

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

FIRST APPEAL NO.833 OF 2017

1. Mahendra s/o Dadarao Gawande
Aged - Adult, Occ. Agriculturist,
 2. Vilas s/o Dadaram Gawande
Aged - Adult, Occ. Agriculturist
 3. Sau. Pushpa w/o Rajendra Injhalkar,
Aged - Adult, Occ. Agriculturist,
R/o. Mamdapur, Tahsil – Tiwsa,
District Amravati
 4. Smt. Sushilabai wd/o Dadarao Gawande,
Aged - Adult, Occ. Agriculturist,
- Nos.1, 2 & 4 R/o. Antardoh,
Tahsil Arvi, District Wardha

...APPELLANTS

VERSUS

1. The State of Maharashtra,
represented by the Collector,
Wardha
2. The Special Land Acquisition Officer,
Lower Wardha Project (General),
Wardha, Tahsil and District Wardha
3. The Executive Engineer,
Lower Wardha Project Division,
Wardha, Tahsil and District Wardha

...RESPONDENTS

Shri S.P. Kshirsagar, Advocate for the appellants.
Ms T.H. Udeshi, AGP for respondent Nos.1 and 2.
Ms A.S. Athalye, Advocate for respondent No.3.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : APRIL 11, 2023.

ORAL JUDGMENT :

By preferring this appeal, the appellants (original claimants) have challenged the judgment and award dated 28/08/2014 passed by the 3rd Joint Civil Judge, Senior Division, Wardha in Land Acquisition Case No.98/2007, 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 :

A] The appellants are the owner of the land bearing Survey No.114 admeasuring 0.98 HR, Survey No.26/1 admeasuring 0.81 HR and Survey No.26/2 admeasuring 1.62 HR of Mouza Mamadapur, Tahsil Arvi, District Wardha which was acquired by the Government for submersion of Lower Wardha Project vide LAC No.26/LAQ/47/2000-01.

B] The Notification under Section 4(1) of the Land Acquisition Act, 1894 was issued on 18/06/1998. The award was passed on 21/12/2001. The declaration under Section 6(i) of the Land Acquisition Act was published on 13/05/1999. The Special Land Acquisition Officer determined the amount of compensation @ Rs.41,500/- per hectare for

the land and compensation of Rs.9429/- for fruit bearing trees in Survey No.26/2 and Rs.208 + 82 + 595 for other trees with statutory benefits to the appellants.

3. Being aggrieved and dissatisfied with the amount of compensation awarded by the Special Land Acquisition Officer, the appellants preferred the reference bearing No.98/2007 on the ground that the Special Land Acquisition Officer had not considered the fertility and potentiality of the acquired land. The appellants were cultivating crops like cotton, jawar, tur, soyabean, gram etc. The land was adjoining to the Arvi town. The Special Land Acquisition Officer had not considered the above aspects and awarded the inadequate compensation and the appellants claimed the compensation @ Rs.1,75,000/- per hectare for the land and Rs.10,000/- for mango trees along with statutory benefits and interest.

4. In response to the notice, the non-applicant Nos.1 and 2 filed the written statement vide Exhibit 17 and non-applicant No.3 filed written statement vide Exhibit 13 and denied the contention of the claimants. It is submitted by the respondents that the Special Land Acquisition Officer had determined the market value of the acquired land after taking into consideration the location, quality and fertility of

the acquired land, and trees. The acquiring body further raised the issue that the reference is barred by limitation and prayed for the dismissal of the reference petition.

5. The reference Court has framed the necessary issues and matter was fixed for final hearing. After sufficient opportunity the appellants have not adduced any evidence, and therefore, the reference Court dismissed the reference on the ground that the appellants/applicants failed to adduce evidence and hence they are not entitled to receive any compensation.

6. Being aggrieved and dissatisfied with the judgment and award passed by the reference Court, present appeal is preferred by the appellants on the ground that the reference Court has not considered the settled law that it has to consider the material on record and award the compensation. The reference Court has not given the appropriate opportunity to the appellants to adduce the evidence and dismissed the reference without appreciating the material before it. Therefore, the judgment and award passed by the reference Court deserves to be set aside and matter deserves to be remitted back to the reference Court for deciding afresh.

7. Heard Shri P.S. Kshirsagar, learned Counsel for the appellants. He reiterated the said contentions and placed his reliance on Kawadu s/o Madhav Bansod V/s. State of Maharashtra and anr. 2004 (1) Mh.L.J. 980 and Narayan Deorao Gore, (died) through Lrs. Vs. State of Maharashtra 2011 (3) Mh.L.J. 592. He submitted that the reference Court ought to have adjudicate the aspect on the basis of material before it instead of dismissing the reference. Therefore, the judgment and award passed by the reference Court is erroneous and liable to be set aside.

8. On the other hand, Ms A.S. Athalye, learned Counsel submitted that after sufficient opportunity, the appellants failed to adduce the evidence, and therefore, the reference Court has passed the judgment. No ground is made out by the appellant to remand the matter back to the reference Court, and therefore, the appeal has no merits and liable to be dismissed.

9. Heard rival submissions of both the parties. Perused the material on record.

10. From the perusal of the judgment it is apparent that as the appellants failed to adduce the necessary evidence, the reference was

dismissed by the reference Court. There is no dispute that burden is on the claimants to adduce the evidence in support of the contention for the enhancement of the compensation. The record shows that the appellants were not diligent while pursuing their cause in the litigation. At the same time, it is the duty of the trial Court to consider the material before it while deciding the reference.

11. This Court has dealt with the issue in case of Kawadu s/o Madhav Bansod (supra) wherein it is held by this Court in paragraph 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.”

12. In view of the above decision, this Court has earlier taken a view that, while considering the reference in absence of the claimant, the 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 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.

13. After giving due consideration and the observations made in the case of Kawadu s/o 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 Reference Court should have considered the material on the basis of which the Land Acquisition had

assessed the compensation amount. The findings recorded by the trial Court nowhere shows that this aspect was considered by the Reference Court. In view of that, the judgment and award passed by the Reference Court in L.A.C. No.98/2007 dated 28/08/2014 is hereby quashed and set aside and the matter is remitted back to the 3rd Joint Civil Judge, Senior Division, Wardha. The liberty is granted to the appellant to file an application before the Court below for adducing the evidence. The reference Court shall consider the application if it is filed for seeking permission to adduce the evidence. The reference Court also shall consider the aspect of the interest while deciding the reference.

14. As the appellant appears to be not diligent in attending the Court proceeding and to adduce the evidence, therefore, the trial Court shall consider the aspect of the interest at the time of final decision of the reference.

15. In the above circumstances, I proceed to pass the following order:-

- (i) Appeal is allowed.
- (ii) The Judgment and Decree dated 28/08/2014 passed by the 3rd Joint Civil Judge, Senior Division, Wardha in Land Acquisition Case No.98 of 2007 is hereby

quashed and set aside.

- (iii) The reference is remitted back to the 3rd Joint Civil Judge, Senior Division, Wardha to decide it afresh.
- (iv) Record and proceedings be sent back to the 3rd Joint Civil Judge, Senior Division, Wardha.
- (v) The parties to appear before the 3rd Joint Civil Judge, Senior Division, Wardha on 24/04/2023.
- (vi) The reference Court shall decide the reference as expeditiously as possible, as the reference petition is of the year 2007.
- (vii) The parties to co-operate with the trial Court for deciding the reference as expeditiously as possible.
- (viii) The appeal stands disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*