

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

963 WRIT PETITION NO. 4731 OF 2020

**DWARKABAI POPAT PATIL (DIED)
VERSUS
THE SPECIAL LAND ACQUISITION OFFICER JALGAON**

Shri. A. B. Kale, Advocate for the petitioner
Smt. D. S. Jape, APP for the respondent/State

CORAM : M. G. SEWLIKAR, J.

DATED : 20th August, 2021

PER COURT :-

1. This is a petition under Article 227 of the Constitution of India thereby challenging the judgment and order passed by the learned Ad-hoc District Judge-1, Amalner dated 5th October, 2009 whereby reference is abated.

2. It is the case of the petitioner that the land Gut No. 74 has been acquired by the Government for the purpose of approach road on Kadji bridge district Jalgaon. The learned Special Land Acquisition Officer (SLAO) awarded compensation. Being dissatisfied with the compensation

awarded, petitioner preferred reference under Section 18 of the Land Acquisition Act for enhancement in the amount of compensation.

3. Issues were framed in the reference. Reference was of the year 1991. Petitioner did not lead evidence for a pretty long period. The learned trial Court has passed following order,

“This is reference filed under the provision of Se. 18 of the L.A. Act for grant of enhanced compensation. The opponents appeared in the Court and contested the reference.

2) That, by filing of the applications Exh. 76,78, it is informed that the applicant Dwarkabai died on 13.4.1999. The applicant of Exh. 76 and 78 has failed to remain present in the Court failed to pursue the applications and therefore, the applications were ordered to be filed. Thus the applicant is dead and therefore, the reference is liable to be abetted due to the death of applicant. Hence, order

ORDER

Reference is hereby abetted due to the death of applicant.

No order as to cost.”

4. Heard Shri. Kale, learned counsel for the petitioner and Smt. Jape, learned AGP for the State.

5. Learned counsel for the petitioner Shri. Kale submits that counsel for the petitioner did not intimate the petitioner about the date fixed in the matter. He submitted that it was impermissible for the Reference Court to decide the reference without recording evidence. He has therefore sought intervention of this Court. Learned counsel Shri. Kale further submits that notice of Reference Court was not given to the petitioner. For all these reasons he prays for setting aside the impugned order.

6. Learned AGP Smt. Jape opposed the petition. She submitted vehemently that despite giving several opportunities petitioner did not lead evidence and now he cannot turn around and say that opportunity was not given. She submits that if this Court comes to the conclusion that petition needs to be allowed, it may be allowed only on condition that petitioner shall not be entitled to interest for the period from the date of dismissal of the reference till this petition is restored.

7. Petitioner has placed reliance on the case of

Diwakar Prabhakar Chopade Vs. Sub-divisional Officer, (Land Acquisition Officer), Aurangabad and others reported in 2019(6) Mh.L.J., 591. In this decision Hon'ble Division Bench of this Court has held that reference under Section 18 of the Land Acquisition Act in the light of the mandate as laid down by Hon'ble Apex court in the case of *Khazan Singh Vs. Union of India* has to be decided by the Civil Court on the basis of material before it on merits.

8. The learned trial Court observed that applicant did not lead evidence and did not take any steps to adduce evidence.

9. Smt. Jape, learned counsel placed reliance on the case of *Ramanlal Deochand Shah Vs. State of Maharashtra and another (AIR 2013 SC 3452)* for the proposition that the petitioner will not be permitted to claim interest from the date of judgment of Reference Court till the date of order of this Court. It has been held thus :-

"12. Suffice it to say that in the facts and circumstances of the present case no evidence having been adduced by the defendants-

respondents, whether documentary or otherwise, there was no question of the appellant relying upon such non-existent evidence. Merely because some documents were referred to in the Draft Award by the Collector, did not make the said documents admissible by them to enable the plaintiffs to refer to or rely upon the same in support of a possible enhancement. If a document upon which the plaintiffs placed reliance was available, there was no reason why the same should not have been produced or relied upon. Inasmuch as no such attempt was made by the plaintiffs, they were not entitled to claim any enhancement."

10. Learned counsel Shri. Kale undertakes that in six months time petitioner will lead the evidence and assist the Court in disposing of the reference. In view of this following order is passed.

ORDER

- (i) Petition is allowed.
- (ii) Judgment and order dated 5th October, 2009 passed by the Reference Court is set aside.
- (iii) Reference is restored to file.
- (iv) The Reference Court shall permit the petitioner and State to lead evidence.
- (v) Petitioner shall not be entitled to interest for the

period from the date of dismissal of reference i.e.

5th October, 2009 till the date of this order.

(vi) Learned trial Court shall dispose of the reference within a period of six months.

[M. G. SEWLIKAR, J.]

ssp