

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

WRIT PETITION NO. 8680 OF 2022

Ramesh Digambarrao Potdar
Since deceased through his Lrs.
Shankaramma Ramesh Potdar
and another .. Petitioners

Versus

The State of Maharashtra
Through Collector .. Respondent

Shri Pravin B. Rakhunde, Advocate for the Petitioner.
Shri S. N. Morampalle, A.G.P. for the Respondent.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 16TH FEBRUARY, 2023.**

FINAL ORDER :

. By this petition, the challenge is to the judgment and award dated 28th January, 2009, whereby reference under Section 18 of the Land Acquisition Act came to be dismissed by the Reference Court.

2. Learned counsel appearing for the petitioners submits that reference filed under Section 18 of the Land Acquisition Act, 1894 cannot be dismissed for non prosecution. He would further urge that the reference Court has not decided the claim on merits and dismissed the reference on the ground that the claimant failed to lead evidence. He would further submit that, the petitioner was informed by his counsel that he will be intimated

when his presence is required. Therefore, for lack of communication from advocate, evidence could not be led. Learned counsel further submits that, the petitioner is agreeable to waive the interest for the delayed period.

3. Per contra, learned Assistant Government Pleader for respondent vehemently opposes the petition and would submit that, as the petitioner failed to lead evidence, the Reference Court has rightly decided the matter on the basis of material on record. Therefore, no interference is called for in the impugned order.

4. Learned counsel for the petitioner has placed reliance on the judgment of this Court **dated 02.02.2023 in Writ Petition No. 13332 of 2022** in the case of **Chandabai W/o Gangaram Pauyed Vs. The State of Maharashtra and another** with other connected writ petitions and judgment **dated 17.08.2022 passed in Writ Petition No. 2649 of 2021 in the case of Kundlik S/o Limbraj Gore Vs. The State of Maharashtra and others.**

5. Heard learned counsel for respective parties.

6. A detailed order has been passed by this Court on 02nd February, 2023 in Writ Petition No. 11332 of 2021 with other connected writ petition. This Court has held that the order of Reference Court under the Land Acquisition Act has to comply with form of the award prescribed by Section 26 of the Land Acquisition Act (for short "L. A. Act"). Admittedly the reference

was filed U/Sec. 18 of the L. A. Act and the order dated 28th January, 2009 shows that the Reference has been dismissed for failure on part of petitioner to adduce evidence in support of his claim. By no stretch of imagination the order can be said to be a decision on merits. As held by this Court in the case of **Kundlik S/o Limbraj Gore Vs. The State of Maharashtra and others** and in the case of **Chandabai W/o Gangaram Pauyed Vs. The State of Maharashtra and another** reference has to be decided on merits.

7. As far as the delay is concerned, it is submitted that after acquisition of the land, the petitioner became landless and, therefore, for the purpose of livelihood the petitioner/original claimant had shifted to Pune where he was residing till his lod age and thereafter he again shifted to his village and on 21st September, 2015 original claimant expired. As such there was communication gap and the petitioners could not attend the proceedings and upon being intimated about dismissal in the Month of June 2022 by the counsel for the original claimant certified copies were applied and received on 18.06.2022. Considering that the reference is of the year 1994 and came to be dismissed in the year 2009, in my opinion, the petitioner claimants will not be entitled to any interest from the date of the judgment rejecting the reference i. e. from 28.01.2009 till the final disposal of the reference.

8. Hence the following order.

O R D E R

A. Judgment and award dated 28th January, 2009 passed in L.A.R. No. 149 of 2004 (Old L.A.R. No. 12 of 1994) is hereby quashed and set aside.

B. L. A. R. No. 149 of 2004 (Old L.A.R. No. 12 of 1994) is hereby restored to its original position.

C. The petitioner-claimant shall appear before the Reference Court on 13.03.2023.

D. The Reference Court shall permit the petitioner - claimant to lead oral and documentary evidence in support of his contention so also permit the respondent-State or the acquiring body, as the case may be, to lead oral and documentary evidence in support of their rival contentions.

E. The concerned Reference Court shall dispose of the Land Acquisition Reference as expeditiously as possible, preferably within a period of six months from 13th March, 2023.

G. The petitioner - claimant shall not be entitled to any interest on the enhanced amount of compensation, if awarded from the date of dismissal of LAR till the final disposal of the LAR by the Reference Court.

H. The writ petition is allowed in the aforesaid terms.

[SHARMILA U. DESHMUKH, J.]

bsb/Feb. 23