

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

7 WRIT PETITION NO.12819 OF 2022

GANPATI NAGOJI SHINDE
VERSUS
THE STATE OF MAHARASHTRA
THROUGH DISTRICT COLLECTOR AND OTHERS

...
Advocate for Petitioner : Mr. Ganpat Niranjana Chincholkar
AGP for Respondent – State : Mr. S.N. Morampalle
...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 02-03-2023

PER COURT :

. The petition takes exception to the judgment and order dated 20.03.2013 whereby the Land Acquisition Reference is dismissed for non prosecution.

2. Heard the learned counsel appearing for the parties.

3. The issue in the present case is no longer *res integra* and is covered by the decisions of this Court in the case of **Walmik Trimbak Tupe vs. The State of Maharashtra & another, Writ Petition No.12795 of 2019** decided on 17.01.2020 and **Uttamrao Madhavrao Yenkikar vs. the State of Maharashtra, Writ Petition No.4863 of 2021** decided on 20.07.2022. There are various judicial pronouncements which have held that the reference cannot be dismissed for non

prosecution and there has to be decision on merits.

4. In the present case, perusal of the impugned judgment and order would indicate that the decision of the Reference Court is not a decision on merits and do not satisfy the requirements of Section 26 of the Land Acquisition Act. The reference has been dismissed due to failure on part of the petitioner to lead evidence and as such the judgment and order is not a decision on merits. However, it needs to be considered that since no steps have been taken by the petitioner to lead evidence, the reference has been dismissed, the learned counsel for the petitioner agreed to waive the interest for the period from 20.03.2013 (from the date of dismissal of the LAR) till the final disposal of the LAR by the reference Court on merits.

5. In view of the above, the following order is passed.

ORDER

(i) The Award dated 20.03.2013 passed by the trial Court in L.A.R. No.48 of 2007 is hereby quashed and set aside.

(ii) The Land Acquisition Reference No.48 of 2007 is hereby restored to its original position.

(iii) The Reference Court shall permit the petitioner - claimant to

lead oral and documentary evidence in support of his contentions 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.

(iv) The petitioner – claimant shall appear before the Reference Court on 27.03.2023.

(v) The concerned Reference Court shall dispose of the Land Acquisition Reference as expeditiously as possible, preferably within a period of six months from 27.03.2023.

(vi) The petitioner - claimant shall not be entitled to any interest on the enhanced amount of compensation, if awarded from the date of dismissal of the reference in default i.e. on 20.03.2013 till the final disposal of the LAR by the Reference Court on merits.

(vii) The writ petition is allowed in the aforesaid terms.

(SHARMILA U. DESHMUKH, J.)

GGP