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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.305 OF 2022.

Vinayak Bhalchandra Patil

...Appellant.

Versus

The Executive Engineer Ujani Cannal Division No.1

...Respondent.

Mr. Sachinkumar Rajepandhare, for the Appellant.

Mr. Mayur Sonavane, AGP for the State.

Coram : Sharmila U. Deshmukh, J.

Date : April 17, 2025.

P. C. :

1. The present First Appeal has been preferred against the impugned judgment and award dated 3rd January 2020, passed by the Land Reference Court, dismissing the Land Acquisition Reference for failure on the part of original Claimant to lead evidence and also on the ground of limitation.

2. The facts of the case are that the Claimant's land was acquired for the purpose of Bori-Kurnur Irrigation Project. Section 4 notification was published in the year 1998 and Section 11 of the Act was declared on 4th August 2004. Being dissatisfied with the amount of compensation, application was made for reference to competent Court for enhancement of compensation.

3. Before the Reference Court, the acquiring body filed its Written

Statement as well as the State Government. Necessary issues came to be framed by the Reference Court. The Reference Court noted that the Reference is of the year 2016 and the Claimants have failed to lead evidence for enhanced compensation and closed the evidence of the Claimants on 4th December 2019. Thereafter, the reference was kept for the evidence of the Opponent who did not lead any evidence and neither arguments were advanced by the parties. As there was no evidence brought on record by either of the parties, Reference Court dismissed the Reference Petition and the Award passed by the Special Land Acquisition Officer was confirmed.

4. Learned counsel appearing for the Appellant would submit that it is well settled proposition of law that the Reference cannot be dismissed for default. He submits that as far as issue of limitation is concerned, the Reference Court erred in holding that the reference is of 2016 whereas the reference has been filed in the year 2004 within the period of limitation and came to be numbered in 2016. As the Advocate for the Claimants failed to remain present during the proceedings and the Claimants were unaware of the progress of the Land Acquisition Reference no evidence was led. He would further submit that the impugned judgment does not constitute an Award and as the Special Land Acquisition Officer had also failed to enter into the witness box, the Award could not have been confirmed by the

Reference Court.

5. Per contra, Mr. Sonavane, learned AGP would submit that the burden was upon the Claimant to lead cogent evidence to establish the inadequacy of the compensation granted by the Special Land Acquisition Officer. He would further submit that as no evidence was lead by the Claimant, the Reference Court has rightly upheld the Award passed by the Special Land Acquisition Officer. He further submits that in the absence of any evidence being led, the issue of limitation has been rightly framed and answered. He would further submit that even if the reference is remitted for consideration afresh the State should not be saddled with the responsibility of payment of interest, due to default on the part of the Claimant.

6. In rejoinder the learned counsel appearing for the Applicant would rely on the decision in the case of **Chandaba Gangaram Pauyed Vs. State of Maharashtra and Ors.** wherein this Court has held that in order to constitute an Award within the meaning of Section 26 of the Act, the Award has to specify the amount of Award under Section 23 as also the amounts respectively awarded under the other clauses of the said subsection together with grounds of awarding each of the said amount. He submits that this Court in identical facts in the said decision had restored the Land Acquisition References and permitted the Claimant to lead evidence. He submits that the same course be

adopted in the present proceedings.

7. I have considered the submissions and perused the record.

8. The impugned judgment notes that no evidence was led by the Claimant and by the Opponents. Though the Reference Court framed necessary issues there was no evidence on the basis of which the issues could have been answered by the Reference Court. As far as the issue of limitation is concerned the said issue was mixed question of law and facts which required evidence to be led. In the absence of any evidence, the issue could have been answered against the Claimant.

9. As far as adequacy of the compensation is concerned, the provisions of Section 26 of the Land Acquisition Act, provides the form of Award to be passed by Land Reference Court. When the impugned Judgment is considered against the background of the statutory provisions, it is clear that judgment does not constitute an Award within the meaning of Section 26 of the Land Acquisition Act. Even if, the Claimant had failed to adduce any evidence, it was the duty of the Opponents to step into the witness box and prove the adequacy of compensation, which has been granted by the SLAO. If such evidence would have been adduced the Reference Court would have been in a better position to pass an Award within the meaning of Section 26 of the Land Acquisition Act. There was thus default on part of both the parties. However, it cannot be lost sight of, that the burden is upon

Claimant to prove adequacy of compensation and for whatever reasons, the Claimants had failed to lead any evidence. The impugned judgment is thus dismissal of the Reference for non prosecution, which cannot be sustained. Learned counsel for the Applicant is right on relying upon the decision of **Chandaba Gangaram Pauyed Vs. State of Maharashtra and Ors.** , and the course adopted by the Court which is required to be adopted in the present case also. It is settled that the Reference Court is required to decide the Reference on merits and in view thereof opportunity is required to be given to the Claimant as well as the Opponents to lead necessary evidence before the Reference Court to determine the adequacy of compensation.

10. However, for default on the part of the Claimants to lead evidence and discharge their burden the Opponents cannot be saddled with the liability of payment of interest on the enhanced compensation, if any, and in view thereof the Appellants though being granted an opportunity of leading evidence shall not be entitled to claim any interest for the period from the date of dismissal of the Land Acquisition Reference in default till the final disposal of Land Acquisition Reference by the trial Court.

11. In the light of the above the following order is passed:

- a) The impugned Judgment dated 3rd January 2020, is hereby quashed and set aside.

- b) Land Acquisition Reference No.22 of 2016 is restored to the original position.
- c) The Reference Court shall permit the parties to lead oral and documentary evidence in support of their contention.
- d) The parties shall appear before the Reference Court on 5th May 2025, and apply for further directions.
- e) The concerned Reference Court is requested to dispose of the Land Acquisition Reference expeditiously.
- f) The Claimants shall not be entitled to any interest on the enhanced amount, if any, from the date of dismissal of the Land Reference proceedings in default till final disposal of the land Acquisition Reference by the Reference Court.

12. First Appeal stands allowed in the above terms.

[Sharmila U. Deshmukh, J.]