

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

944 WRIT PETITION NO. 3992 OF 2021

Vinayak S/o. Trimbak Tribhuvan,
Age-55 Years, Occu-Agril,
R/o. At post Wakla, Tq. Vaijapur,
Dist. Aurangabad

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through Special Land Acquisition
Officer, Jayakwadi Project,
Collector Office at Aurangabad

...RESPONDENTS

2. The State Of Maharashtra,
Through Collector Aurangabad,
Collector Office, Aurangabad

Mr. Yogesh D. Kale, Advocate for the petitioner
Mr. R. D. Sanap, AGP for the respondents/State

CORAM : N. J. JAMADAR, J.

DATE : 03-03-2021

JUDGMENT :

. Rule. Rule made returnable forthwith and heard finally
with the consent of the learned counsel for the parties.

2. This petition assails the legality and propriety of the
judgment and award dated 03-09-2016, passed by the learned Civil
Judge Senior Division, Vaijapur, Dist. Aurangabad (Reference Court)

in LAR No. 311/2010 whereby the Reference Court dismissed the reference made at the instance of the petitioner-claimant.

3. The petitioner avers that the learned judge was persuaded to dismiss the reference on account of the default on the part of the claimant to lead the evidence. The petitioner was prevented by unavoidable circumstances from adducing the evidence before the Reference Court. In the circumstances, learned judge ought not to have dismissed the reference, having regard to the object and nature of the proceedings before the Reference Court.

4. I have heard learned counsel for the petitioner and learned AGP for the respondents at some length.

5. Learned counsel for the petitioner would urge that in view of settled legal position that the reference court has no jurisdiction to dismiss the reference for default in appearance of the claimant, the impugned order suffers from serious legal infirmity. Amplifying the submission learned counsel for the petitioner would submit that though Reference Court has made an endeavour to consider the material on record yet the fact that the reference came to be dismissed primarily for default on the part of the petitioner-claimant to adduce the evidence becomes unmistakably clear. Placing reliance on a judgment of this court in Civil Revision Application No. 63/2017 [Coram: Prasanna B. Varale and Avinash

G. Gharote, JJ] and another judgment of this court in the case of Walmik Trimbak Tupe Vs the State of Maharashtra and others (writ petition No.12795/2019 and other connected matters) dated 17-01-2020, the learned counsel for the petitioner urged that the impugned order is unsustainable and deserves to be set aside.

6. Learned AGP submitted that from the perusal of the impugned judgment it becomes evident that the petitioner did not diligently prosecute the claim in the reference. Ample opportunity was provided to the petitioner. The State cannot be made to suffer the consequences of deliberate inaction and default on the part of the petitioner.

7. In the Civil Revision Application No. 63/2017 [Coram:Prasanna B. Varale and Avinash G. Gharote, JJ] (supra) the Division Bench of this Court culled out the propositions in para 31. Clauses C, E and F are material. The read as under:-

“31. In the result, we hold as under:-

(C) We also hold that an ‘order otherwise than on merits’, passed in proceedings u/s. 18 of the L.A. Act, by the Civil Court, cannot be considered as an award and, therefore, does not amount to a decree, as defined in Section 2(2) of C.P.C. by virtue of the deeming provision U/s. 26(2) of the L.A. Act and, therefore, an appeal against it also would not be maintainable.

(E) We further hold that a reference u/s. 18 of the L.A. Act, in the light of the mandate as laid down by the Hon'ble Apex Court in the case of *Khazan Singh* (supra), has to be decided by the Civil Court on the basis of the material before it, on merits.

(F) We further hold that an 'order passed otherwise than on merits' in proceeding u/s. 18 of the L.A. Act by the Civil Court, in case it has been so passed, would be susceptible to a challenge under Article 227 of the Constitution of India before the High Court in its supervisory jurisdiction, or u/o. IX Rule 9 r/w. Sec.151 CPC by virtue of Section 53 of the L.A. Act."

8. The learned Single Judge of this court in the case of *Walmik Trimbak Tupe Vs The State of Maharashtra and another* (Writ Petition No.12795/2019) (supra) after following aforesaid in pronouncement, was persuaded to remit the matter back to the Reference Court by setting aside the orders of dismissal of the reference otherwise than on merits.

9. From the perusal of the impugned judgment and award, it becomes evident that the learned judge made an effort to consider the material on record. However, the issues were answered against the claimant on the count that the claimant did not lead evidence. In this setting of the matter, it would be hazardous to draw an inference that reference came to be decided

on merits. The observations which have been made by the Reference Court as regards the nature of the claim and party on which onus lay, do not render the disposition on merits.

10. The submission on behalf of the respondent as regards the continued liability of the respondent to pay interest, in the event the compensation is enhanced can be taken care of by directing the Reference Court to consider the entitlement for interest for the period the claimant is found to be at fault, in prosecuting the reference.

11. For the forgoing reasons, the petition deserves to be allowed. Hence, the following order.

ORDER

- i. The petition stands allowed.
- ii. The judgment and award dated 03-09-2016, in LAR No. 311/2010, passed by the learned Civil Judge Senior Division, Vaijapur, Dist. Aurangabad stands quashed and set aside.
- iii. The LAR No. 311/2010, is restored to the file of the reference court.
- iv. The Reference Court shall decide the reference in

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accordance with law as expeditiously as possible.

v. The petitioner shall co-operate the Reference Court to dispose of the reference in an expeditious manner and shall not seek adjournment.

vi. The petitioner shall appear before the Reference Court on 05-04-2021.

vii. Rule made absolute.

[N. J. JAMADAR, J.]