

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

WRIT PETITION NO.12089 OF 2022

Asaram Hari Shinde
Through the Legal Heirs

1. Laxman Asaram Shinde
Age : 65 years, Occu : Agril,
2. Dwarkabai wd/o. Asaram Shinde
Died through L.Rs.
(Petitioner nos.1, 4-a to 4c, 5 to 8
are legal heirs of deceased petnr no.2
are already on record.)
3. Gangubai w/o. Vithalrao Mhaske
Died through L.Rs.
- 3a. Dnyaneshwar Vithal Mhaske
Age : 45 years, occu : Agril,
R/o. Waghhol (D), Tq. Badnapur,
Dist. Jalna.
- 3b. Ganesh s/o. Vithal Mhaske
Age : 42 years, Occu : Agril,
R/o. Waghhol (D), Tq. Badnapur,
Dist. Jalna.
4. Madhukar s/o. Asaram Shinde
Died through L.Rs.
- 4a. Mangalbai wd/o. Madhukar Shinde
Age : 50 years, Occu : Household,
- 4b. Vishnu Madhukar Shinde
Age : 30 years, Occu : Agri,
- 4c. Krishna Madhukar Shinde
Age : 25 years, Occu : Agril,
5. Kamlakar s/o. Asaram Shinde

Age : 60 years, Occu : Agril,

6. Narmadabai w/o. Ganesh Jadhav
Age : 57 years, Occu : Household,

7. Lilabai Baburao Waghmare
Age : 54 years, Occu : Household

8. Nivrutti Asaram Shinde
Age : 52 years, Occu : Agril,

Petitioner nos.1, 4-a to 4c, 5 to 8

R/o. Ladsawangi, Tal. & Dist. Aurangabad.

.. Petitioners

Versus

1. The State of Maharashtra
Through the Special Land Acquisition Officer,
J.P. No.1, Aurangabad, Dist. Aurangabad.

2. The Executive Engineer,
Minor Irrigation (Local Sector),
Aurangabad, Dist. Aurangabad.

.. Respondents

...

Advocate for Petitioners : Mr. Dnyaneshwar A. Bide

AGP for Respondent – State : Mrs. G.L. Deshpande

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CORAM : SANDEEP V. MARNE, J.

DATE : 05-12-2022

ORAL JUDGMENT :

. Rule. Rule is made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the admission stage. Mrs. G.L. Deshpande, the learned AGP waives notice on behalf of respondents – State.

2. By the present petition, petitioners have challenged

judgment and order dated 10.11.2014 passed by the 8th Jt. Civil Judge Senior Division, Aurangabad dismissing the Land Acquisition Reference on the ground of failure of petitioners to lead evidence in support of claim for enhanced compensation.

3. It is well established principle that the Land Acquisition Reference, not being an appeal against the award, is required to be decided by giving an opportunity to the claimant to lead evidence. At the same time, it cannot be expected that the reference Court would wait endlessly for the claimants to lead evidence. These principles have been reiterated nby this court in **Walmik Trimbak Tupe vs. State of Maharashtra and Another, Writ Petition No.12795/2019** with connected writ petitions decided on 17.01.2020 and **Vinayak Trimbak Tribhuvan vs. The State of Maharashtra and Anr., Writ Petition No.3992/2021** decided on 03.03.2021

4. The petition is opposed by Mrs. Deshpande, the learned AGP for respondents. She submits that a notice was issued to the claimants in the LAR on 27.04.2000 and the Court waited for 14 long years for the claimants to adduce evidence. Lastly, claimants were directed to remain present in the Court and lead evidence on 24.05.2014, but the claimants defaulted, on account of which the

reference Court was left with no option but to dismiss the LAR. She further submits that there is no valid justification for filing the present petition after delay of 8 long years. She therefore prays for dismissal of the petition.

5. On the other hand, Mr. Bide, the learned counsel for petitioners relies upon the judgment of the Supreme Court in **Ningappathotappaangadi (Dead) Thr. LRs vs. The Special Land Acquisition Officer and another**, (2019) 12 JT 289 in which the Hon'ble Supreme Court, relying upon the judgment in **Dhiraj Singh (Dead) through LRs and Others vs. State of Haryana and Others**, (2014) 14 SCC 127 and other judgments has held in para - 8 to 11 as under:

“8. We find that the issue raised in this appeal is no longer res-integra. This Court in **Dhiraj Singh (Dead) through LRs. and Others v. State of Haryana and Others**, (2014) 14 SCC 127 held that:

“14. The appellants are identically situated and there is no reason to meet out a different treatment to them. We also note that, while in these cases, the High Court had refused to condone the delay and dismissed the LPAs of the appellants, other LPAs were allowed by the High Court itself by condoning the delay of the same magnitude in the same circumstances.

15. Equities can be balanced by denying the appellants' interest for the period for which they did not approach the Court. The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hypertechnical view of self-imposed limitations. In the matter of compensation for land acquisition, we are of the view that approach of the Court has to be pragmatic and not pedantic. [Emphasis applied]

9. The afore-cited view has been consistently followed by this Court in a series of cases before and after the decision in Dhiraj Singh's (dead) case (supra). In **Imrat Lal & Ors. v. Land Acquisition Collector & Ors.** (2014) 14 SCC 133, it was observed that the delay in filing the Special Leave Petition cannot be the reason to deny just and fair compensation to the claimants. This Court observed that a liberal approach should be adopted in such like matters. In **Huchanagouda v. Assistant Commissioner and Land Acquisition Officer, 2019 SCC Online SC 990** also this Court condoned the delay and restored parity in the matter of grant of compensation though with a condition "that for the period of delay in filing and in refiling the Special Leave Petitions, the appellant-claimant(s) shall not be entitled to any interest on the enhanced compensation and statutory amount."

10. It is undeniable that this Court vide judgment dated November 11, 2016 passed in C.A. No. 2927/2010 (Ningappa Thotappa Angadi v. Special Land Acquisition Officer & Anr.) has set aside the order of the High Court and restored the compensation as was awarded by the Reference Court. In the cited case, this Court held as follows:

"We have heard the learned counsel for the parties to some length and carefully perused the material on record. We are of the considered opinion that the impugned judgment and order of the High Court deserves to be set aside and judgment and order passed by the Reference Court restored. We say so because, this Court has in a similar appeal directed against the very same order set aside the impugned judgment and restored the enhancement granted by the Reference Court. We see no reason to take a different view in the present case. We, accordingly, allow this appeal and while setting aside the impugned judgment insofar as the same relates to the appellant, restore the judgment and order passed by the Reference Court. The parties shall, however, bear their own costs."

11. The appellant(s) are also similarly placed claimants. They are, thus, 3 2019 SCC Online SC 990 entitled to seek parity and claim the same amount of fair and just compensation as has been awarded to other land owners. The appellant(s) are, however, not entitled to seek interest for the period for which they did not approach this Court."

6. Mr. Bide has also relied upon the judgment of the Karnataka High Court in **Munivenkatappa and Others vs. The Commissioner, Bangalore Development Authority and others, AIR**

2001 Karnataka 371 in which it is held in para 8 as under:

“8. In a matters of this nature, the Court should be liberal in its approach to further the cause of justice and to effectuate the intention of the Act. A reference application under Section 18 is to enable the owners of lands whose lands have been acquired by the State to seek for a just compensation if the compensation awarded by the Land Acquisition Officer is found to be inadequate or on the lower side. In a reference under Section 18, the lis between the parties is not necessarily akin to a lis between the two private parties. It also cannot be said that, delay of proceedings has in any way given rise to any right in favour of the State which has acquired the lands. Delay in the disposal of the reference application at any rate will not act to the detriment of the State. If at all it may be detrimental to the claimant/landowners, when the other side is not likely to suffer any disadvantage or loss, the approach of the Court should be to view the matter generously and not to dismiss an application for restoration based on mere technicalities rather than on an objective consideration of the totality of the circumstances. In the instant case also, it is a fact that the power of attorney holder of the appellants had suffered paralytic stroke and was seriously ill. The appellants could come up with an application though belatedly and sought setting aside of the order of dismissal. In such circumstances, I am of the view that the Court below ought to have entertained the application and accepted the same rather than dismissing the application for restoration.”

7. This Court in **Housabai Gahininath Pawar vs. State of Maharashtra**, Writ Petition No.718 of 2022 has taken a view that writ petition cannot be filed after inordinate delay and latches to reopen a closed LARs. In that case petitioners had not offered any satisfactory justification for inordinate delay in approaching this Court. As against this, petitioners herein have offered following justification for delay in filing the present petition.

“V] It is the case of the petitioners that the original claimants who was the Karta of the family and was handling the entire family affairs is died on 13.12.2013 as such the petitioners did not aware about the impugned proceeding

therefore, fails to appear before the learned reference court. It is further case of the petitioners that not only the original claimants deceased Asaram but also wife of deceased Asaram namely Dwarkabai was also expired on 28.08.2016, the one of the son of deceased Asaram namely Madhukar also expired on 11.05.2021. One of the legal representatives of deceased Asaram namely Gangubai Vithalrao Mhaske also expired as such the continuous series of death of the family members in the family of petitioners they fail to approach before the learned reference court even after the judgment and order dated 10.11.2014.”

8. Considering the above position emerging, I am of the view that though the delay of nearly about 8 years has occurred in approaching this court, some explanation is provided by petitioners to justify condonation of the same. Considering the position reiterated by several judgments that an opportunity is required to be given to claimant to lead evidence in support of his claim for enhanced compensation, I am of the view that petitioners in this case are also required to be given similar benefit. Of course, petitioners cannot take benefit of their own wrong and are required to be denied interest from the date of dismissal of the LAR onwards. Petitioners are also required to be saddled with costs for belatedly approaching this Court.

9. In view of the above, the following order is passed.

ORDER

(i) The judgment and order dated 10.11.2014 passed by the 8th Jt. Civil Judge Senior Division, Aurangabad in LAR No.278 of 2000 is set aside and LAR No.278 of 2000 stands restored.

(ii) Petitioners shall lead evidence in LAR No.278 of 2000 within a period of four months from today. Failure on the part of petitioners to lead evidence within the stipulated period shall result in dismissal of the LAR.

(iii) After considering the evidence so led by petitioners in support of their claim for enhanced compensation, the reference Court shall decide LAR No.278 of 2000 on its own merits without being influenced by any of the observations made either in its earlier judgment dated 10.11.2014 or in the present order.

(iv) Petitioners shall not be entitled to any interest on the enhanced amount of compensation, if awarded, from 10.11.2014 till the decision of the LAR.

(v) Petitioners shall pay costs of Rs.10,000/- to respondents by depositing the same in the trial Court within a period of four weeks from today.

(vi) Accordingly, writ petition is allowed. Rule is made absolute. No costs.

(SANDEEP V. MARNE, J.)