

(2022) 02 BOM CK 0034

In the Bombay High Court

Case No : First Appeal No. 2771 Of 2016

Subhash And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 15-02-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 14 Rule 2, Order 16 Rule 2
Land Acquisition Act, 1894 — Section 18, 18(2)

Citation : (2022) 02 BOM CK 0034

Hon'ble Judges : Shrikant D. Kulkarni, J

Bench : Single Bench

Advocate : V.D. Gunale, B.V. Virdhe, Sham B. Patil

Final Decision : Allowed

Judgement

Shrikant D. Kulkarni, J

1. Heard finally at admission stage with the consent of all parties.

2. This appeal is directed against the impugned judgment and award passed in L.A.R. No. 1346 of 2010 by the reference Court / Civil Judge, Senior

Division, Udgir dated 23.11.2015.

3. The facts giving rise to this appeal in brief are as under:

3(a) The land gut no. 242 admeasuring 55 R situated at village Deoni, Taluka Deoni, District Latur is owned and possessed by the appellants. The

Government has acquired 55 R land for the construction of right canal of Devardhan Medium Project. The possession of the land of the appellants

was taken by private negotiation by the acquiring body on 20.03.1995. The Special Land Acquisition Officer passed the award on 13.07.2021.

According to the appellants, the acquiring land is situated on Nilanga â?" Udgir

State Highway. There is bus stand opposite to the acquired land. There is also college building in front of the acquired land. Schools, colleges, Government quarters and P.W.D. rest house, primary health centre, market committee, Tahsil office are situated at Deoni. The acquired land had N.A. potentiality. N.A. permission was granted long back in the year 1995 prior to the initiation of acquisition proceedings. It is contented that the Special Land Acquisition Officer determined the market value at the rate of Rs.

51,800/- per hectare, which is inadequate having regard to the location of the acquired land surrounded by the public offices.

3(b) The appellants received the amount of compensation under protest on 09.09.2005. Thereafter, the appellants filed reference before the Collector

claiming enhanced compensation at the rate of Rs. 200/- per sq. ft. The reference was forwarded to the reference Court at Udgir. The reference

Court / Civil Judge, Senior Division, Udgir was pleased to dismiss the reference moved by the appellants on the ground that it was not filed within a

period of limitation.

4. Feeling aggrieved by the impugned judgment and award passed by the reference Court, the appellants / original claimants have preferred this appeal

on various grounds.

5. Heard Mr. V.D. Gunale, learned counsel for the appellants, Mr. B.V. Virdhe, learned AGP for respondent No. 1 / State and Mr. Sham Patil,

learned counsel appearing for respondent no.2 / acquiring body.

6. Mr. Gunale, learned counsel for the appellants invited my attention to the impugned judgment and award. He pointed out that the learned reference

Court has simply recorded the finding in respect of issue of limitation. Learned reference Court though discussed in para no. 10 of the judgment about

sufficient evidence produced by the claimants for enhancement of compensation, the reference Court has recorded negative finding against issue no.1,

which is perverse. He also invited my attention to para no.12 of the impugned judgment and argued that the reference Court did not consider the issue

of adequate compensation / reasonable compensation by holding that since the reference is not filed within limitation, there is no need to decide the

issue of enhancement of compensation. Mr. Gunale, learned counsel for the appellants submitted that the entire approach of the reference Court is not

only erroneous, but also against the well settled provisions of law. He submitted

that the reference Court ought to have recorded findings against all the issues on the basis of pleadings and evidence. It was improper on the part of the reference Court to simply dismiss the reference on the point of limitation without recording findings on other issues. He, therefore, urged to quash and set aside the impugned judgment and award passed by the reference Court. He further prays to remand the matter to the reference Court for fresh decision.

7. Per contra, Mr. B.V. Virdhe, learned AGP for respondent no.1 / State and Mr. S.B. Patil, learned counsel for respondent no.2 / acquiring body supported the impugned judgment and award passed by the reference Court. They submitted that the reference filed by the appellants / original claimants was not within the limitation as contemplated under Section 18(2) of the Land Acquisition Act, 1894. The reference Court has rightly considered the legal position and the evidence on record and arrived at correct conclusion that the reference is barred by law of limitation. Mr. Sham Patil, learned counsel for respondent no.2 / acquiring body has placed his reliance in case of Officer on Special Duty (Land Acquisition) and another Vs. Shah Manilal Chandulal and others reported in (1996) 6 SCC 414, on the point of limitation. Learned AGP for respondent no.1 / State and Mr. Sham Patil, learned respondent no. 2 / acquiring body submitted that there is no merit in the appeal. The reference is hit by law of limitation. As such, there is no need to decide the issue of enhancement of compensation.

8. Having regard to the argument advanced by the learned counsel for appellants, learned AGP for State and learned counsel for respondent no.2, I have gone through the impugned judgment passed by the reference Court. The reference Court has reproduced the issues at para no.5 of the judgment. The reference Court has recorded negative finding against issue nos. 1 to 3 including issue of enhancement of compensation.

9. On going through the impugned judgment, para no.12, it is evident hat the learned reference Court on the basis of pleadings and evidence on record arrived at conclusion that the reference filed by the original claimants is barred by law of limitation in view of Section 18(2) of the Land Acquisition Act, 1894. The reference Court went on observing that since the reference is not filed within limitation, there is no propriety in making further calculations as claimed by the original claimants, and therefore, claimants are

not entitled to get enhanced compensation and other reliefs. The observations made by the reference Court are absolutely incorrect. According to Order XIV Rule 2 of the Civil Procedure Code, it is necessary on the part of trial Court / reference Court to pronounce the judgment on all issues. It was necessary on the part of the reference Court to decide the issue of enhancement of compensation on the basis of pleadings and evidence produced before him. The reference Court cannot swayed away from recording findings on other issues only because the reference is found to be barred by law of limitation. It was the incorrect approach of the reference Court in the eyes of law and contrary to the provisions of Order XVI Rule 2 of the Civil Procedure Code.

10. The reference Court has observed in its judgment in para 10 that claimants have filed sufficient evidence on record and shown that the market price of the acquired land was on much higher side than market price determined by the Special Land Acquisition Officer. Even then the learned reference Court went on recording negative finding against issue nos.

1 and 3 only because reference is found to be barred by law of limitation.

11. Moreover, the reference Court has simply considered the evidence produced by the claimants in respect of issue of limitation. But what about the evidence, which is withheld by the State or acquiring body. No evidence was produced on behalf of the State or acquiring body on the point of limitation.

12. Having regard to the above reasons and discussion, it is very much clear that the reference Court has not answered all the issues on merits only because reference was found to be barred by law of limitation. In view of this scenario, the only option available before me is to remand the matter / reference back to the reference Court for deciding all the issues on its merits by giving an opportunity to both the parties to lead their oral and documentary evidence. The evidence from the State / acquiring body is also necessary to decide the issue of limitation in view of Section 18 of the Land Acquisition Act, 1894.

13. Having regard to the above reasons and discussion, the following order is passed.

ORDER

(i) The appeal is hereby allowed.

(ii) The impugned judgment and award passed in L.A.R. No. 1346 of 2010 by the reference Court / Civil Judge, Senior Division, Udgir dated

23.11.2015 is hereby quashed and set aside.

(iii) The proceedings of L.A.R. No. 1346 of 2010 is restored to the file of reference Court / Civil Judge, Senior Division, Udgir.

(iv) The reference is remitted back to the reference Court with a direction to the reference Court to decide it a fresh on all issues on its own merits by

giving an opportunity to both the parties to lead their oral and documentary piece of evidence.

(v) R & P be sent back to the reference Court forthwith.

(vi) In view of the old nature of reference, the reference Court is requested to decide the reference within a period of six (06) months from the date

of receipt of writ of this Court along with R & P.

(vii) The first appeal is accordingly disposed of.

(viii) No costs.