
(2010) 08 BOM CK 0075

In the Bombay High Court

Case No : Civil Revision Application No. 21 of 2010

Malanbee

APPELLANT

Vs

The State of Maharashtra and Executive Engineer, Medium
Project Section

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2010) 08 BOM CK 0075

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

Bench : Single Bench

Advocate : B.R. Sontakke Patil, for the Appellant; V.A. Shinde, 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 petitioner/applicant was the owner and possessor of Survey/Gat No. 362/411-2, admeasuring 44 R, situated at Murum, Tq. Omerga, Dist. Osmanabad, which is acquired by the respondents for Benitura Medium Project, Murum. The respondents had taken possession of the suit land, by private negotiations, and they had agreed to pay 10% per annum rental compensation. Notification u/s 4 of the Land Acquisition Act, was published. On 18th March, 1996, the revision petitioner came to know about the passing of Award.

4. On 13th November, 1997, Land Acquisition Reference No. 205 of 2005 (Old No. 873 of 1997) was filed by the revision petitioner, for compensation @ of Rs. 50,000/- per acre. The said Land Acquisition Reference was pending in the Court of Civil Judge Senior Division, Osmanabad for years together, and after passing several years same was transferred to Omerga Court.

On 30th September, 2008, the learned Civil Judge Senior Division, Omerga has rejected the reference with cost, and further directed to recover Court fees from

the revision petitioner. In respectful submission of the Counsel for the revision petitioner, reference should not have been rejected, merely on the ground that the revision petitioner has not adduced any evidence to prove her claim. The learned Counsel would further submit that another ground on which reference is rejected, is for non payment of Court fees. The Counsel for the revision petitioner further submitted that, the genuine claim of the revision petitioner should not have been rejected, merely on technicalities. The Court below, should have given sufficient opportunity and time to adduce evidence, and also to pay Court fees. The learned Counsel would submit that if the matter is remitted back to the Court below and if Court below hears Land Acquisition Reference afresh, the revision petitioner is ready to adduce the evidence and to pay the Court fees. Therefore, learned Counsel would submit that the Civil Revision Application deserves to be allowed.

5. On the other hand, learned A.G.P. appearing for the State, vehemently argued that the Court is bound to ask for the Court fees, and Court has no power to exempt the payment of Court fees. It is further submitted that though the Land Acquisition Reference was pending for years together, the revision petitioner did not bother to adduce any evidence and Advocate engaged on her behalf has not appeared, before the Court on the date, when the matter was finally heard by the Court below. Therefore, learned A.G.P. would submit that the Civil Revision Application is not maintainable, even on merits and same required to be dismissed.

6. I have given due consideration to the rival submissions and also perused the pleadings in the application, as well as other documents made available for perusal, and I am of the considered opinion, that the Civil Judge Senior Division, Omerga should not have rejected the reference, merely on the grounds that the revision petitioner have not adduced any evidence and not paid the Court fees.

At the outset it has to be observed 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, Yevatmal 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.

7. Coming to the first contention of the Counsel appearing for the revision petitioner, 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 petitioner 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 petitioner, and therefore, the ground of reason of failure of revision petitioner, to adduce evidence cannot be a 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 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 petitioner to adduce evidence. Yet in another unreported Judgment in the case of Kamalakar 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 petitioner should not have been rejected, merely on the ground of failure of the revision petitioner to adduce evidence.

8. Another ground, on which the reference is rejected by the learned Civil Judge Senior Division, Omerga, is non payment of Court fees. It is true that the revision petitioner should have paid the Court fees, however, concerned Court should have given opportunity to the revision petitioner to pay the Court fees. The learned Counsel for the revision petitioner, has submitted across the bar, that the revision petitioner is ready to pay the Court fees, in case Land Acquisition Reference is restored to its original position. In this view of the matter, I am inclined to accept the case of the revision petitioner.

9. In the result, the impugned Judgment and order dated 30th September, 2008 in Land Acquisition Reference No. 205 of 2005, (Old No. 873 of 1997) is quashed and set aside. The Civil Revision Application is allowed in terms of prayer Clause "C" and disposed of. Land Acquisition Reference No. 205 of 2005 (Old No. 873 of 1997) to its original position/file. The Concerned Court to hear the Land Acquisition Reference No. 205 of 2005 (Old No. 873 of 1997) afresh, after giving reasonable opportunity to the revision petitioner to adduce evidence and to pay Court fees. Needless to mention that the revision petitioner will take all necessary steps to adduce evidence and to pay the Court fees within three months from the date of hearing to be fixed by the Court below. All contentions are kept open for both the sides. Rule is made absolute in above terms. The Civil Revision Application is disposed of.