

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2352 OF 2023**

TULSHIRAM NARAYAN TOTAWAD DIED THROUGH HIS LRS
INDUBAI TULSHIRAM TOTWAD
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE
COLLECTOR NANDEDAND ANOTHER

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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 09.08.2007 rejecting the Reference under Section 18 of the Land Acquisition Act.
3. Learned counsel appearing for the petitioners 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 Reference Court has observed that in the absence of any evidence on part of the Claimant, it will not be proper to grant enhancement to the land in question and has rejected the Reference Petition. I have perused the impugned judgment and order. The Reference Court after considering the pleadings in detail has held that no evidence has been adduced by the claimant in respect of inference drawn by the Land Acquisition Officer. In my opinion, 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.

7. The impugned judgment and order dated 09.08.2007 rejected the Reference for non-prosecution and cannot be construed as an award within the meaning of Section 26 of the Land Acquisition Act. As regards the delay caused in filing the present petition, the petitioners have submitted that the original claimant had expired on 30.05.2018 and filing of the claim petition was not known to the present petitioners who are the wife and legal heirs of the original claimant and after receiving the knowledge the present legal heirs had taken search and after obtaining information have filed the present petition.

8. Considering that the petitioners are the rustic villagers, it cannot be expected that they are well informed of the legal proceedings, however considering the delay, the Petitioners

will not be entitled to interest on the enhanced compensation, if awarded, from the date of dismissal of the Reference i.e. from 9.08.2007 till decision of the Reference on merits.

9. For the reasons above, the impugned judgment and order dated 09.08.2007 is hereby quashed and set aside. The Land Acquisition Reference No.56/2003 is restored to file. The petitioners are directed to appear before the Reference Court on 27.03.2023 for the purpose of leading evidence.

10. The Reference Court is requested to decide the Land Acquisition Reference within a period of six months from the date of this order. Petitioners will not be entitled for the interest on the enhanced compensation, if any, during the period from 09.08.2007 i.e. the date of dismissal of the Reference Petition till the decision of the Reference Court pursuant to the remand of the Reference.

11. Writ Petition stands allowed in the above terms.

(SHARMILA U. DESHMUKH)
JUDGE