

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

942 WRIT PETITION NO.3470 OF 2022

SARJERAO PANDURANG PAWAR
VERSUS
THE STATE OF MAHARASHTRA THROUGH COLLECTOR AND
OTHERS

...
Advocate for Petitioners : Mr Vishnu B. Madan
AGP for Respondent/State : Mrs G.L. Deshpande

CORAM : SANDEEP V. MARNE, J.
DATE : 14th DECEMBER, 2022

PER COURT :

1. By this petition, petitioner challenges the Judgment and order dated 04.07.2014 passed by the Reference Court rejecting land acquisition reference on failure to produce the evidence.

2. In the present case, reference was filed in the year 2007 and was possibly renumbered as LAR No.100/2010. Issues were framed on 03.01.2012. Thereafter, it appears that petitioner filed affidavit of evidence on 10.12.2012. However, on account of petitioner consistently remaining absent for cross-examination, the evidence was closed on 21.02.2014. The reference Court thereafter proceeded to reject the reference vide Judgment and order dated 4th July, 2014.

3. The learned counsel appearing for petitioner places reliance on the Judgment of this Court in ***Walmik Trimbak Tupe Vs. The State of Maharashtra and Anr.*** Writ Petition No. 12795/2019 decided on 17th January, 2020 and would contend that in view of the decision of this Court, reference is required to be decided on merits. The learned counsel

also relies on the order of this Court in case of ***Babulal Vs. State of Maharashtra in Writ Petition No. 4988/2021 decided on 27.06.2022.***

4. This Court in case of ***Shantaram Dattatray Kekan and others Vs. Bhausahab Karbhari Kekan and anr in Writ Petition No. 14046 of 2021 decided on 05th December, 2022*** wherein this Court, after considering various judgments on the subject, has held that there is no specific stage provided in the code when the Court Commissioner can be appointed for measurement of land or fixation of boundaries.

5. In the present case also, there appears to be substantial delay in filing the present petition. The reference has been dismissed on 04.07.2014 whereas the present petition is filed on 24.11.2021. However, petitioner has given detailed explanation for the delay in filing present petition. Para Nos. 10 to 17 of the petition are as under :-

10. *The petitioner states that, the Ld. Reference court passed the impugned judgment and award on 04/07/2014. Due to the communication gap in between the petitioner and his advocate, the petitioner was not aware about the judgment and order passed by the Ld. Joint civil Judge, Senior Division, Jalna.*

11. *The petitioner states that, in the month of January 2016, the petitioner contacted to his advocate at that time, it was intimated by the advocate for the petitioner that, he would check the status and then inform the petitioner. However, thereafter, the advocate for the petitioner did not make any call to the petitioner. The petitioner was under impression that, his Reference is pending for adjudication before the Hon'ble Court.*

12. *The petitioner states that, as per petitioner was under impression that, his reference is pending for adjudication before the Ld. Court, he did not make any contact to his advocate for considerable period. In the month of June 2019, the petitioner again contacted his advocate, however, it was informed that, he did not attend the matter for various dates. As such, the petitioner requested the advocate to inform the status of the case. However, the advocate for the petitioner did not inform the petitioner about the status of the reference for considerable period.*

13. *The petitioner states that, lastly, in the month of February 2020, the petitioner approached to the Ld. Reference Court and made enquiry regarding the pendency of the Reference filed by the petitioner. After scrutiny, the petitioner came to know that, his reference is rejected by the Ld. Reference Court way back in the year 2014 vide judgment and order dated 04/07/2014.*

14. *The petitioner states that, the petitioner shocked and surprised to know that, his reference was proceed unattended and therefore, the Ld. Court proceeded to decide the same ex-parte. Thereafter, the unprecedented COVID-19 disease knocked the country and therefore, the State/Central Government was required to impose strict lockdown in the Country/State. Due to the lockdown imposed by the State/Central Government, the petitioner could not get the certified copies of the documents from the Ld. Court.*

15. *The petitioner states that, after certain relaxation, the petitioner approached in the Court of Ld. Joint civil Judge, Senior Division, Jalna and applied for the certified copies of the necessary documents for filing the Fist appeal before this Hon'ble High Court. The petitioner applied for the certified copies of the*

impugned judgment and order and allied documents on 04/11/2020 and the petitioner received the certified copies of the required documents on 10/11/2020.

16. *The petitioner states that, after receipt of the documents from the Ld. Court, the petitioner approached to his advocate at Aurangabad for filing the appeal. However, the learned advocate for the petitioner intimated the expenses towards the Court Fees and the documentation. As such, some more time consumed in arranging the necessary expenses for filing the First Appeal. Hence, there is delay in filing the First Appeal, which is neither intentional nor deliberate one and therefore, the same is required to be condoned in the interest of justice.*

17. *The petitioner states that, it is pertinent to note heres that, due to the COVID-19 pandemic, the Hon'ble Supreme Court in Suo Moto Writ Petition (Civil)No. 03/2020 vide order dated 08/03/2021 has excluded the limitation from 15/03/2020 till 14/03/2021 in computing the period of limitation for any suit, appeal, application or proceeding.*

6. It is also required to be noted that even though petitioner had filed his affidavit of evidence on 12.10.2012, the Reference Court has recorded findings in para No. 6 of the Judgment that petitioner did not lead any oral or documentary evidence. True it is that on account of failure to remain present for cross-examination affidavit in lieu of examination-in-chief alone cannot be taken into consideration. However, the fact remains that petitioner did make an attempt to lead evidence by filing his affidavit of evidence.

7. Considering the above position, I am inclined to grant an indulgence in favour of petitioner. However, petitioner cannot be permitted to take benefit of his own wrong. Petitioner will have to forgo interest on enhanced amount on compensation, if awarded, from the date of dismissal of the reference i.e. 04.07.2014 till the date of decision thereof. For inordinate delay of seven long years in filing of present petition, petitioner is also required to be saddled with costs. I accordingly proceed to pass the following order :-

ORDER

- (i) The writ petition is allowed.
- (ii) The judgment and order dated 04.07.2014 passed by the Reference Court is set aside and LAR No. 100/2010 is restored.
- (iii) Petitioner to lead necessary oral and documentary evidence in support of his claim for enhanced compensation before the Reference Court within a period of four months from today.
- (iv) Petitioner shall not be entitled to any interest on the enhanced amount of compensation, if awarded during the period from 04.07.2014 till the date of decision of the Reference.
- (v) Petitioner to pay costs of Rs.10,000/- (Rupees Ten Thousand) to the acquiring body by depositing the same in the Reference Court within a period of four weeks from today.
- (vi) The acquiring body is at liberty to withdraw the costs so deposited.

[SANDEEP V. MARNE, J.]

mta