

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

4 FIRST APPEAL NO.1909 OF 2018

SHANTABAI NIMBA MAHAJAN
VERSUS
THE SPECIAL LAND ACQUISITION OFFICER -2 U.T.P.H - 2 JALGAON
AND ANR

...
Advocate for Appellant : Shri Madhav M. Bhokarikar
AGP for Respondent – State : Shri S.J.Salgare
Advocate for Respondent No.2 : Shri Avishkar S. Shelke

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CORAM : P.R.BORA, J.
DATE: 6th March, 2019

PER COURT:-

1. The claimant in Land Acquisition Reference (LAR) No.460 of 2006 has preferred the present appeal against the order passed in the said Reference Application by 2nd Joint Civil Judge, Senior Division, Jalgaon on 06.12.2017.
2. The Reference court has dismissed the aforesaid Reference Application only on the ground that the claimant did not adduce any evidence in order to substantiate her claim. The order so passed by the Reference court is apparently unsustainable. The Hon'ble Apex Court in the case of *Khazan Singh (dead) by L.Rs. Vs. Union of India* [AIR 2002 Supreme Court 726] has held that even if the claimant had not participated in the hearing of the claim petition under Section 18 of the Act, it is not permissible for the Reference Court to dismiss the claim petition on that ground.

The Hon'ble Apex Court has observed in paragraph No.7 of the Judgment as under:-

"7. The provisions above subsumed would thus make it clear that the Civil Court has to pass an award in answer to the reference made by the Collector under S. 18 of the Act. If any party to whom notice has been served by the Civil Court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the concerned party. But non-participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference for default."

3. In view of the fact that the Reference Application has not been decided on merits, the only course available for this Court is to remit the matter to the Reference Court for deciding it afresh.

4. The learned Counsel for the Acquiring Body and the learned AGP appearing for the State have submitted that from the circumstances it can be gathered that the Reference Application could not be decided because of lapses and inaction on part of the appellant. The learned Counsel for the Acquiring Body and the learned AGP have therefore prayed for dis-entitling the claimant from claiming interest of long period of 11 years from the date of filing of the Reference Application till the date of disposal of the said Reference Application if this Court inclines to remit the matter for deciding it afresh.

5. After having considered the submissions and more particularly, in view of the Judgment of the Hon'ble Apex Court in the case of *Khazan Singh (dead) by L.Rs.* (supra), the impugned order cannot be sustained. There cannot be a dual opinion on the point that the Reference Application could not have been dismissed on the aforesaid ground. In the circumstances, I am inclined to remit the matter to the Reference Court.

6. Insofar as the submission made by learned Counsel for the Acquiring Body and learned AGP to dis-entitle the claimant from claiming interest, from the material on record, it is difficult to gather as to because of whose negligence or inaction, the Reference Application could not be heard. However, if the issues would have been framed much prior to dismissal of the application, a reasonable inference can be drawn that the hearing and ultimate decision of the Reference Application has been delayed because of inaction on part of the claimant. In the circumstances, the following order is passed:-

ORDER

- I) The order passed on 06.12.2017 in LAR No.460 of 2006 is quashed and set aside.

II) The matter is remitted to the Reference Court for deciding it afresh.

III) The Reference Court shall give adequate opportunity to the claimant as well as the respondents to adduce necessary evidence on their behalf.

IV) In the event of success of the appellant in the Reference Application, while awarding the interest, the Reference Court shall take into account the fact whether the hearing of the Reference Application was delayed on account of inaction on part of appellant – claimant after framing of the said issue and if it is convinced that the hearing was delayed on account of lapses on behalf of the claimant, may consider the request of the Acquiring Body for dis-entitling the claimant from claiming the interest of the said period while awarding interest in the matter.

V) Appeal stands allowed in the aforesaid terms.

VI) Having regard to the fact that the Reference Application was filed in 2006, it is directed that the Reference court shall decide the Reference Application as expeditiously as possible and preferably within a period of six months from the date of receipt of the record or writ from this Court.

(P.R.BORA)
JUDGE