

(2010) 08 BOM CK 0076

In the Bombay High Court

Case No : Civil Revision Application No. 75 of 2010

Arjun Waghmare and Babruwan Waghmare

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Citation : (2011) 2 BomCR 866

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : M.B. Kolpe, holding for, S.A. Wakure, for the Appellant; D.R. Korde, A.G.P., for the Respondent

Judgement

S.S. Shinde, J.—Heard counsel for the parties.

2. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

3. The revision petitioners/applicants are the owner of land Gut No. 316, admeasuring 1 Hectar 31 R, situated at Village Bhabulgaon, Tq. Kallam, Dist. Osmanabad. The above mentioned land was acquired by the respondent for the purpose of percolation tank at Village Bhabulgaon, Tq. Kallam. Thereafter, land acquisition proceedings were initiated, and finally Award was passed.

4. The revision petitioners being dissatisfied by the Award, filed Land Acquisition Reference No. 248 of 2000 before the Special Land Acquisition Officer. The Special Land Acquisition Officer after scrutiny, forwarded the Land Acquisition Reference in the Civil Court for its adjudication.

5. The learned Joint Civil Judge Senior Division, Osmanabad, dismissed the Land Acquisition Reference, on two fold grounds. Firstly, the revision petitioners who are the owners/claimants have not adduced any evidence to prove that their lands were irrigated one, and they were taking the crops like sugarcane, sunflower, groundnut etc. in the acquired land. Further the claimants have not adduced any documentary evidence in support of their pleading. Secondly,

claimants have not added acquiring body i.e. The Executive Engineer, Irrigation Division, Osmanabad, as party to the claim. Therefore, the claim is bad, on the ground of non-joinder of necessary parties.

6. The learned Counsel appearing for the revision petitioners, vehemently argued that the Court below should not have dismissed the reference, merely on technicalities. It is further submitted that the Land Acquisition Reference, ought to have been decided on merits. The learned Counsel appearing for the revision petitioners, invited my attention to the grounds in the Civil Revision Application, and submitted that the impugned Judgment and Order deserves to be set aside. In support of his contention, the learned Counsel for the revision petitioners, placed reliance on the reported Judgment of this Court, in case of *Kawadu Bansod Vs. State of Maharashtra and Another*, . Relying on the said Judgment the learned Counsel appearing for the revision petitioners, would urge that the facts of the case in hand and the facts of the case which is cited supra are similar, and in that case this Court has taken a view that the reference cannot be rejected, only for the reason that the revision petitioners have failed to adduce any evidence. The learned Counsel appearing for the revision petitioners, invited my attention to para No. 7 in the case of "*Kawadu Madhav Bansod v. State of Maharashtra and Anr.*" cited supra and submitted that in the interest of justice, the impugned Judgment and Order deserves to be set aside.

7. On the other hand, learned A.G.P. submitted that the Reference Court, after giving sufficient time to the revision petitioners, and after revision petitioners heard at length had rejected Land Acquisition Reference and the impugned Judgment and Order cannot be faulted. Therefore, the Civil Revision Application is devoid of any merits and same deserves to be dismissed.

8. I have heard, the learned Counsels appearing for the parties at length, and I am of the considered opinion that the impugned Judgment and Order deserves to be interfered with and required to be quashed and set aside.

At the outset it has to be clarified that the present Civil Revision Application is maintainable, in view of the observations made in para No. 9 in case of "*Kawadu Madhav Bansod v. State of Maharashtra and Anr.*" cited supra. This Court in the above said case in para No. 9 has observed thus:

Since the Civil Judge, Senior Division, Yavatmal dismissed the reference of the present revision petitioner without considering the material on record, the matter needs to be remanded to that Court for passing the order in the light of the discussion made above. As the matter is being remanded, the Civil Judge shall also be directed to give an opportunity to the revision petitioner and also to State to lead evidence.

In view of the above observations of this Court, I hold that Civil Revision Application is maintainable.

9. Coming to the first contention of the Counsel appearing for the revision

petitioners, that Land Acquisition Reference should not have been rejected, on the ground of not filing documentary evidence is concerned, this Court in case of "Kawadu Madhav Bansod v. State of Maharashtra and Anr." cited supra, has taken a view that the said order rejecting the reference on the ground of failure of the revision petitioners to adduce evidence cannot be taken to be adjudication, and therefore, same cannot be treated to be an Award. Therefore, one of the ground i.e. no documentary evidence is filed by the revision petitioners, cannot be ground to reject the reference. This Court in the case of "Kawadu Madhav Bansod v. State of Maharashtra and Anr." cited supra in para No. 7 has observed thus:

It is true that the adjudication made by the Civil Court on the reference has to be regarded as an award, whether an enhanced 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 the 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 the the 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 revision petitioner submitted that the case could not be dismissed in default also.

Therefore, in my opinion, the Court below should not have rejected the reference, on the ground of failure of the revision petitioners to adduce evidence. Yet in another unreported Judgment in the case of Shri Kamalkar S/o Laxman suryawanshi v. State of Maharashtra in Civil Revision Application No. 1965 of 2005 and in other two connected matters, this Court has taken a similar view. Therefore, I have no hesitation, to hold that the reference filed by the revision petitioners, should not have been dismissed, merely on the ground of failure of the revision petitioners to adduce evidence. 10. Another reason to reject the reference is non-joinder of party i.e. acquiring body. The acquiring body was not party respondent, in the proceedings pending in the Land Acquisition Reference. In this respect, the Counsel appearing for the revision petitioners is justified in submitting that the Land Acquisition Reference was filed in the year 2000 and the Judgment of the Hon"ble Supreme Court, making it incumbent upon the claimants to add acquiring body as party to the reference has been delivered, subsequently after filing this reference, and therefore, the learned Judge should not have rejected reference on that ground.

I have given due consideration to the submissions, advanced by the Counsel for the revision petitioners, and I find considerable force in his arguments. The Court below should have given fair opportunity to the revision petitioners to file application for impleading, acquiring body as a party to the reference. It was possible for the reference Court to ask the revision petitioners to add the acquiring body as a party to the reference. Therefore, in my opinion, the claim of the revision petitioners should not have been discarded/rejected, merely on technicalities of not adducing documentary evidence, or not adding acquiring body as a party to the reference. The Court below, should have given sufficient and full opportunity to the revision petitioners to put-forth their case, and after appreciating their contentions at length, the reference should have been decided. Therefore, the impugned Judgment and Order dated 25th August, 2009 in Land Acquisition Reference No. 248 of 2000 passed by the Learned IInd, Joint Civil Judge Senior Division, Osmanabad is quashed the matter is remanded back to the learned IInd Joint Civil Judge civil Judge Senior Division, Osmanabad. The liberty to the revision petitioners to file application before the Court below for adding the acquiring body as a party respondent to the Land Acquisition Reference. The Concerned Court to hear the Land Acquisition Reference afresh. The Registry to send back the record and proceeding immediately to the concerned Court. Rule made absolute in above terms. The Civil Revision Application is disposed of.