

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

CIVIL REVISION APPLICATION NO. 169 OF 2015

Gulam Askar S/o Gulam Sarwar ... Applicant

Versus

The State of Maharashtra and others ... Respondents

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Ms Madhaveshwari S. Mhase, Advocate for applicant

Mr. S. N. Kendre, AGP for respondent No.1

Smt. R. D. Reddy, Advocate for respondent No.2

Mr. H. M. Shaikh and Mr. S. U. Shaikh, Advocates for respondent Nos. 3-A and 3-B

Mr. S. S. Mane, Advocate for respondent No.4

Mr. M. L. Dharashive, Advocate for respondent No. 7 and 8

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CORAM : R. G. AVACHAT, J.

DATED : 09th AUGUST, 2021

PER COURT :-

1. The challenge in this revision application is to the judgment and order dated 26.03.2008 passed by the learned Civil Judge, Senior Division, Latur, in Land Acquisition Reference (L.A.R.) No.345 of 1982.

2. Heard.

The applicant herein claims to be one of the sons of deceased Gulam Sarwar, whose land came to be acquired for State

Transport bus stand and bus depot, at AUSA, way back in October 1981. Being dissatisfied with the amount of compensation offered by the Special Land Acquisition Officer, the original land owner – Gulam had preferred L.A.R. No.345 of 1982. The Reference Court dismissed the reference with the following reasons:

“12. ISSUE NO. 1, 2, 4 TO 6 :- The earlier evidence adduced by the claimant cannot be read in evidence unless opportunity is given to the respondent no.2 to cross examine the witnesses of the claimant. The legal heirs of the claimant have failed to turn to the Court which goes to show that they are least interested in prosecuting the reference. When the evidence on record cannot be read in evidence then it is to be held that there is no evidence on record to prove the claim of the claimant in the reference petition. In the result, I hold that the claimant failed to prove the issues in respect of market price of acquired land on the date of notification u/sec.4 of the Act and that the L.A.O. has awarded inadequate compensation to them and as such the reference is liable to be rejected. In the result, it is rejected and following order is passed.”

3. The record indicates that on the demise of land owner Gulam, his widow and sons had come on record as his legal representatives in L.A.R. No.345 of 1982. Learned Advocate for the applicant would submit that all was not well among the sons of deceased Gulam. Wrong name of the applicant was given. The notices issued by the Reference Court, therefore, could not be served on the applicant herein. This Court, while allowing the application

for condonation of delay in preferring the present application had observed thus:

“2. It is the contention of the applicant that he is legal heir of original claimant – Gulam Sarwar Abdul Nabi. It is contended that after the death of Gulam Sarwar during pendency of the proceeding notices were sent on Court motion, but notice to the present applicant was never served and present applicant had no knowledge about the pendency of the proceeding. It appears that notice was served on some of the legal heirs, but no evidence is given to substantiate the claim. Ultimately the matter came to be dismissed. The learned counsel for the respondents submitted that there is no sufficient cause for condoning the delay.

3. This Court has gone through the copy of Roznama produced along with the present matter which is of LAR No.345/1982. There is force in the aforesaid contentions made by the learned counsel for the applicant. There is apparently some case to fight out and so, this Court holds that sufficient cause is shown.

4. In the result, the application is allowed. Delay is condoned.”

4. The Reference Court dismissed the reference on account of failure of the legal representatives of the original land owner to lead evidence. It is a settled legal position that land acquisition reference cannot be dismissed in default. If some evidence is on record, the Reference Court is expected to appreciate the same and pass the award on merits. The matter appears to have long history. The L.A.R. No.345 of 1982 had already been allowed. The award

passed therein was challenged in appeal before this Court. The appeal was allowed since the acquiring body was not a party before the Reference Court. As such, the proceedings in L.A.R. No.345 of 1982 came to be reopened. It also appears that the original owner/claimant had received amount of compensation offered by the S.L.A.O. and even enhanced vide judgment and award dated 12.08.1988 passed in L.A.R. No.345 of 1982.

5. Smt. Ranjana Reddy, learned Advocate for respondent No.2 - M.S.R.T.C., would submit that the applicant and respondent Nos. 4 to 8 had intentionally avoided to receive the notice in L.A.R. No.345 of 1982. Respondent Nos. 7 and 8 had appeared suo-motu. The Reference Court took all the efforts to call all the concerned parties. The Rozanama indicate that the legal representatives of the deceased land owner were not interested in the proceedings. The applicant had knowledge of the judgment passed in the L.A.R. He, however, took years to approach this Court. The revision application is not maintainable on account of inordinate and deliberate delay. According to the learned Advocate, it is a matter of public money. A person who slept over his right, has no equity in his favour. She, therefore, urged for rejection of the application.

6. Since the applicant being legal representative (son) of the original land owner, is entitled to pursue the land reference preferred by his father and there being no opportunity for him to lead evidence in the said matter for want of notice of the said proceeding, the impugned award needs to be set aside.

7. In the result, the Civil Revision Application is allowed. The matter is remanded back to the Reference Court to decide it afresh on merits after giving the applicant and his siblings, an opportunity to lead evidence.

8. The applicants/claimants shall not be entitled for interest on enhanced compensation, if any, from the date 21.07.2004 when the reference was remanded back vide order passed in First Appeal No.84 of 1990 to the date of this order, since the applicant took years to pursue this application.

9. The amount which has already been paid, should be adjusted at the end of the proceedings.

10. The Reference Court is requested to decide the Reference within a period of eight months from the date of receipt of a copy of

this order. He need not issue notices of the said proceedings to the applicant and the respondents herein. The parties are directed to appear before the Reference Court on 27th September, 2021.

[R. G. AVACHAT, J.]

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