



CNR No.MHNG100008892013
L.A.R. No.318/2013
Shri Mahadev & 1 .VS. State & 1

ORDER BELOW EXH. 10

- 1] Perused application, reply and record. Heard and considered the submissions of both sides.
- 2] The respondent no.1 by moving this application, has contended that the petitioners, during pendency of Reference have received ex-Gratia payment as an additional compensation from the Government authorities and accordingly have furnished undertaking (Hamipatra) that they are withdrawing and will withdraw the present Reference. The petitioners however, have neither applied for amendment nor for withdrawal of this Reference and have suppressed above facts from the Court. In view of above developments and undertaking, this Reference is not maintainable and is without jurisdiction. It therefore, deserves to be dismissed with exemplary costs. It has thus prayed accordingly.
- 3] The petitioners by filing reply have strongly opposed this application.
- 4] From the facts and circumstances, following points arise for my determination and I have recorded my findings against each of them for the reasons mentioned thereunder -

Sr. No.	Points		<u>Findings</u>
1	Is this Reference maintainable ?	:	Yes
2	Whether this Court has jurisdiction to entertain and decide this Reference ?	:	Yes.
3	Is the respondent entitled to relief claimed ?	:	No.
4	What order ?		As per final order

REASONS

AS TO POINT NOS. 1 TO 4 :-

5] The learned Advocate for the respondent by relying upon written notes of arguments filed in other matters and by making oral submissions, has argued that the petitioners have already voluntarily received the additional compensation amount as per agreement between them and Government authorities and have also undertaken to withdraw this Reference. As they have received agreed compensation amount and have given above undertaking, they were supposed to withdraw this Reference but they have not done so. This Reference, therefore, is not maintainable and this Court has no jurisdiction to proceed with the above Reference. He by contending this application to be under Order 7 Rule 11 r/w section 151 of Civil Procedure Code, has argued for dismissal of this Reference.

6] Per contra, the learned Advocate for the petitioners by relying upon written notes of arguments filed in other matters and by making oral submissions, has argued that though the petitioners have received the additional compensation, still it is less than the compensation they have sought for in this Reference. It is their statutory right to seek enhancement of compensation under section 18 of the Land Acquisition Act, 1894 and therefore, the entire claim and contentions of the parties need to be adjudicated on merits. This Reference therefore, cannot be dismissed as prayed for by the respondent. He by relying upon the common Judgment in **Civil Revision Application No.113/2015, Motiram Zingar Wawre .Vs. State of Maharashtra and others and other Revision Applications delivered by the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur, Nagpur on 31.03.2017**, has argued that the ratio laid down in this common judgment is applicable to this Reference and therefore, this application deserves outright rejection.

7] Admittedly, after acquisition of property, the petitioners have filed this Reference. During pendency of the present Reference proceedings, they have received additional compensation from the Government authorities and have undertaken to withdraw the present Reference. They have not withdrawn this Reference but are claiming adjudication of their claim of enhancement made in this Reference on merits. They claim the present Reference to be maintainable before this Court whereas the respondent claims it to be not maintainable and to be barred by jurisdiction.

8] The learned Advocate for the petitioners is relying upon supra case law in support of his above contentions whereas the learned Advocate

for the respondent has claimed the supra case law to be not applicable to the present Reference due to different facts and circumstances. At this stage, it would be apposite to note down the facts and ratio laid down in supra case law -

a] In the supra case law, after acquisition of lands and issuance of notice under section 12 (2) of the Land Acquisition Act, 1894, the claimants therein received compensation and filed Reference proceedings. After filing of the Reference, the Government granted compensation under rehabilitation package to the claimants. The claimants thereafter applied for permission to deposit the court fees on Reference application but the Additional Collector in view of above payment, ordered the proceedings to be filed. The claimants being aggrieved by the said order, filed above Civil Revision Applications.

b] The Hon'ble High Court was pleased to lay down that the statutory right of a land holder to seek enhancement in the amount of compensation cannot be defeated by obtaining an affidavit/undertaking from the land holder that he would not seek enhancement in the amount of compensation by filing Reference under section 18 of the Land Acquisition Act. It was held that the estoppel against statute is not permissible as public policy animating a statutory provision would then become the casualty. It was further held that therefore the entire basis of the action of Collector in treating the proceedings as closed without making Reference to the Court falls to the ground and it is always open for the acquiring body to contend before the Reference Court that while enhancing the amount of compensation, if found necessary, it should take into consideration such amount of rehabilitation compensation received by the claimant and accordingly determine the amount of fair compensation and to that extent, the enhancement in the amount of compensation could be set off.

The Civil Revision Applications were accordingly allowed with directions to the Additional Collector, Nagpur to expeditiously forward the proceedings to Civil Court after completion of all necessary formalities under section 18 of above Act.

9] The claimants/petitioners in this Reference have sought enhancement of compensation, solatium and interest under the provisions of Land Acquisition Act, 1894. During pendency of this Reference, they have received certain additional compensation amount from the respondent as is clear from the submissions of the parties and the documents furnished by the respondent. They claim that they have not received the enhancement and the entire amount as claimed by them in this Reference and therefore, they are still entitled for enhancement and other amount as sought for by them. They therefore, pray for adjudication of their claim on merits. The respondent on the other hand claims fulfillment of claim by way of above settlement/ agreement made out of Court. The controversy between the parties in respect of their above claims needs to be adjudicated on merits. This Reference is being forwarded to this Civil Court for its adjudication and therefore all the claims and contentions of the parties need to be adjudicated on merits. Considering above dispute and above circumstances, this Reference cannot be straight-away dismissed as prayed for by the respondent without considering the merits of the claims of the parties, hence, this application deserves to be rejected.

10] Further, as per ratio laid down by the Hon'ble High Court in the supra Judgment, it is the statutory right of the present petitioners /claimants to seek enhancement in the amount of compensation by making Reference

under section 18 of the Land Acquisition Act, 1894 and therefore such right cannot be defeated and frustrated by obtaining above affidavit and undertaking from them that they would withdraw the Reference and would not pursue the same. The claim made by them in this Reference in respect of their right for enhancement needs adjudication on merits. Dismissing the Reference by accepting the contention of the respondent would amount to defeating above statutory rights of the applicants. Similarly, the claim of respondent about estoppel too cannot be accepted as there cannot be any estoppel against above statute and above statutory rights of the applicants. The ratio laid down in supra case law is squarely applicable to the present facts and circumstances and therefore, in view of above ratio which is binding on this Court, the requirement or otherwise of enhancement needs to be determined by this Court by adjudicating the claims and contentions of the parties on merits and thus, this Reference needs to be heard and decided on merits in accordance with law and cannot be dismissed as per prayer. No prejudice would be caused by refusal of prayer to the respondents as they shall have every opportunity to meet with all the claims and contentions of the petitioners/claimants and shall also be at liberty to raise all their claims and contentions. On the contrary, continuing with the present Reference and its adjudication on merits would help in doing substantial justice between the parties. Needless to mention that the amount already paid till date to the petitioners can be considered while deciding the Reference and all claims and contentions of the parties shall remain open for adjudication.

11] The acquired property being situated within the jurisdiction of this Court and this Reference being forwarded to this Court for adjudication, this Court has jurisdiction to entertain and decide the same and was/is still

maintainable in above circumstances. The Reference application discloses cause of action and it is not barred by any law. Hence, considering the facts and circumstances of the case, provisions of Order 7 Rule 11 read with section 151 of the Code of Civil Procedure, provisions of Land Acquisition Act, 1894 and relying upon the ratio laid down in supra case law, this Reference being maintainable and this Court being having jurisdiction, it cannot be dismissed as per prayer. This application being devoid of merits, deserves to be rejected. I, therefore, record my findings as against point nos. 1 and 2 in the affirmative, point no.3 in the negative and point no.4 accordingly and proceed to pass the following order -

ORDER

- 1] The application Exh.10 stands rejected.
- 2] No order as to costs.
- 3] Parties to co-operate in the expeditious decision of this matter.

Umred.
Dated: 20/12/2021.

[A. V. Mishra]
Civil Judge Sr. Dn. Umred.

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OPERATIVE ORDER

- 1] The application Exh.10 stands rejected.
- 2] No order as to costs.
- 3] Parties to co-operate in the expeditious decision of this matter.

Umred.
Dated: 20/12/2021.

[A. V. Mishra]
Civil Judge Sr. Dn. Umred.

Certificate

"I affirm that the contents of this P.D.F. file judgment are word to word same as per original judgment".

Name of Stenographer : **Stenographer (Grade III)**
Court Name : Civil Judge Senior Division, Umrer
Case argued on : 17/12/2021
Judgment dictated on : 20/12/2021
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