

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11979 OF 2022**

VIKRAM SHAHAJI SATHE
VERSUS
THE STATE OF MAHARASHTRA THROUGH COLLECTOR
OSMANABAD AND ANOTHER

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Ms. Laxmi R. Thakur h/f Mr. Laxmikant C. Patil, Advocate for the
Petitioners.

Mrs. G. L. Deshpande, AGP for Respondents-State.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 27th FEBRUARY, 2023.**

PER COURT:-

1. Heard.

2. The challenge in the petition is to the judgment and order dated 21.02.2013 passed in Land Acquisition Reference No.246/2006 dismissing the reference.

3. Learned counsel for the petitioner submits that the impugned judgment and order is not an award within the meaning of Section 26 of the Land Acquisition Act. She would further submit that the dismissal is for non-prosecution and she is squarely covered by the decision of this Court in the case of *Walmik S/o Trimbak Tupe Vs. The State of Maharashtra & anr.; Writ Petition No.12795/2019* with connected writ petitions decided on **17.01.2020**.

4. Per contra, the learned A.G.P. submits that the burden was upon the claimant to prove the entitlement to enhance the compensation and as the claimant failed to produce the evidence, the Reference came to be dismissed and as such, it is a decision on merits. She would further submit that there has been considerable delay which has not been properly explained.

5. Considered the rival submissions of the parties and perused impugned judgment and order.

6. The Reference Court has held that inspite of sufficient chances the Claimant has failed to adduce evidence in support of his claim and has dismissed the claim. The settled position is that the reference has to be decided on merits. The judgment and order has to take the form of an award which should meet the requirements of Section 26 of the Land Acquisition Act. In the present case, the reference has been dismissed for non prosecution. I have perused the impugned judgment and order. In my opinion, the decision of the Reference Court cannot be construed as an award within the meaning of Section 26 of Land Acquisition Act.

7. Learned counsel for the petitioner submits that the father of the original claimant was looking after the Court proceeding and after his expiry, there was no intimation to the Petitioner from the Advocate about the matter being listed for evidence. It is to be noted that the Petitioner is an agriculturist and cannot be expected to have knowledge about legal proceedings. However as there is considerable delay in filing the present Petition, the Petitioner is not entitled to interest on the enhanced compensation, if any from the date of dismissal of the reference till decision of the Reference on merits after the remand. In the result, the following order:

ORDER

a. Writ Petition is allowed in terms of prayer Clause (C) and the impugned judgment and order dated 21.02.2013 is hereby quashed and set aside.

- b. Land Acquisition Reference No.246/2006 is restored to file.
 - c. Petitioners to appear before the Reference Court on 27.03.2023 and to adduce necessary evidence in support of their claim for enhanced compensation.
 - d. Considering the delay, the petitioners are not entitled to the interest on the enhanced compensation, if any, for the period from the date of dismissal of the Reference i.e. from 21.02.2013 till the decision of the Reference Court on merits.
8. Writ Petition stands allowed in the above terms.

(SHARMILA U. DESHMUKH)
JUDGE