

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 115 OF 2014

Vishambhar Gana Musande
Died through L.Rs. Vitthal .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Vivekanand V. Ingale, Advocate for the Petitioner.
Shri D. R. Korde, A.G.P. for the Respondent No. 1.
Shri Hiraji Gaikwad, Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 06TH OCTOBER, 2015.**

PER COURT :

. The reference filed by present petitioner U/Sec. 18 of the Land Acquisition Act (for short "L. A. Act") is rejected.

2. Mr. Ingale, the learned counsel for the petitioner submits that, the Reference was filed by Vishambhar U/Sec. 18 of the L. A. Act seeking compensation on account of acquisition of his land. The said Vishambhar died on 23.05.2011. The present petitioner was not aware about filing of said proceedings seeking compensation. It is subsequently the petitioner got knowledge of the dismissal of reference and thereafter has filed present revision. According to the learned counsel absence was not

intentional, but due to aforesaid reasons.

2. Mr. Gaikwad, the learned counsel for the respondent No. 3 i. e. acquiring body submits that, ample opportunity was given to the claimant right since 2006, but the claimant and his advocate were absent. Lastly the Court had no option but to dismiss the reference in the year 2014, as the claimant was consistently absent. No error has been committed by the Reference Court.

3. The learned Assistant Government Pleader also adopts the arguments of Mr. Gaikwad.

4. I have considered the submissions. The Reference was filed by Vishambhar Gana Musande seeking compensation. The said reference is filed in the year 1994. The old number of said reference is L.A.R. No. 248 of 1994. The same is given new number as L.A.R. no 754 of 2009. The said Vishwambhar had died on 23.05.2011 itself. The petitioner who is legal heir was required to be brought on record. However, it is contended that, this petitioner who is legal heir of Vishambhar was not having knowledge about pendency of said proceedings filed by his predecessor. I am inclined to give benefit to the present petitioner, however, because of the delay that is caused, it can be directed that the petitioner would not be entitled for statutory benefits for the delayed period as is held by the Apex Court in the

case of **Ramanlal Deochand Shah Vs. State of Maharashtra and others** reported in **AIR 2013 SC 3452**.

5. In the result I pass the following order.

6. The impugned judgment and award is quashed and set aside. The L.A.R. No. 754 of 2009 (Old L.A.R. No. 248 of 1994) is restored to its original position. The parties shall appear before the Reference Court on 16.11.2015. In case the Reference Court comes to the conclusion to enhance the compensation amount, then the petitioner would not be entitled for statutory benefits from 27.07.2006 till 15.11.2015. The civil revision application accordingly is disposed of.

7. The present petitioner shall file an application for bringing himself on record in place of original claimant as a legal heir, which application shall be allowed by the Reference Court after satisfying itself that the petitioner is legal heir of deceased Vishambhar.

[S. V. GANGAPURWALA, J.]