



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3144 OF 2021

1. Vijay s/o. Ramdhan Dandge **... APPELLANT**
(Original Claimant)

VERSUS

1. The Special Land Acquisition Officer,
Jayakwadi Project No.2,
Aurangabad, Dist. Aurangabad
2. The Executive Engineer
Minor Irrigation Division No.1,
Aurangabad **... RESPONDENTS**
(Original Respondents)

WITH
FIRST APPEAL NO. 3145 OF 2021

1. Tukaram s/o. Thansing Jadhav
2. Durgabai w/o. Mohansing Jadhav **... APPELLANTS**
(Original Claimants)

VERSUS

1. The Special Land Acquisition Officer,
Jayakwadi Project No.2,
Aurangabad, Dist. Aurangabad
2. The Executive Engineer
Minor Irrigation Division No.1,
Aurangabad **... RESPONDENTS**
(Original Respondents)

...

Mr. Dnyaneshwar A. Bide – Advocate for Appellants
Mr. Rajdeep D. Raut – AGP for Respondent No.1, State
Mr. S.B. Patil – Advocate for Respondent No.2

....

CORAM : SANJAY A. DESHMUKH, J.

DATE : 6th JANUARY, 2025

JUDGMENT :

1. Heard rival submissions.
2. These two appeals are preferred against the judgment and award passed by learned 8th Joint Civil Judge, Senior Division, Aurangabad (*hereinafter referred to as “the learned Reference Court”*) in L.A.R. No.220 of 2012 dated 21.09.2021 and L.A.R. No.251 of 2012 dated 14.09.2021 respectively filed by the claimants.
3. Learned advocate for the appellants pointed out that, the impugned judgments and awards and submitted that, the applications for amendment were moved in these two proceedings. These two applications were allowed, however the amendment was not carried out within the stipulated period. Thereafter, the permission was sought by filing the applications however these applications were not decided. But on the oral request of the learned advocate for the claimants the amendment were carried out regarding the adding of nature of the lands i.e. perennial irrigated land and adding of number of trees in the applications.

4. Learned advocate for the appellants further argued that, it is in the said impugned judgment by the learned Reference Court. But it did not award compensation to the appellants as it was allowed in other cases. He pointed out that, the judgment of the same Judge delivered in L.A.R. No.228 of 2008 dated 14.02.2020 in which the amount of compensation was awarded at the more rate to the claimants where are similarly situated. He submitted that because of the mistake of the advocate, the parties shall not suffer. He therefore prayed for remanding the reference to the learned Reference Court for deciding it on merit.

5. Learned advocate for the respondents strongly objected the appeals and submitted that, the amendment in the applications were carried out without permission of the Court and an opportunity was not given to the respondents to file their additional written statements thereafter. Therefore, now prayer for the remand of those land references is not justifiable. He submitted to dismiss the appeals as the directions of the learned Reference Court were not followed by the appellants regarding carrying out the said amendments.

6. Perused the impugned judgment, record and proceeding as

well as ground raised in the appeals.

7. The following point emerged for consideration in both the appeals :

(a) Is that the ground made out for remanding the references to learned Reference Court for decision ?

8. As far as moving of the applications for amendments are concerned admittedly, the amendments in these two applications are carried out without there being written order for carrying out the same.

9. Even though the amendment is carried out the opportunity to lead evidence to the claimants and to defend the claim regarding the adding of trees and nature of the property i.e. perennial irrigated land was not given to the respondents. Therefore in the interest of the justice, these two appeals deserves to be remanded to the learned Reference Court for giving an opportunity to the respondents to file their additional written statement, if they are willing and also for deciding these two matters on merits by giving an opportunity to both sides to lead evidences, if any. Therefore the argument advanced by learned advocate for the appellants is acceptable in this regard. However, the arguments of the learned

advocate for the respondents is not acceptable.

10. In view of the above reasons, the appeals deserve to be partly allowed for remanding the applications for hearing and deciding these on merits before the learned Reference Court. Hence, point No.1 is answered in affirmative. Therefore, following order :

ORDER

- (i) Both the appeals are allowed.
- (ii) The impugned judgments and awards are set aside and the learned Reference Court is directed to give an opportunity to the respondents to file their say. The learned Reference Court is further directed to give an opportunity to the applicants/claimants to lead their additional evidence, if any, and also same opportunity be given to the contesting respondents.
- (iii) It is clarified that, now the issue of carrying out the amendment shall not be agitated and considered as the amendment is carried out. The matter is therefore remanded to the learned Reference Court for allowing to submit additional written statement and to lead the additional evidence, if any, and deciding it on merit

particularly in view of the principle of parity considering the similar judgment delivered by the same Court in L.A.R. No.228 of 2012 dated 14.02.2020.

(iv) It would be proper to give directions to the learned Reference Court to decide these two references as expeditiously as early as possible and preferably within four (4) months from today.

(v) The appellants to submit copies of these judgments in both the learned Reference Court.

(vi) The parties to appear before the learned Reference Court on 27.01.2025.

(vii) No costs.

(viii) Record and proceeding be sent back.

(ix) The appeals are disposed of.

[SANJAY A. DESHMUKH]
JUDGE