
(2022) 10 GUJ CK 0034
In the Gujarat High Court
Case No : R/First Appeal No. 3917 Of 2022

Hamirbhai Hirabhai

APPELLANT

Vs

Deputy Collector

RESPONDENT

Date of Decision : 06-10-2022

Acts Referred:

Citation : (2022) 10 GUJ CK 0034

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Krushnakant D Patel, Tejas P Satta, Manraj Barot

Final Decision : Allowed

Judgement

A.S. Supehia, J

1. Admit. Learned AGP waives service of notice of admission on behalf of the defendant No.1.

2. At the outset, learned advocate Mr.Satta has submitted that the issue is covered by the judgement and order dated 29.06.2022 passed by the Coordinate Bench of this Court in First Appeal No.862 of 2022 and allied matters. It is submitted that in the present case also, the impugned judgement and decree rejecting the reference proceedings by the reference Court has been passed only on the ground that the claimant was unable to adduce any evidence, even after affording ample opportunities to him. It is submitted that a last opportunity may be given to the appellant-claimant to adduce evidence before the Court below and as per the observations made by this Court vide order dated 29.06.2022, for intervening period i.e. from the date of judgement till passing of the order of this Court, in the present appeal also, the appellants-claimants will not claim any interest.

3. Learned AGP on the contrary, has submitted that the order passed by the Court below is appropriate since the same reflects that despite giving ample

opportunities to the claimants, the appellants did not adduce any evidence and by the judgement and decree dated 30.07.2018, the issues were framed and right to evidence was closed. It is submitted that the burden is raised on the appellant-claimant to prove his case in the case of claiming the compensation and hence, no order may be passed.

4. Heard the learned advocates for the respective parties and also perused the documents as pointed out by them.

5. The appellant has placed reliance on the order dated 29.06.2022 passed by the Coordinate Bench of this Court in First Appeal No.862 of 2022 and allied matters, on the similar issue, whereby the reference Court has rejected the reference application on the ground that the appellant-claimant did not produce any evidence despite giving ample opportunities to them. The Coordinate Bench of this Court has observed thus:

"6. In view of above, this Court is of the opinion that in the land reference cases, it is the duty of the learned reference Court to go into the issue of awarding compensation and to assess the same for its adequacy in the background that the claimants have lost possession of their land. In the present case, no such exercise has been undertaken by the learned reference Court. In the premise, the impugned judgment and orders are hereby set aside and the matters are remanded back to the learned reference Court for determining the entitlement of the land owners to just, reasonable and adequate compensation, which can be determined only after examining the evidence adduced by the parties. In the interest of justice, the present appellants deserve an opportunity to produce additional evidence in respect of their entitlement to adequate compensation.

6.1 Accordingly, all the First Appeals are hereby allowed. The impugned common judgment and order is hereby quashed and set aside and the matter is remanded to the learned reference Court for fresh consideration in accordance with law with a liberty in favour of the parties to adduce oral as well as documentary evidence in support of their case.

6.2 The parties are directed to adduce their evidence within 6 weeks from the date of first appearance before the learned reference Court. The reference Court is also directed to decide the reference cases as expeditiously as possible and not later than 31.12.2022.

6.3 It is also seen from the record that the learned reference Court had granted number of opportunities to the appellants with respect to production of evidence, however, they remained negligent. Therefore, this Court is of the opinion that if any enhancement is made by the learned reference Court in the remand proceedings, the appellants shall not be entitled to any interest from the date of impugned judgment till today, i.e. from 17.3.2018 to 29.6.2022.

6.4 The parties are directed to cooperate with the learned reference Court in early disposal of the reference cases.

Present First Appeals are allowed for the aforesaid reasons and accordingly stand disposed of. There shall be no order as to costs.”

6. This Court has observed that the appellants-claimants shall not be entitled for any interest for the intervening period i.e. from the date of impugned judgement till the order passed by this Court.

7. Under the circumstances, and in light of the aforesaid order passed by this Court, it is directed that the parties shall adduce their evidence within a period of six weeks from the date of first appearance before the reference Court. The reference Court is also directed to decide the reference cases as expeditiously as possible and not later than 31.12.2022. It is also directed that the appellant-claimant shall not be entitled for any interest from the date of the impugned judgement i.e. 30.07.2018 till today i.e. 06.10.2022. The parties are directed to cooperate with the reference Court for early disposal of the reference cases.

8. The present appeal stands allowed for the aforesaid reasons and accordingly stand disposed of. There shall be no order as to costs.