

**(2004) 01 BOM CK 0012**

**In the Bombay High Court**

**Case No :** Civil Rev. Application No. 248 of 2003

Vijaykumar Hanumanprasad Goenka and Another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

**Date of Decision :** 16-01-2004

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9  
Land Acquisition Act, 1894 — Section 26, 26(1)  
Maharashtra Industrial Development Act, 1961 — Section 34

**Citation :** (2004) 2 ALLMR 907 : (2004) 3 MhLj 1069

**Hon'ble Judges :** S.G. Mahajan, J

**Bench :** Single Bench

**Advocate :** A.C. Dharmadhikari, R.V. Shiralkar, N.A. Jachak and S.D. Kane, for the Appellant; A.S. Sonare, A.G.P., for the Respondent

**Final Decision :** Allowed

## Judgement

S.G. Mahajan, J.—Rule returnable forthwith by consent of the learned counsel for revision-petitioners and the learned A.G.P. appearing for respondent.

2. The present revision-petitioners are the owners of field Gat No. 111, admeasuring 7.96 hectares, situated at Village Yeota, Taluka and District Akola. The abovesaid land was acquired by the State of Maharashtra. The Land Acquisition Officer (General), Akola, in Case No. LAQ/47/Shioni-Shivapur, Yeota and Kumbhari/2/91-92 passed an award. Dissatisfied with the amount of compensation awarded, the revision-petitioners filed a reference u/s 34 of Maharashtra Industrial Development Act, 1961 and the same was registered as LA Case No. 386/97. The case was allotted to the Court of 3rd Additional District Judge, Akola. As per the revision-petitioners, when the case was fixed for evidence, it was adjourned from time to time. On 27-3-2002 when the case was for evidence, the counsel for the revision-petitioners, who were the applicants in the reference case, did not file an application for adjournment. He was under the impression that the case would be adjourned because a Session Trial was going

on in the abovesaid Court. However, after 2/3 days, it was found that the reference was dismissed on 27-3-2002 itself on the ground that the present revision-petitioners (applicants in that case) had not proved the enhanced rate.

3. The revision-petitioners then filed MJC No. 66 of 2002 for the restoration/recall of the abovesaid order dated 27-3-2002 under Order 9, Rule 9 read with Section 151, Civil Procedure Code. Thus, by referring to the provision under Order 9, Rule 9, Civil Procedure Code, the revision-petitioners treated the dismissal of reference to be a dismissal in default. Alternatively, it was the stand of the revision-petitioners that if it was not treated to be a dismissal in default, still since the order was not on merits, it was liable to be recalled u/s 151, Civil Procedure Code. During the arguments, it was canvassed on behalf of the revision-petitioners that the case could not have been dismissed by the reference Court for the reason that the revision-petitioners/applicants were absent and the Court, while passing the order of dismissal, ignored the material available on record. Considering the ratio of *Khazan Singh Vs. Union of India*, the learned 3rd Additional District Judge accepted that the Court conducting the trial of land acquisition reference case is not empowered to dismiss the case for want of prosecution or in default of the applicants/claimants and the Court has to deliver a judgment within the scope of clause II of Section 2 of the Code of Civil Procedure. However, as per the learned Judge, the above principle was not violated by him while passing the order dated 27-3-2002 dismissing the reference. As per the learned Judge, in the order passed by him, the reasons considering the material available on record were given and the disposal of the abovesaid land acquisition case (reference) was not for want of prosecution or in default of the applicants. In this view, the 3rd Additional District Judge, Akola, by the judgment and order dated 27-6-2003, dismissed MJC No. 66 of 2002.

4. What is contemplated by Section 26 of the Land Acquisition Act is that the Court should pass an award. What are the requirements of the award are laid down in Sub-section (1) of Section 26 of the Act. 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 it is incumbent on the Court that it should consider the material on record even if the party is absent and has failed to adduce evidence and on considering the material, may refuse to enhance the compensation. But unless the material on record is considered, the order cannot be said to be an adjudication. This Court has earlier also held so in Civil Revision Application No. 114 of 2003 decided on 2-7-2003. In the present case, though the order passed by the 3rd Additional District Judge, Akola, dated 27-3-2002 is styled as an award, the reasoning given by the learned Judge while dismissing the reference is that the claimants (applicants in the reference case) failed to adduce any evidence in order to prove that at the time of relevant notification, the market value of their acquired field was Rs. 2.5 lacs per hectare. The learned Judge observed that the position of claimants in reference case is that of a plaintiff in a civil suit and as such they have to prove the market value of the acquired property at the relevant time and then alone they can establish

the claim for enhanced compensation. The learned Judge further categorically observed that in the case before him, in absence of the evidence on record, it could not be said that the market value of the acquired field was Rs. 2.5 lacs per hectare and the claimants were entitled to the enhanced compensation. He, therefore, concluded that the claim for enhanced compensation was not proved and in that view, he dismissed the reference.

5. The above order passed by the learned 3rd Additional District Judge, Akola, clearly shows that the reference was dismissed for the reason of failure of the revision-petitioners/applicants to adduce evidence and on that basis, it was held that the applicants did not prove the market value of the acquired land at enhanced rate. The material on record was not considered. It was not demonstrated as to how the compensation awarded by the Land Acquisition Officer was correct. Hence, in my view, the order passed by the learned Judge cannot be taken to be an adjudication and, therefore, the same cannot be treated to be an award.

6. In connection with the above point, it would be useful to refer to M.S. Ramaiah and Ors. v. Special Land Acquisition Officer AIR 1974 Kar 122. This case lays down that when a reference is made to the Court (Civil Court), it is its duty to determine the amount of compensation payable for the land or lands acquired; the Court has no jurisdiction to refuse to determine the amount of compensation even where the claimant remains absent or where he is present, fails to adduce evidence; the Court further has to apply its mind and make an award and cannot blindly confirm the award of the Land Acquisition Officer. It was further enunciated that the award which the Court passes must be in the form of a judgment containing the statement of the grounds for the award. Where the claimant remains absent or does not produce evidence, it is not open to the Court to dispose of the reference stating that the claim of the claimant is dismissed or that the reference is rejected.

7. In view of the above discussion, although the learned Judge did not dismiss the reference by using the words "dismissed for want of prosecution" or "dismissed in default", the order was passed in absence of the revision-petitioners/applicants without considering the material on record and thus even if it is taken that it is not liable to be restored under Order 9, Rule 9, Civil Procedure Code, the same is liable to be recalled for the aforesaid reasons. The revision-petitioners shall have to be given an opportunity to lead evidence and of course an opportunity shall have to be given to the State to lead evidence in rebuttal, if any. In the result, the following order :

8. The revision is allowed. The order passed by the learned 3rd Additional District Judge, Akola, dated 27-6-2003, in MJC No. 66 of 2002, whereby he rejected the application of the present revision-petitioners, who are the claimants in Land Acquisition Case No. 386 of 1997, for the restoration/recall of order of dismissal of reference dated 27-3-2002 passed in the said land acquisition case, is set aside. MJC No. 66 of 2002 is allowed. The order passed by the reference Court

dated 27-3-2002 is recalled. The learned 3rd Additional District Judge, Akola, shall decide the reference afresh by giving an opportunity to the revision-petitioners to lead evidence and also to the State to lead evidence in rebuttal and shall decide the reference in the light of the observations made by this Court in the present judgment and pass the order according to law. The revision-petitioners shall appear in the Court of 3rd Additional District Judge, Akola, on 16-2-2004. Hamdast allowed.

9. Rule is disposed of accordingly.