

**IN THE HIGH Court OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 5418 OF 2021

Gajanan s/o Bhujangrao Kharat vs. Executive Engineer, Minor Irrigation Division,
Washim and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. V. K. Paliwal, Advocate for petitioner.
Mr. M. A. Kadu, Advocate for respondent No.1.
Mr. K. L. Dharmadhikari, AGP for respondent No.2.

CORAM : MANISH PITALE J.

DATE : 14/03/2022

Heard Mr. Paliwal, learned counsel for the
petitioner.

2. By this petition, the petitioner has challenged the order dated 03/03/2020 passed by the 3rd Joint Civil Judge Senior Division, Washim (hereinafter referred to as "Reference Court"), whereby the application filed on behalf of the petitioner for restoration of reference proceeding has been rejected.

3. The petitioner is the original claimant pertaining to acquisition of his land under the provisions of the Land Acquisition Act, 1894.

Dissatisfied with the Award passed by the Collector/ Special Land Acquisition Officer, the petitioner preferred a reference under Section 18 of the aforesaid Act, seeking enhancement of compensation.

4. After filing of the reference proceeding, the petitioner failed to lead any evidence in support of his claim regarding enhancement. The Reference Court granted last opportunity to the petitioner to do so, but the same was not availed by the petitioner. It was ultimately on 07/02/2017, that the Reference Court passed an order closing the evidence of the petitioner. The respondents filed a pursis that they did not wish to lead any evidence.

5. The Reference Court had framed three issues in the proceedings. The first issue pertained to the question as to whether the petitioner proved that he was entitled for enhancement of compensation, the second issue pertained to the question as to whether the reference proceeding was initiated within limitation and the third issue was, as to what order deserved to be passed in the said reference proceeding.

6. By Judgment and Award dated 13/07/2017, the Reference Court proceeded in the

matter and found that there was absolutely no evidence led on behalf of the petitioner in support of his claim for enhancement of compensation. It was held that the reference proceeding was initiated within limitation, but since no evidence was led in support of the claim, no case was made out for enhancement. On this basis the reference application was rejected and Award passed by the Special Land Acquisition Officer was upheld.

7. In this backdrop, the petitioner filed the aforesaid application for restoration of the reference proceeding. By the impugned order dated 03/03/2020, the restoration application was dismissed by the Reference Court as not maintainable.

8. Mr. Paliwal, learned counsel appearing for the petitioner submitted that there was no finding on merits rendered by the Reference Court and that therefore, the application for restoration filed on behalf of the petitioner was maintainable. It was submitted that the Judgment and Award of the Reference Court dated 13/07/2017, could not be said to be a decree at all in terms of the provisions of the Civil Procedure Code and that therefore, the application for restoration was maintainable.

9. Mr. Paliwal, learned counsel for petitioner relied upon Judgment of this Court in the case of *Diwakar Prabhakar Chopade and others vs. Sub-Divisional Officer (Land Acquisition Officer) 2019 (6) Mh.L.J. 591*, to contend that since the Judgment and Award of the Reference Court was otherwise than on merits, the application under Order IX Rule 9 read with Section 151 of the Civil Procedure Code, ought to have been entertained by the Reference Court.

10. On the other hand, Mr. Kadu, learned counsel appearing for the respondent No.1 and Mr.Dharmadhikari, learned AGP appearing for respondent No.2 submit that a perusal of the Judgment and Award of the Reference Court would show that it cannot be said to be an Award otherwise than on merits. The failure on the part of the petitioner to lead evidence could not be said to be a basis for holding that the Reference Court had failed to decide the matters on merits. It was further submits that in such circumstances, the petitioner ought to have availed the remedies available under the Land Acquisition Act, 1894 in accordance with law. But, the application under Order IX Rule 9 of the Civil Procedure Code was not the correct remedy sought to be invoked by the petitioner and that

therefore, the present writ petition deserved to be dismissed.

11. The central question that arises for consideration in this writ petition is, as to whether Judgment and Award passed by the Reference Court on 13/07/2017, could be said to be an Order/Award otherwise than on merits. If the answer is in the affirmative then, the petitioner would be justified in relying upon the Judgment of Diwakar Chopde (supra), to contend the impugned order deserves to be set aside. This Court has perused the Judgment and Order/Award passed by the Reference Court on 13/07/2017. The Reference Court framed three issues, while proceeding to decide the reference application of the petitioner. The issues included an issue pertaining to the question of enhancement of compensation as claimed by the petitioner. It was recorded that since no evidence was led on behalf of the petitioner, no case was made out for grant of enhancement of compensation. In fact, the Reference Court specifically held that the reference was filed within the period of limitation, but no case was made out on merits for enhancement of compensation, in the light of the fact that no evidence was led by the petitioner.

12. This Court is of the opinion that the tenor of the said Judgment and Order dated 13/07/2017, passed by the Reference Court is clearly a decision on merits and it cannot be categorized as an order passed otherwise than on merits. Once this conclusion is reached, it becomes clear that the dictum of law clarified by the Division Bench of this Court in the case of Diwakar (*supra*), cannot be applied to the facts of the present case.

13. Consequence of the same is that the remedy under Order IX Rule 9 read with Section 151 of the Civil Procedure Code would not be available to the petitioner before the Reference Court. Therefore, it cannot be said that the Reference Court committed any error in holding that such an application filed by the petitioner was not maintainable, while rejecting it for want of jurisdiction. The petitioner has failed to demonstrate any error committed by the Reference Court. If the contention raised on behalf of the petitioner is to be accepted, then it would amount to holding that a claimant like the petitioner would only have to file an application seeking reference under Section 18 of the aforesaid Act and after failing to lead any evidence in the matter, such a claimant could turn around and contend that any Order/Award passed by the Reference Court amounts

to a decision otherwise than on merits. Such a contention cannot be accepted and therefore, this Court finds that no interference is warranted in the present writ petition. Accordingly, writ petition is dismissed.

14. Needless to say, the petitioner would be at liberty to avail all the remedies available under the aforesaid Act, including the remedy of filing an appeal to challenge the Judgment and Order/Award dated 13/07/2017, passed by the Reference Court, in accordance with law.

JUDGE