

(2010) 10 BOM CK 0042

In the Bombay High Court

Case No : Civil Revision Application No. 155 of 2010

Narayan Deorao Gore (Died) through L.Rs. Dhondan Gore

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6, 9, 9(3), 9(4)

Citation : (2011) 2 ALLMR 686 : (2011) 3 MhLj 592

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

Bench : Single Bench

Advocate : Vivek V. Ingale, 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. This Revision application is filed being aggrieved by the order dated 9.3.2007, passed by learned Civil Judge, Senior Division, Omerga in L.A.R. No. 442 of 2005 (Old No. 485 of 1998), thereby dismissing Land Acquisition Reference filed by the husband of the petitioner.

4. It is the case of the petitioner that the land bearing survey No. 336 admeasuring 1 H 25 R situated at village Salegaon, Tq. Omerga, District Osmanabad belonging to the petitioner have been acquired by the respondent authorities for the purpose of rehabilitation of earthquake affected persons of village Kaldeo-Nimbala.

The Land Acquisition Officer has published notice u/s 4 of the Land Acquisition Act and notification u/s 6 was also published. The notice u/s 9(3) (4) of the Act came to be published and served on the claimant. But when the claimant had come to known about the said notice, the claimant immediately rushed to the office of respondent and raised his objection through his advocate. The claimant had demanded price of land for Rs. 10,000/-per Are. The claimant withdrawn the

amount of Rs. 24,400/- under protest and claimed Rs. 13,25,600/- for his acquired land by way of enhancement. However, the land Acquisition Officer has not given proper opportunities to the claimant and without applying the mind, finalized the claim of the claimant which is grossly inadequate. The notice u/s 9 has not been served on the claimant properly and in spite of the same, the claimant replied the same. However, the Land Acquisition Officer has not taken into consideration these aspects and awarded very meager amount of compensation.

5. Being aggrieved and dissatisfied with the award passed by the Land Acquisition Officer thereby granting inadequate compensation, the husband of the petitioner had preferred Land Acquisition Reference bearing No. 485 of 1998 before the learned District Judge, Osmanabad. However, during pendency of the said Reference in the District Court at Osmanabad, a new Court of Additional District Judge is established at Omerga and therefore, the said reference came to be transferred to Omerga and it is renumbered as L.A.R. No. 442 of 2005.

6. The learned C.J.S.D. Omerga has taken up the Reference for hearing by fixing a date. However, it is the case of the petitioner that the petitioner was not known the date fixed by the learned Judge. The learned Judge had taken the matter for hearing on 9.3.2007 and dismissed the Land Acquisition Reference, on the ground that no any documentary proof are filed by the claimant in support of his submission that value of the said property is very high. Therefore, for want of documentary and oral evidence the Reference came to be dismissed. Hence, this Revision.

7. Learned Counsel appearing for the petitioner submitted that the order passed by learned Judge is without giving opportunity of hearing to the petitioner and therefore, the order impugned 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, only for the reason that the revision petitioner 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.

8. 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 the Revision.

9. 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.

10. 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 adjudicated, and therefore, same cannot be treated to be an Award. Therefore, 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.

(Emphasis supplied).

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 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.

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. Therefore, in my opinion, the claim of the revision petitioner should not have been discarded/rejected, merely on technicalities of not adducing documentary evidence. 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 09.03.2007, passed by the learned Civil Judge (S.D.) Omerga, District Osmanabad, in Land Acquisition Reference No. 442 of 2005 (Old No. 485 of 1998) is quashed and set aside and the matter is remitted back to the learned Civil Judge, Senior Division, Omerga.

13. Learned Counsel appearing for the petitioner makes a statement before this Court that necessary documents will be filed and evidence will be led before the Reference court within two months from the first date of hearing to be fixed by the Reference Court. The Reference Court, upon recording evidence and hearing arguments, shall dispose of the L.A.R. No. 442 of 2005 (old No. 85 of 1998) within six months from the date of receipt of copy of this order.

14. 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.