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23fa1105.23

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

23 FIRST APPEAL NO. 1105 OF 2023

JIJABAI W/O SHAMRAO KHANDAGALE

....Appellant

VERSUS

**THE STATE OF MAHARASHTRA THR THE COLLECTOR,
AURANGABAD AND ORS**

.....Respondents

Mr. D. R. Jayabhar, Advocate for the appellant

Mr. D. B. Bhange, AGP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 19th JULY, 2024

P. C.

1. Heard.

2. The appeal is taken up for final disposal at the stage of admission by consent of the parties.

3. The applicant had filed LAR No.187/2011 in the court of CJSD, Aurangabad. Learned CJSD, Aurangabad by way of judgment and award dated 02-07-2021, rejected the

reference with costs and confirmed the award passed by the learned SLAO.

4. Learned advocate for the applicant vehemently argued the appeal stating that the learned reference court has failed to appreciate the market value of the land and such other grounds. He submits that the appellant after the decision of the learned reference court could get copy of a sale deed dated 27-01-2006 executed by Sopan Bhagaji Chande in favour of Birdabai Madan Maher. Said sale deed of the land is from the same village for land admeasuring 15-R for Rs.30,000/-at rate Rs.2,000/- per R. However, in the present case the learned SLAO has awarded the rate of Rs.1150/- per R which is inadequate. He further submit that sale deed needs to be considered in the evidence.

5. Learned AGP has opposed the appeal. He submits that learned reference court has rightly appreciated the evidence. It is not the case of the appellant that she was

prevented from giving evidence before the learned reference court. There are no circumstances shown as to what prevented the appellant to get such evidence before the learned trial court.

6. This court also considered this arguments of the learned AGP.

7. This court finds that sale deed dated 27-01-2006 appears to be material evidence which needs to be considered while deciding the market value. Though the appellant could not produce the same in the trial court, for the reasons given in the application which is allowed by separate order by this court, this court finds that the appellant needs to be given an opportunity to lead the evidence in respect of the said sale deed which was not available to her when matter was pending before the learned reference court. This court feels that it is not necessary to go into the other aspects for the present. It would be proper to remand the appeal to the learned reference court for fresh decision by considering the evidence in the nature of

sale deed.

8. In view of discussion and considering that it is necessary to give an opportunity to the appellant to lead the evidence before the learned reference court, it is necessary to remand the matter back to the learned reference court. Hence, the following order:-

ORDER

- a] The appeal stands partly allowed.
- b] Reference No. 187/2011 is remanded back for fresh decision by considering the evidence that is sale deed dated 27-01-2006. The appellant is also allowed to give oral evidence in support of her case in view of the sale deed.
- c] Learned reference court is expected to decide the reference as expeditiously as possible preferably by the end of 31-07-2025.
- d] The appeal stands disposed off in above terms.
- e] No order as to costs.

[KISHORE C. SANT, J.]