

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2396 OF 2023**

SHESHRAO NARAYANRAO TAWAR @ DEVASARKAR
VERSUS
THE STATE OF MAHARASHTRA AND ORS

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Mr. Kiran M. Nagarkar, Advocate for the Petitioner.

Mr. S. N. Morampalle, 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 27.06.2014 rejecting the Reference under Section 18 of the Land Acquisition Act.
3. Learned counsel appearing for the petitioner submit that Reference has been rejected for non-prosecution. He would further submit that in view of the decision of this Court in 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*** the Reference has to be decided on merits.
4. Per contra, learned AGP submits that the burden was upon the claimant to prove the entitlement to enhance compensation. As the claimant has failed to adduce the evidence, the Reference has been rightly rejected.
5. Considered the rival submission of the parties.

6. This Court in the case of ***Walmik S/o Trimbak Tupe*** (supra) after considering various judicial pronouncements on the subject has held that the Reference under Section 18 of the Land Acquisition Act has to comply with the requirements of the award provided under Section 26 of the Land Acquisition Act. In the present case the determination by the Reference Court cannot be said to be a determination on merits so as to comply with the provisions of Section 26 of the Land Acquisition Act. The order dated 27.06.2014 is dismissal of the Reference for non-prosecution and cannot be construed as an award within the meaning of Section 26 of the Land Acquisition Act.

7. Initially the claim petition was filed before the Senior Division Court at Nanded and thereafter, the matter was transferred to the Bhokar Court and the matter was pending for appearance of respondent no.3-Acquiring Body and as such, the petitioner was under the impression that till the appearance by the Acquiring Body and filing of reply the matter would not be proceeded further. The petitioner was not intimated about the proceedings by his Counsel and could not be remain present for leading evidence. Considering the delay caused in filing the present Petition, the Petitioner will not be entitled to interest, on the enhanced compensation, if awarded, for the period from dismissal of the reference i.e. from 27.06.2014 till decision on merits by the Reference Court after remand.

8. For the reasons above, the impugned judgment and order dated 27.06.2014 is hereby quashed and set aside. The Land Acquisition Reference No.66/2010 is restored to file. The petitioners are directed to appear before the Reference Court on

27.03.2023 for the purpose of leading evidence. The petitioner will not be entitled for the interest on the enhanced compensation, if any, during the period from 27.06.2014 i.e. the date of dismissal of the Reference Petition till the decision of the Reference Court pursuant to the remand of the Reference.

9. The Reference Court is requested to decide the Land Acquisition Reference within a period of six months from the date of this order.

10. Writ Petition stands allowed in the above terms.

(SHARMILA U. DESHMUKH)
JUDGE