarded inadequate compensation to the acquired land. 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 and dismissed the reference.

12. This Court has dealt with this issue in the case of **Kawadu s/o Madhav Bansod Vs. State of Maharashtra and another**, reported in **2004 (1) ALL MR 651**, wherein it is held by this Court in para No.7, which reads as under:

“it is true that the adjudication made by the Civil Court on the reference has to be regarded as an award, whether an enhanced 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 revision petitioner submitted that the case could not be dismissed in default also.”

13. In view of the above decision, this Court has earlier taken a view that, while considering the reference in absence of the evidence 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, in support of his claim and the reference was dismissed shows that land 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.

14. After giving due consideration and the observations made in the case of **Kawadu s/o Madhav Bansod** (supra), no reason for this Court 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 Officer had assessed the compensation amount and whether the compensation amount is correct. The findings recorded by the learned trial Court nowhere shows that this aspect was considered by the learned reference Court. In view of that, Judgment and Award passed by the learned reference Court in Land Acquisition Case No.208/2013 dated 6.2.2019 is hereby quashed and set aside and the matter is remitted back to the learned Civil Judge Senior Division, Washim.

15. The liberty to the appellant to file an application before the Court below for adducing the evidence is permitted. At the same time, the appellant appears to be negligent in not adducing the evidence, therefore the learned trial Court shall consider this aspect while granting the interest at the time of final decision of the reference. In the above

circumstances, I proceed to pass following order.

ORDER

- (i) Appeal is allowed.
- (ii) The Judgment and Decree dated 06.02.2019 passed by the learned Civil Judge Senior Division, Washim in Land Acquisition Case No.208/2013 is hereby quashed and set aside.
- (iii) The matter is remitted back to the learned Civil Judge Senior Division, Washim. The learned Civil Judge Senior Division shall give an opportunity to both the sides to adduce the evidence.
- (iv) The parties to appear before the learned Civil Judge Senior Division, Washim on 03.03.2023.
- (v) Record and proceedings be sent back to the learned trial Court.

(URMILA JOSHI-PHALKE, J.)

Sarkate.