

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

WRIT PETITION NO.10237 OF 2022

Ganpati Rama Hazare

Age : 36 years, Occu : Agri,
R/o. Kawadgaon, Tal. Paranda,
Dist. Osmanabad

.. Petitioner

Versus

1. The State of Maharashtra
Through the Collector
Osmanabad, Dist. Osmanabad
2. The Special Land Acquisition Officer
(MIW) Osmanabad at Paranda
Tq. Paranda, Dist. Osmanabad
3. The Executive Engineer
Sona Kolegaon Project
Paranda, Tal. Paranda,
Dist. Osmanabad.

.. Respondents

...
AND

WRIT PETITION NO.10241 OF 2022

Somnath Hari Hazare
Died Through L.R.s

1. Pushpa Somnath Hazare
Age : 65 years, Occu : Household,
R/o. Kawadgaon, Tq. Paranda,
Dist. Osmanabad
2. Prakash Somnath Hazare
Age : 45 years, Occu : Agri,
R/o. Kawadgaon, Tq. Paranda,
Dist. Osmanabad.
3. Shibiraj Somnath Hazare
Age : 39 years, Occu : Agri,
R/o. As above.

.. Petitioners

Versus

1. The State of Maharashtra
Through the Collector
Osmanabad, Dist. Osmanabad
2. The Special Land Acquisition Officer
(MIW) Osmanabad at Paranda
Tq. Paranda, Dist. Osmanabad
3. The Executive Engineer
Sona Kolegaon Project
Paranda, Tal. Paranda,
Dist. Osmanabad. .. Respondents

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Mr. Abhijit S. More, Advocate for the Petitioners in both the matters
Ms. G.L. Deshpande, AGP for the Respondents – State in WP
No.10237 of 2022

Mr. K.N. Lokhande, AGP for the Respondents – State in WP
No.10241 of 2022

Mr. A.M. Gaikwad, Advocate for Respondent No.3 in both the matters

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CORAM : SANDEEP V. MARNE, J.

DATE : 11-10-2022

ORAL JUDGMENT :

1. Heard. Rule. It is made returnable forthwith. Ms. G.L. Deshpande and Mr. K.N. Lokhande, learned Assistant Government Pleaders as well as Mr. A.M. Gaikwad, learned advocate waives service for respective respondents. At their joint request the matter is heard finally at the admission stage.

2. In both these petitions, the judgments and orders passed by Civil Judge, Senior Division, Paranda on 25.01.2022 in L.A.R. No.455 of 2016 and on 16.04.2022 in L.A.R. No.454 of 2016 have

been challenged. By those orders, the trial Court has proceeded to dismiss the Land Acquisition References filed by the petitioners. The main ground of dismissal is failure on the part of the petitioners-claimants to adduce evidence. The trial Court has recorded detailed findings as to how repeated opportunities were granted to the petitioners to lead evidence in support of their claims. However, since the evidence was not led for a considerable period of time, the Court was left with no alternative but to adjudicate the references in the absence of any evidence being led and proceeded to dismiss them.

3. Mr. More, learned counsel for the petitioners submits that the petitioners were not given proper advice on account of which they could not lead evidence in the matter. In respect of the period after March – 2020, he would rely upon the situation arising out of Covid-2019 pandemic to justify failure on the part of the petitioners to lead evidence. He would submit that the petitioners are required to be granted one opportunity to lead evidence, so that the references can be properly adjudicated based on the evidence adduced. Mr. More submits that, since the evidence was not adduced for a long period of time, the petitioners are willing to forgo interest on enhanced amount of compensation, if awarded by the reference Court. Mr. More relies upon decisions of this Court in **Walmik Trimbak Tupe vs. The State of Maharashtra and another**, Writ Petition

No.12795 of 2019 decided on 17.01.2020 and **Ranganath Ganpati Pathak Died Thr. LRs Janardhan & Anr vs. The State of Maharashtra & Others**, Writ Petition No.1449 of 2021 decided on 29.08.2022.

4. Per contra, Mr. Gaikwad, the learned counsel for respondent no.3 opposes the petitions. He submits that the petitioners were negligent in prosecuting their references. Inviting my attention to para no. 8 of the judgment and order passed in LAR No.455 of 2016, Mr Gaikwad contends that the matter was kept for evidence for two long years between 19.01.2018 till 04.02.2020 when the petitioners did not bother to lead evidence. Even after 04.02.2020, till the references were finally decided on 25.01.2022, evidence was not led. He therefore opposes the prayer of Mr. More for grant of any further opportunity to lead evidence.

5. Mr. Gaikwad relies upon the decision of the Apex Court in **Ramanlal Deochand Shah vs. State of Maharashtra**, 2013 AIR SCW 4591 to buttress his contention that the burden of leading evidence in support of claim for higher compensation rests on the shoulders of the petitioners and that on account of their failure to discharge that burden, the judgment and order passed by the reference court cannot be found fault with. He prays for dismissal of the petitions.

6. Ms. Deshpande, the learned AGP appearing for respondent nos.1 and 2 also opposes the petitions. She submits that in the event of this Court granting any opportunity to the petitioners to lead evidence, the respondents cannot be burdened with the liability to pay interest on amount of higher compensation, if awarded.

7. Having heard the learned Counsel for the parties, I find that the petitioners were negligent in their conduct of not leading evidence in support of their references. Therefore, it cannot be said that the Reference Court has committed any error in rejecting the references. The reference Court was not supposed to wait endlessly till they adduced evidence in support of their claims.

8. However, it is now a settled position that reference filed under Section 18 of the Land Acquisition Act is not an appeal against award and it is necessary to produce the material based on which the higher compensation is claimed. No doubt, in **Ramanlal Deochand Shah** (*supra*) relied upon by Mr. Gaikwad, the Apex Court has held that the burden of adducing evidence in support of higher claim for compensation is on the plaintiffs, but ultimately the Apex Court has also granted an opportunity to the appellant therein to adduce evidence in support of the claim for enhancement of compensation.

9. In **Walmik Trimbak Tupe** (*supra*) this Court was dealing with somewhat similar situation. In the bunch of cases, this Court dealt with cases of petitioners therein who had not adduced the evidence due to unavoidable circumstances. After considering the entire law of the subject, this Court held in para 10 and 11 as under :

‘10. In para 4 (1) of the aforesaid case, the Supreme Court observed that a reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the said material is produced and proved before the court. In almost all the land Acquisition references, which are subject matter of the present writ petitions, the learned Judges of the respective Reference Courts *suo moto* gone through the award and sale instances relied upon by the Land Acquisition Officers even wp12795.19 though the said sale instances are not produced and proved before the Reference Courts.

11. In view of the same, even though there was an attempt on the part of Reference Courts to decide the reference on merits, however, in the given set of facts and in terms of the ratio laid down by the Supreme Court in the cases, as referred above, I conclude that the Land Acquisition Reference petitions, which are subject matter of these writ petitions, are not decided on merits and as such, the impugned judgment and orders passed by the respective Reference Courts in Land Acquisition References, as mentioned in the chart in para 3 of this judgment, are not sustainable in the eyes of law and thus required to be quashed and set aside.’

10. The decision in **Walmik Trimbak Tupe** (*supra*) has been followed by this Court in **Ranganath Ganpati Pathak** (*supra*) in which it is held in para 5 as under :

‘5. Indisputably the issue involved in this petition is covered by the judgment of this Court (Coram: V.K. Jadhav, J.) in Writ Petition No. 12795 of 2019 and connected writ petitions wherein this Court has held that the reference has to be decided on merits. Since, in those matters, references were rejected due to failure on the part of the petitioners therein to adduce evidence, this Court has held that the reference Court did not decide the references on merits and therefore set aside the orders passed by the reference Court and restored the references and directed to decide the references on merits.’

11. Therefore, it would be appropriate that the petitioners are granted an opportunity to lead evidence in support of their claims for enhanced compensation. The valid concern expressed by Ms. Deshpande, the learned AGP about burden of interest is already taken care of by a fair statement made by Mr. More not to claim interest on enhanced amount of compensation, if awarded.

12. In view of the above, I proceed to pass the following order.

ORDER

(i) The judgments and orders passed by the Civil Judge, Senior Division, Paranda on 25.01.2022 in L.A.R. No.455 of 2016 and on 16.04.2022 in LAR No. 454 of 2016 are set aside.

(ii) L.A.R. Nos. 454 of 2016 and 455 of 2016 shall stand restored to on the file of Civil Judge, Senior Division, Paranda.

(iii) The reference Court shall permit the petitioners – claimants to lead oral and documentary evidence in support of their claim. Needless to say that the acquiring body as well as the State Government would also have similar opportunity of leading oral and documentary evidence.

(iv) The petitioners shall appear before the concerned reference Court on **10.11.2022** and there shall be no necessity of issuing notices to any of the parties.

(v) The statement made by Mr. More on behalf of petitioners forgoing interest on the enhanced amount of compensation from 19.01.2018 (when the references were placed for adducing evidence) till the date of final decision of the references, is accepted. The petitioners to file an undertaking before the reference Court in this regard on or before 10.11.2022. Failure on the part of the Petitioners to file such an undertaking before the stipulated date shall result in dismissal of the references.

(vi) The reference Court to decide Land Acquisition References on their own merits, without being influenced by any of the observations made in this order as expeditiously as possible, preferably within a period of six months from 10.11.2022.

13. Writ Petitions are accordingly partly allowed. Rule partly made absolute.

(SANDEEP V. MARNE, J.)

GGP