

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

WRIT PETITION NO.2713 OF 2021

ASRABAI NARAYAN THAKRE
VERSUS
THE STATE OF MAHARASHTRA THROUGH GOVT. PLEADER, HIGH
COURT OF BOMBAY, BENCH AT AURANGABAD AND OTHER

...
Advocate for the Petitioner : Shri Jayabhar Dattatraya R.
AGP for Respondents 1 and 2 : Smt. P.V. Diggikar
Advocate for Respondent 3 : Shri S.W. Munde
...

CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 07th January, 2022

Per Court:

1. The petitioner is aggrieved by the rejection of the LAR No.372/2009 at the hands of the learned Third Joint Civil Judge, Senior Division, Aurangabad on 04.12.2017.
2. I have heard the learned counsel for the petitioner, the learned counsel for respondent No.3/ acquiring body as well as the learned AGP for respondent Nos.1 and 2.
3. On perusal of the order dated 04.12.2017, it can be discerned that the reference came to be filed by the petitioner for enhancement of the compensation under Section 18 of the Land Acquisition Act by claiming that the Land Acquisition Officer has not taken into consideration

the objection about not acquiring her land and the award came to be passed on 01.08.2008. It is contended that she accepted the amount under protest, but she claimed that she has been awarded meager sum of Rs.40,393/- for her land admeasuring 34 R situated at village Devlana, Taluka Kannad, District Aurangabad. In the reference, she claimed compensation of Rs.1,29,607/- by way of enhancement and also solatium of 30% and interest at the rate of 12% per annum along with other benefits.

4. The claim in reference has been rejected under the impugned order on the ground that the petitioner had not filed her affidavit in lieu of examination-in-chief and she had chosen to remain absent when the matter was fixed for evidence. More so ever, it is also recorded that no documents are filed in support of her claim seeking enhancement of compensation. Respondent Nos.1 and 2 had closed their evidence by filing the purshis and this constrained the learned Reference Court to reject the reference by recording that no purpose would be served by keeping the proceedings pending which are more than 08 years old and particularly when the claimant has failed to adduce evidence to prove her claim in the reference. The reference is, thus, rejected.

5. Admittedly, there is no determination of the claim of the claimant on merits. The learned counsel for the petitioner has placed on record the order passed in the reference petition filed by the owner of the

piece and parcel of the land, which was acquired for the same project being LAR No.358/2009 filed by one Ramrao Bandu Sonawane and in the said reference, the learned Reference Court, vide order dated 15.10.2015 has allowed the reference by granting enhanced compensation and also solatium as well as interest at the rate of 12% per annum under Section 23(1)(a). Further interest as per Section 28 has also been awarded. As per the judgment, the interest is directed to be paid from the date of publication of the notification under Section 4 till the realization of the amount of award.

6. When confronted with the aforesaid order and when it is specific submission of the learned advocate for the petitioner that the reference in respect of the same piece of land has been allowed and in the absence of determination of her claim on merits, her claim is rejected on technical ground, when the petitioner would also have been entitled for the same relief, the learned advocate for respondent No.3, however, states that the order passed in the said reference case is already assailed and the enhanced compensation granted is subject matter of challenge by the acquiring body.

In any case, since the claim of the petitioner is not determined on merits, I am inclined to remand the matter back to the learned Reference Court in the wake of the fact that the petitioner is an illiterate lady and she was not properly guided in prosecuting the

reference proceedings. If similarly situated claimant as like the petitioner has been extended the benefit of the enhanced compensation, there is no reason why on establishment of her claim, she should not be held entitled for enhanced compensation. The petitioner, therefore, deserves one more opportunity to establish her claim.

7. For the aforesaid reasons, LAR No.372/2009 is remanded back to the Reference Court by setting aside the order dated 04.12.2017. Remand, however, be subject to the stipulation, which the learned counsel for the petitioner has agreed, to the effect that the petitioner shall not claim any interest on the enhanced amount, if any awarded in future, from 04.12.2017 till the date of actual determination of LAR No.372/2009. The learned Reference Court, on remand of LAR No.372/2009, shall afford an opportunity of hearing to the petitioner as well as to the acquiring body and will permit her claim to be contested and shall also conclude the proceedings LAR No.372/2009 within a period of six months from today. The Writ Petition is, accordingly, allowed. No order as to costs.