

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD.

116 WRIT PETITION NO.5721 OF 2021

KALYAN SHANKARRAO GHOGRE

VERSUS

THE STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS

...

Advocate for Petitioner : Mr. Sambhaji S. Tope.

AGP for Respondent/State: Mr. A. R. Kale.

...

CORAM : **S. V. GANGAPURWALA &  
R. N. LADDHA, JJ.**

DATE : 30<sup>th</sup> August, 2021.

**P.C.:**

. We have heard Mr. S. S. Tope, learned counsel for petitioner and Mr. A. R. Kale, learned AGP for respondent Nos.1 to 4.

2 The grievance of the petitioner is that the interest under Section 34 of the Land Acquisition Act has not been paid to the petitioner.

3 The learned counsel for petitioner submits that the petitioner had filed reference under Section 18 of the Land Acquisition Act. The Reference Court has not awarded the interest under Section 34 of the Land Acquisition Act. The interest is awarded by the Special Land Acquisition Officer in an award passed under Section 28-A of the Land Acquisition Act, as per the directions of this Court.

4           Mr. Kale, learned AGP submits that the petitioner had filed reference before the Reference Court. The Reference Court has not granted relief to the petitioner of interest under Section 34 of the Land Acquisition Act. The same would amount to constructive *res-judicata*.

5           There cannot be dispute with the proposition that the relief claimed by the party and not granted, is deemed to have been rejected as per Explanation V to Section 11 of the Code of Civil Procedure. So also as per Explanation IV to Section 11 of the Code of Civil Procedure, if a relief could have been claimed but is not claimed amounts to constructive *res-judicata*.

6           In the present case, Section 34 casts an obligation upon the Collector to pay the interest under Section 34 of the Land Acquisition Act. It also does not prescribe filing of reference under Section 18 of the Land Acquisition Act for claiming interest under Section 34.

7           The petitioner has already approached the competent authority by filing an application for grant of interest under Section 34 of the Land Acquisition Act.

8           In light of that, in case the application filed by the petitioner

(page 51) is pending with respondent No.4, then respondent No.4 shall pass appropriate orders on the said application within four months, ofcourse, after hearing all the parties concerned.

9           It is made clear that respondent No.4 shall verify the award passed by the Reference Court under Section 18 of the Land Acquisition Act and if the said relief is not granted by the Reference Court then only may consider grant of relief under Section 34 of the Land Acquisition Act.

10           The writ petition is disposed of. No costs.

[ R. N. LADDHA, J. ]

[ S. V. GANGAPURWALA, J. ]

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