

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12871 OF 2022

Shaikh Shabbir Shaikh Gulab

...Petitioner

Versus

Shaikh Mukin Shaikh Samad And Others

...Respondents

Mr. Ameya Sabnis, Advocate for the petitioner.

Mr. R.B. Bagul, AGP for State.

Mr. A.S. Tilve a/w Mr. Mohsin Shaikh, Advocate for respondent
No. 1.

Mr. V.V. Deshmukh h/f. Mr. V.R. Patil, Advocate for respondent
No. 2.

Mr. D.R. Jethliya, Advocate for respondent No. 3.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 10th APRIL, 2023

ORDER :

1. The petitioner is aggrieved by order dated 18.01.2021 passed below Exhibit-25, 26 and order dated 28.04.2022 passed below Exhibit-30 in Land Acquisition Reference No. 27 of 2017.

2. Petitioner appeared in the land acquisition proceeding on 12.03.2017 and due to objection raised by the petitioner, proceedings were referred to the Civil Court. On 04.05.2019, petitioner filed application Exhibit-18 for seeking

time to file say. The application was rejected on the same day by passing order by the Reference Court. Though, his earlier application was rejected, on 12.06.2019, petitioner once again filed application Exhibit-19 for seeking time to file say. This application was also rejected by the Reference Court and no say order was passed against the petitioner.

3. On 23.12.2019, the objection raised by the petitioner in Land Acquisition Reference No. 33 of 2017 on the ground that he was the tenant, and the issue referred to the Tenancy Authorities was decided against the petitioner.

4. On 01.10.2019, petitioner filed say, without applying for setting aside no say order. On 10.02.2020, respondent filed application Exhibit-25 claiming that say filed by the petitioner may not be taken on record and considered. Thereafter, application Exhibit-26 is filed by the petitioner on 18.02.2020 for recalling the no say order. This application is rejected. Thereafter, the petitioner filed application Exhibit-30 for recalling of no say order. This application is also rejected by the Reference Court on 28.04.2022. Hence, the present petition.

5. Heard the learned advocate for the petitioner and learned advocates for the respondents. Perused the grounds in the writ petition, annexures thereto and the impugned order.

6. The petition is vehemently opposed by learned advocate for the respondents contending that there is inordinate and unexplained delay on the part of the petitioner. The proceedings initiated in the year 2016 are till date protracted by the petitioner by filing one application or other. The Tenancy Authority has held against the petitioner, in another land acquisition reference. Therefore, issue of tenancy is concluded against the petitioner. He therefore submits that this is another attempt on the part of the petitioner to protract the land acquisition reference proceeding.

7. Upon hearing the learned advocates for the parties, this Court is of the opinion that, one opportunity needs to be given to the petitioner to contest the matter on merits. In that view of the matter, no say order passed by Reference Court is required to be recalled. Hence, the following order:

ORDER

(i) Writ Petition is allowed in terms of prayer clause 'A',

which reads thus;

“(A) By issuing appropriate writ or order, direction or any other appropriate order in the nature of writ, the Hon’ble High Court may be pleased to quash and set aside the order dated 18/01/2021 passed below Exhibit No. 25, 26 and Order dated 28/04/2022 passed below Exhibit No. 30 in LAR No. 27/2017 and issue appropriate Orders for the said purpose.”

- (ii) Applications Exhibit-26 and Exhibit-30 are allowed.
- (iii) The petitioner shall pay costs of Rs. 25,000/- to the respondents in the Reference Court within two weeks from the date of receipt of writ of this order.
- (iv) The Reference Court shall adjudicate the reference within three months from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI, J.]