

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

70 WRIT PETITION NO.1321 OF 2023

Damodhar Tukaram Rayalla

.. Petitioner

Versus

The State of Maharashtra
Through Its Secretary and Others

..Respondents

...

Advocate for Petitioner : Mr. Ajeet B. Kale
AGP for Respondent – State : Mr. P.K. Lakhotiya
Advocate for Respondent No.4 : Mr. S.S. Dande

...

**CORAM : NITIN W. SAMBRE AND
 S.G. CHAPALGAONKAR, JJ.**

DATE : 17-04-2023

PER COURT :

. The challenge in the petition is to the communication dated 19th October, 2022 issued by respondent no.3, with a prayer for making a reference to the competent authority under Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the 'Act of 2013') pursuant to application dated 21st August, 2018.

2. According to Mr. Kale, petitioner made aforesaid reference under Section 64 of the Act of 2013 as his land was affected

by acquisition, but the compensation was not paid. Section 64 of the Act of 2013 is attracted even if there is no Award and respondent authorities have committed an error in not forwarding the reference as was sought by petitioner.

3. Learned Counsel Mr. Kale would invite our attention to the order dated 14th February, 2019 delivered by this Court in Writ Petition No.10040 of 2018, Damodhar Tukaram Rayalla vs. State of Maharashtra and Others so as to claim that in compliance of above, petitioner was paid compensation by acquiring body on 08th August, 2019 and a notice under Section 33 (3) read with Section 36 of the Maharashtra Industrial Development Act and under Section 26 to 30 of Act of 2013 was issued on 16th September, 2019 to petitioner. According to him, petitioner immediately approached the competent authority on 06th November, 2019 requesting his reference dated 21st August, 2018 to be forwarded which is pending with the competent authority. As such, his contentions are his reference dated 21st August, 2018 be directed to be referred to competent authority or in alternative the application dated 06th November, 2019 be treated as an application for reference under Section 64 of the Act of 2013 by treating the communication dated 08th August, 2019 against which he was paid compensation, as an award.

4. Learned counsel Mr. Dande for respondent – Corporation so also learned AGP Mr. Lakhotiya would oppose the prayer, as according to them petitioner has taken his chance by seeking reference under Section 64 of the Act of 2013 prior to the release of compensation in compliance with the order of this Court dated 14th February, 2019. As such, according to them, once petitioner has approached this Court in Writ Petition No.10040 of 2018, it is not open for him to claim that the request for making reference under Section 64 of the Act of 2013 on 19th October, 2022 is maintainable.

5. We have appreciated the aforesaid submissions.

6. In response to the court's query, Mr. Kale, learned counsel for petitioner submits that petitioner is willing to forgo claim for interest till the issuance of impugned communication dated 19th October, 2022, in case if this Court directs respondent authority to treat his application dated 06th November, 2019 to be one under Section 64 of the Act of 2013.

7. The aforesaid statement made by learned counsel for petitioner, on instructions, is accepted as it will not be out of place to mention here that the right conferred on petitioner under Section 64

of the Act of 2013 is the statutory right.

8. In this backdrop and having regard to the factual matrix of the case in hand viz. the incorrect prayer of petitioner for making reference moved by request dated 17th / 19th July, 2018, we deem it appropriate to direct respondent authority to refer the claim of petitioner under Section 64 of the Act of 2013 based on the application of petitioner dated 06th November, 2019.

9. We expect respondent authority to decide such reference expeditiously considering its long pendency.

10. While deciding such application, respondent authority must consider that petitioner has given up his claim for interest from 08th August, 2019 till 19th October, 2022.

11. The petition stands partly allowed in the aforesaid terms.

12. In view of aforesaid order, we hereby clarify that it shall not be open for respondents to raise an issue of limitation.

(S.G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE , J.)