

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.1333 OF 2017
IN
LAND ACQUISITION REFERENCE NO.6 OF 1988**

Nowroz Jilla	..Applicant/org.Claimant
In the matter between	
The Special Land Acquisition Officer (3)	
And	
Nowroz Jilla	..Claimant
And	
Naval Coast Battery	
of Western Naval Command	..Acquiring Body

Mr.Jaydeep Raut i/b. Mr.Girish Pikale for Applicant.
Mr.S.R. Rajguru and Mr.A.R. Varma for Acquiring Body.

CORAM : G.S. KULKARNI, J.

DATE : 9th JANUARY, 2020

P.C.:

Heard learned Counsel for the applicant and learned Counsel for the respondent.

2. By an order dated 7 January 2015, the above land acquisition reference was dismissed for non-prosecution. The said order reads thus:-

- “1. Claimant and advocate absent.
2. On 8th December, 2014 the LAR came to be adjourned since it was seen that the claimant was not ready to proceed with LAR.
3. The Land Acquisition Reference is granted in terms of the order of the SLAO.”

3. This notice of motion for restoration of land acquisition reference was filed on 9 August 2017. There is a delay of 943 days in filing the notice of motion. Learned Counsel for the applicant has drawn my attention to the averments as made in the affidavit in support of notice of motion that the applicant was diligent in pursuing the proceedings, however the Advocate had remained absent when the reference was called out for hearing on 7 January 2015. The relevant averments to that effect are set out in paragraphs 3 to 8 of the affidavit in support of the notice of motion which read thus:-

“3. I say that the delay is not my fault, since I have been always been pursuing the matter very diligently. I say that I am deeply aggrieved by the conduct of my previous advocate on record which has resulted in the impugned order dated 7th January 2015 being passed by Her Ladyship the Hon’ble Mrs. Justice Dalvi. I say that that the Order dated 7th January 2015, passed by Her Ladyship the Hon’ble Mrs. Roshan Dalvi was an ex parte order passed in my absence and in the absence of my advocate. Hereto annexed and marked Exhibit ‘A’ copy of the order dated 07/01/2015.

4. I say that my Advocate had informed me that he/she was following the matter diligently, when actually no one was present in this Hon’ble Court. I say that my Advocate had not apprised me nor updated me on the proceedings in court. I say that I was to remain present in court since the matter was to go on, however my advocates had not informed me when and where I was to attend this Hon’ble Court.

5. I say that I had realised much later that not only had my advocates misinformed me about the proceedings going on in Court but had suppressed vital details from me. I say that after a very long time I discovered that my Land Acquisition Reference was dismissed ex – parte for want of prosecution and when I confronted my previous advocates about these happening they refused to continue to represent me and did not bother to return my files, papers and proceedings. In fact, upon requesting them to obtain a certified copy of the order 7th January 2015 for my record, they refused to do that as well.

6. I say that I have had to run from pillar to post to obtain copies of my papers and proceedings in the present matter which has consumed much time. I say that being a

diabetic patient suffering from severe hypertension, I have spent considerable time looking for fresh legal representation and I have suffered tremendous mental and physical harassment and trauma. I say that many Advocates refused to represent me since I did not have full papers and proceedings.

7. I say that the ordinary litigants should not be made to suffer due to the negligence and disregard on the part of the advocates representing them. I say that the disregard and negligence of my previous advocate has caused me to become aggrieved by the aforementioned impugned order and the further crisis of finding alternate legal representation.

8. I sincerely and unconditionally apologise for any delay or difficulties which has been caused due to the negligence, disregard and carelessness of my previous advocates.”

4. Although this notice of motion was served on the respondent quite some time back, there is no opposition to the notice of motion on record as no reply affidavit has been filed. The averments as made in the affidavit in support of notice of motion are accordingly required to be taken as uncontroverted. Though there is no affidavit in opposition, Mr.Rajguru alongwith Mr.Verma, learned Counsel for respondent No.2-acquiring body has opposed the notice of motion. It is also contended that under the Land Acquisition Act there is no jurisdiction with the Court to restore a reference which is dismissed for non-prosecution. Mr.Rajguru is unable to support his contention by any authority in this context.

5. However, I am not persuaded to accept these submissions. The Court certainly would have jurisdiction to restore the reference, considering the powers of the Civil Court as vested in this Court. Accordingly, notice of motion is allowed in terms of prayer clauses (a) and (b). In any event considering the reasons as set out in support of the prayers, the law is well settled. A litigant cannot suffer due to

negligence on the part of his advocate. It is clear that the claimant had appointed an advocate who was pursuing the proceedings and he had remained absent. It is not expected that once an Advocate is appointed, on every listing of the cause the party at whose behest the proceedings are filed, should remain present, unless otherwise required. Considering the interest of justice, in my opinion, delay in filing this notice of motion is also required to be condoned.

6. It is informed that the reference would now be required to be heard finally as the evidence is already recorded. List the reference for final hearing on 23 January 2020.

[G.S. KULKARNI, J.]