

(2010) 09 BOM CK 0088

In the Bombay High Court

Case No : Civil Revision Application No. 64 of 2010

Nagnath Waze

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Citation : (2011) 2 BomCR 171

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

Bench : Single Bench

Advocate : B.R. Sontakke, 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 is the owner of land Survey No. 187 admeasuring 0.14 R, situated at Tuljapur, Dist. Osmanabad. The said land was acquired by the respondent for the purpose of market yard. Thereafter, land acquisition proceedings were initiated and final Award came to be passed.

4. The revision petitioner being dissatisfied by the Award, filed Land Acquisition Reference No. 81 of 1991 before the Special Land Acquisition Officer. The Special Land Acquisition Officer after scrutiny, forwarded the Land Acquisition Reference to 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 petitioner who is the owner/claimant have not adduced any evidence to show that the award passed by Special Land Acquisition officer suffers from material defect. Secondly, the petitioner has not impleaded the acquiring body as party in the reference and therefore, on the ground of non joinder of necessary party, the reference came to be rejected.

6. The Learned Counsel appearing for the revision petitioner, 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 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 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 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. submitted that the Reference Court, after giving sufficient opportunity of hearing to the petitioner had rejected Land Acquisition Reference and the impugned Judgment and Order cannot be faulted with. Therefore, the Civil Revision Application is devoid of any merits and same deserves to be dismissed.

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 Application is 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 Reference should not have been rejected, on the ground of not filing documentary evidence 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 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, cannot be a ground to reject the reference. 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.

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 petitioner, should not have been dismissed, merely on the ground of failure of the revision petitioner to adduce evidence.

10. Another reason to reject the reference is non-joinder of necessary 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 petitioner is justified in submitting that the Land Acquisition Reference was filed in the year 1991 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.

11. I have given due consideration to the submissions, advanced by the Counsel for the revision petitioner and I find considerable force in his arguments. The Court below should have given fair opportunity to the revision petitioner to file application for impleading the acquiring body as a party to the reference. It was possible for the reference Court to ask the revision petitioner to add the acquiring body as a party to the reference. Therefore, in my opinion, the claim of the revision petitioner 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 petitioner to put-forth his case, and after appreciating his contentions at length, the reference should have been decided.

12. In the result, the impugned Judgment and Order dated 18.9.2009, passed by the learned Joint Civil Judge (S.D.) Osmanabad, in Land Acquisition Reference

No. 81 of 1991 is quashed and set aside and the matter is remitted back to the learned Joint Civil Judge, Senior Division, Osmanabad.

13. Liberty to the revision petitioner 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, if any, immediately to the concerned Court. Rule made absolute in the above terms. The Civil Revision Application is disposed of.