

(2010) 10 BOM CK 0104

In the Bombay High Court

Case No : Civil Revision Application No's. 161 and 162 of 2010

Mukund Kalshetti

APPELLANT

Vs

The State of Maharashtra and The Executive Engineer, Latur
Medium Project, Division Latur

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2011) 1 ALLMR 825 : (2011) 6 BomCR 771 : (2011) 2 MhLj 849

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

Bench : Single Bench

Advocate : A.B. Kale, for the Appellant; V.H. Dighe, 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. These Revision applications are filed being aggrieved by the order dated 28.1.2010, passed by learned Civil Judge, Senior Division, Nilanga in L.A.R. No. 493 of 1998 and 494 of 1998, thereby dismissing Land Acquisition References filed by the petitioner.

4. It is the case of the petitioner that the land bearing survey No. 36/2 admeasuring 45 R situated at village Shivani Kotal, Tq. Nilanga, District Latur belonging to the petitioner have been acquired by the respondent authorities for the purpose of Masalga Medium Project at Shivani Kotal, Tq. Nilanga.

The Land Acquisition Officer has published notice u/s 4 of the Land Acquisition Act. The award came to be passed and the petitioner has withdrawn an amount of compensation on 17.9.1992. After withdrawal of the amount under protect the present petitioner has preferred the references u/s 18 before the Collector and then after same was transmitted tot he court of learned Civil Judge, Senior Division, at Nilanga, which were numbered as L.A.R. No. 493 of 1998 (Old No. 68 of 1994) and L.A.R. No. 494 of 1998 (Old No. 69 of 1994).

5. The Land Acquisition References were opposed by the present respondents by filing written statement. The petitioner had filed application for adjournment as to submit evidence in support of his claim during this period. Though the Court has granted adjournment on three occasions, but as on the day when the matter was listed before the court on 28.1.2010, the advocate who has appearing for the petitioner was not feeling well as he was suffering from heart disease and he had filed leave note on 12.1.2010 itself and has requested the lower court to grant leave from 15.1.2010 to 17.2.2010. Inspite of leave, which was sanctioned by the District Judge and was circulated to the Court, the learned Civil Judge, Senior Division, at Nilanga without considering this aspect has proceeded to decide the matter *ex parte* and without there being any evidence has dismissed the References. Hence, these Revision Applications.

6. Learned Counsel appearing for the petitioner submitted that the order passed by learned Judge is without application of mind and is against the principles of natural justice. It is further submitted 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 petitioner, 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 petitioner, 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 petitioner, would urge that the facts of the case in hand and the facts of the case which is cited *supra* are similar. In the said case this Court has taken a view that the reference cannot be rejected on technicalities. Learned Counsel appearing for the revision petitioner, invited my attention to para No. 7 of the said judgment 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. has justified the impugned judgment and order on the ground that the same cannot be faulted with any error and prayed for dismissal of these Revision Applications.

8. I have heard learned Counsel appearing for the parties at length. In my view, 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 Applications are maintainable, in view of the law laid down by this Court in the case of *Kawadu Madhav Bansod (supra)*, as the facts involved in the instant case are similar to the facts of that case.

9. Coming to the first contention of the Counsel appearing for the revision petitioner that Land Acquisition References should not have been rejected, on the ground of technicalities is concerned, this Court in case of *Kawadu Madhav*

Bansod (supra), has taken a view that the said order rejecting the reference on the ground of absence of counsel for the petitioner cannot be taken to be adjudicated, and therefore, same cannot be treated to be an Award. Therefore, the ground on which the references are rejected cannot be a ground to reject the references. This Court in the aforesaid case 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.

(Emphasis supplied).

Therefore, in my opinion, the Court below should not have rejected the references, on the ground of failure of the revision petitioner 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 references filed by the revision petitioner, should not have been dismissed, merely on the ground of technicalities.

10. I have given due consideration to the submissions, advanced by the Counsel for the revision petitioner and I find considerable force in his arguments. Therefore, in my opinion, the claim of the revision petitioner should not have been discarded/rejected, merely on technicalities. The Court below, should have given sufficient and full opportunity to the revision petitioner to put-forth his case through his duly instructed lawyer and after appreciating his contentions at length, the references should have been decided.

11. In the result, the impugned Judgment and orders dated 28.1.2010, passed by learned Civil Judge, Senior Division, Nilanga in L.A.R. No. 493 of 1998 and L.A.R. No. 494 of 1998 are quashed and set aside and the matters are remitted

back to the learned Civil Judge, Senior Division, Nilanga. The Reference Court, upon hearing arguments of both the parties, shall dispose of the L.A.R. No. 493 of 1998 and L.A.R. No. 494 of 1998 within three months from the date of receipt of copy of this order.

12. The Registry to send back the record and proceeding, if any, immediately to the concerned Court. Rule made absolute in the above terms. The Civil Revision Applications are disposed of.