



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

202 FIRST APPEAL NO. 966 OF 2002

The State of Maharashtra

**..Appellant
(Orig.Respondent)**

VERSUS

1. Mallikarjun Narayan Todkari,
Age 50, Occ.Business,
R/o Tuljapur Tq.Tuljapur
Dist. Osmanabad. (Abated as per Order dated 09/10/2015)
2. Mahaling s/o Narayanrao Todkari,
Age 44 years, Occupation Service,
R/o As above.
3. Manmath Narayan Todkari,
Age 42 years, occ. Business,
R/o As above. (Abated as per Order dated 09/10/2015)
4. Mahadeo Narayanrao Todakari,
Age 40 years, Occ. And R/o
As above.

**..Respondents
(Orig.Claimants)**

...
AGP for Appellant-State : Mr. V. M. Chate
Advocate for Respondents No.2 and 4 : Mr. G. N. Chincholkar
...

**WITH
CIVIL APPLICATION NO. 6102 OF 1998
IN FA/966/2002**
....

CORAM : ARUN R. PEDNEKER, J.

Dated : February 14, 2024

ORAL JUDGMENT :-

1. Heard the learned Advocate appearing for parties.
2. By the present first appeal, the State is challenging the Judgment and award passed in Land Acquisition Reference No.75 of 2019 wherein the application filed by the claimants was allowed for enhancement of

compensation. The land in the instant case was acquired for widening of the road and an award was passed on 23/02/1989. The claimants 64.34 square feet house property was acquired in the road widening. The Special Land Acquisition officer granted Rs.10663/- per Square Feet as compensation towards house property. The claimants have filed a Reference bearing No.75 of 1991 and in that Reference, the Reference Court, after considering the evidence on record, passed the following order :-

- "i) The claim of the claimant/petitioners is hereby partly allowed.*
 - ii) The claimant/petitioners are entitled to receive the enhanced amount of compensation to the extent of Rs.85,760/- (Rs. Eighty five thousand seven hundred sixty only) for their acquired portion of house property.*
 - iii) The claimant/petitioners are also entitled to get 30% solatium, inter start 9% p.a. for first year and 15% p.a. for subsequent years, over the enhanced amount of compensation.*
 - iv) The claimant/petitioners are also entitled to get additional amount at 12% p.a. over enhanced amount of compensation U/sec.23 (1-A) of the Act, from the date of notification or of taking over possession of the house, whichever is earlier, till the date of award.*
 - v) The amount received by the claimant/petitioner under protest shall be deducted from the enhanced amount of compensation.*
 - vi) In the circumstances, the claimant petitioners are entitled to get proportionate costs of their reference.*
-"*

Against the order passed by the Reference Court as above, the present first appeal is filed.

3. By order dated 09/10/2015, this Court passed the following order: -

"If no steps are taken by the State as against respondent Nos.1 and 3 within a period of eight (8) weeks, the appeal shall stand abated as against the respondent Nos.1 and 3."

4. However, no steps were taken to bring legal heirs on record of respondents No.1 and 3, as such, an appeal against respondent No.1 and 3 abated and this matter was called for final hearing. It is informed to this Court that the respondent No.2 has also expired.

5. The learned Advocate appearing for the respondent has relies upon the Judgment of the Hon'ble Supreme Court reported in, *State of Punjab Vs. Nathu Ram*, reported in AIR 1962 Supreme Court 89, paragraphs No.9 and 10 of the Judgment reads as under :-

"9. It is therefore, necessary to determine, on the facts of this case, whether the State appeal could proceed against Nathu Ram. The award of the arbitrator in each of these cases was a joint one, in favour of both the respondents Labhu Ram and Nathu Ram. To illustrate the form of the award, we may quote the award for the year 1945-46 in the proceedings leading to Civil Appeal No. 635 of 1957. It is:

"On the basis of the report of S. Lal Singh, Naib Tehsildar (Exhibit P. W. 9/1) and Sheikh Aziz Din, Tehsildar, Exhibit

P. W. 9/2, the applicants are entitled to a sum of Rs. 4,140 on account of rent, plus Rs. 3,872-8-0 on account of Income-tax etc., due to the inclusion of Rs. 6,193-8-0 in their total income, plus such sum as the petitioners have to pay to the Income-tax Department on account of the inclusion of Rs. 4,140 in their income as awarded by this award."

The result of the abatement of the appeal against Labhu Ram is therefore that his legal representatives are entitled to get compensation on the basis of this award, even if they are to be paid separately on calculating their rightful share in the land acquired, for which this compensation is decreed. Such calculation is foreign to the appeal between the State of Punjab and Nathu Ram, The decree in the appeal will have to determine not what Nathu Ram's share in this compensation is, but what is the correct amount of compensation with respect to the land acquired for which this compensation has been awarded by the arbitrator. The subject matter for which the compensation is to be calculated is one and the same. There cannot be different assessments of the amounts of compensation for the same parcel of land. The appeal before the High Court was an appeal against a decree jointly in favour of Labhu Ram and Nathu Ram. The appeal against Nathu Ram alone cannot be held to be properly constituted when the appeal against Labhu Ram had abated. To get rid of the joint decree, it was essential for the appellant, the State of Punjab, to implead both the joint- decree holders in the appeal. In the absence of one joint- decree holder, the appeal is not properly framed. It follows that State appeal against Nathu Ram alone cannot proceed.

10. It is however contended for the State that according to the entries in the village records, Labhu Ram and Nathu Ram had equal shares in the land acquired and that therefore the

appeal against Nathu Ram alone can deal with half the amount of the award. We do not agree. The mere record of specific shares in the revenue records is no guarantee of their correctness. The appellate Court will have to determine the share of Nathu Ram and necessarily the share of Labhu Ram in the absence of his legal representatives. This is not permissible in law. Further, the entire case of Labhu Ram and Nathu Ram, in their application to the Government for the appointment of an arbitrator, was that the land jointly belonged to them and had been acquired for military purposes, that a certain amount had been paid to them as compensation, that they received that amount under protest and that they were entitled to a larger amount mentioned in the application and also for the income-tax they would have to pay on account of the compensation received being added to their income. Their claim was a joint claim based on the allegation that the land belonged to them jointly. The award and the joint decree are on this basis and the appellate Court cannot decide on the basis of the separate shares.”

The learned Counsel contends that the joint decree is passed in favour of all the claimants and when the appeal against one of the claimants is dismissed as abated, the appeal cannot be proceeded against other claimants. In absence of one of the joint decree holders, the appeal is not properly constituted. As such, he submits that the appeal be dismissed.

6. Having perused the order of the Reference Court more specifically order passed, the claimants are jointly entitled to receive compensation under the Reference Court award to the extent of Rs.85760/- for their

acquired portion of house property. The compensation is granted jointly to all the claimants. There is no bifurcation for the sub-division in terms of the share of the each claimants. Thus the appeal preferred against decree in favour of all the claimants, cannot be proceeded against some of the claimants in terms of the above Judgment of the Hon'ble Supreme Court in the Case of *Nathu Ram (Supra)*.

7. The appeal is abated against two of the claimants by virtue of the order passed by this Court on 09/10/2015. Since the appeal is abated against claimants/respondents No.1 and 3, the appeal cannot be proceeded against remaining claimants. In view of the same, the appeal is dismissed. The pending civil application is dismissed.

(ARUN R. PEDNEKER, J.)

vj gawade/-.