

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.189 OF 2023

Motiram Vithoba Kendre (Died)

Through LRs

Sopan s/o.Motiram Kendre

Age : 60 years, Occu : Agri,

R/o. Gutti, Tq. Jalkot,

Dist. Latur.

.. Petitioner

Versus

1. The State of Maharashtra
Through Dist. Collector, Latur

2. The Executive Engineer,
Minor Irrigation (Local Sector)
Latur, Dist. Latur

.. Respondents

...

Advocate for the petitioner : Mr. N.D. Kendre
AGP for the respondent – State : Mrs. G.L. Deshpande

...

CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : 09.01.2023

PRONOUNCED ON : 03.02.2023

JUDGMENT:

. Rule. Rule made returnable forthwith.

Mrs. G.L. Deshpande, learned AGP waives service on behalf of the respondent - State. At the joint request of learned counsels appearing for the parties, the matter is heard finally at the admission stage.

2. The petitioner is aggrieved by the order dated 14.08.2012 dismissing the reference for non prosecution.

3. Heard Mr. N.D. Kendre, learned Advocate for the petitioner and Mrs. G. L. Deshpande, AGP for the respondent – State.

4. The learned counsel for the Petitioner submits that reference under Section 18 of the Land Acquisition Act, 1894 cannot be dismissed for non-prosecution. He would further urge that the reference Court has not decided the claim on merits and dismissed the reference on the ground that the claimant has not bothered to pursue the matter for establishing his claim and has thus failed to adduce any evidence for the purpose of redetermination of the market value of the acquired property. As such, he would contend that the order passed by the Reference Court is liable to be quashed and set aside and the matter be remanded for consideration afresh. On the ground of delay in filing the present petition which is filed in the year 2023 whereas the order has been passed in the year 2012, he would submit that the reference was filed by the aged father of the petitioner who expired on 09.05.2018 and the petitioner till September-2022 was not aware about the reference proceedings. Thereafter one of similarly placed villagers enquired about the matter with the concerned advocate, who gave information about the petitioner's reference and thereafter the petitioner acquired

knowledge about the proceedings and has approached this Court.

5. Per contra, learned AGP submits that the present Petition has been filed to avoid payment of Court fees. The learned AGP would further contend that there is considerable delay in filing the present Petition and no sufficient explanation has been tendered. The learned AGP would contend that in reference proceedings, the burden was upon the claimant to adduce evidence showing that the compensation awarded in respect of the acquired property was inadequate and insufficient, but the claimant has not adduced evidence in support of his claim. The attention of this Court is invited to the provisions of Order-XVII, Rule-2 and 3 of Code of Civil Procedure, 1908 and it is submitted that the procedure prescribed under the Code of Civil Procedure (hereinafter in short 'Code'), the reference Court has proceeded to dispose of the suit in accordance with the provisions of Order-IX of the Code.

6. Before advertng to the merits of the case, it is necessary to refer to Section 18 of the Act which contemplates reference to Court by a person who has not accepted the Award and reads thus:

“18. Reference to Court.- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to

the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

7. Section 53 of the Land Acquisition Act provides that save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court under this Act.

8. Section 54 of the Land Acquisition Act provides that subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court.

9. At this stage, it is necessary to consider the various decisions which have been cited at the bar by the learned counsel for the petitioner. The issue as to whether the reference proceedings under Section 18 of the Land acquisition Act can be dismissed for non-prosecution is no longer *res integra*. The Apex Court in the case of **Khazan Singh (dead) by LRs vs Union Of India** reported in (2002) **2 SCC 242** in para 7 held as under:

‘7; The provisions above subsumed would thus make it clear that the civil court has to pass an award in answer to the reference made by the Collector under Section 18 of Act. If any party to whom notice has been served by the civil court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the party concerned. But non-participation of any party would not confer jurisdiction on the civil court to dismiss the reference for default.’

10. In case of **Chimanlal Hargovinddas vs Special Land Acquisition Officer, Poona and Anr.** reported in **AIR 1988 SC 1652** the Apex Court in the context of the Trial Court treating the award rendered by the Land Acquisition Officer as a judgment under Appeal has laid down the guidelines in para-4 of the judgment as under:

“4. The following factors must be etched on the mental screen:

(1) A reference under section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by

the Land Acquisition officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition officer, as if it were an appellate court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under sec. 4 of the Land Acquisition Act (dates of Notifications under secs. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under sec. 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Some times instances are rigged up in anticipation of Acquisition of land). (9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

- (i) proximity from time angle,
- (ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has there after to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

Plus factors	Minus factors
1. smallness of size.	1. largeness of area.
2. proximity to a road.	2. situation in the interior at a distances from the Road.
3. frontage on a road.	3. narrow strip of land with very small frontage compared to death.
4. nearness to developed area.	4. lower level requiring the depressed portion to be filled up.
5. regular shape.	5. remoteness from developed locality.
6. level vis-a-vis land under acquisition.	6. some special disadvantageous factor which would deter a

purchaser.

7. special value for an owner of an adjoining property to whom it may have some very special advantage.

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say 1000 sq. yds or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be looked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own facts pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense.”

11. The Apex Court in the case of **Chimanlal Hargovinddas** (*supra*) has held that the reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the Court. It was also held that the reference

Court has to treat the reference as the original proceeding before it and determine the market value afresh on the basis of material produced before it. The Apex Court sets out the guidelines as to how the market value of the land under acquisition has to be determined by the reference Court. The decision in the case of **Khazan Singh** (*supra*) and in the case of **Chimanlal Hargovinddas** (*supra*) have been followed by this Court in the case of **Walmik s/o. Trimbak Tupe vs. The State of Maharashtra & Anr** with connected writ petitions decided on 17.01.2020 and in the case of **Uttamrao Madhavrao Yenkikar vs. The State of Maharashtra, Writ Petition No.4863 of 2021** decided on 20.07.2022.

12. In the background of the settled position of law, the decision of the reference Court is required to be examined as to whether the said decision can be said to be a decision on merits.

13. The reference Court by the impugned order dated 14.08.2012 dismissed the reference for non prosecution without considering any factor and it is evident that the said order cannot by any stretch of imagination be construed as an Award as defined under Section 26 of the Land Acquisition Act.

14. The settled position as is discerned from the decisions referred to above is that the reference has to be decided by the Civil Court on the basis of the material before it on merits. The question that is to be determined in the present case is whether the reference can be said to be a decision on merits by the reference Court. The decision of the Apex Court in the case of **Chimanlal Hargovinddas** (*supra*) sets out the manner in which a reference under Section 18 of the Land Acquisition Act is required to be decided by the reference Court. In particular, sub para-3 of para-4 sets out that the Reference Court has to treat reference as an original proceeding before it and determine the market value afresh on the basis of material produced before it. At this stage, it is to be noted that the object and provision of the Land Acquisition Act is to enable the State to acquire the land for public purpose and on payment of reasonable compensation in terms of the provisions of the Act. Section 18 of the Land Acquisition Act entitles a land holder, whose land has been acquired and who is not satisfied with the award of the Land Acquisition Officer whether on the ground of measurement of the land, amount of compensation or apportionment of the compensation to make an application to the reference Court. The provision of Section 23 of the Land Acquisition Act provides for the matters to be considered in determining the compensation and Section 24 provides for the matters to be neglected

in determining the compensation. Section 26 of the Land Acquisition Act specifies the form and contents of the award and is reproduced herein under:

“26. Forms of awards.”—[(1)] Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.[(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2), and section 2, clause (9), respectively of the Code of Civil Procedure 1908 (5 of 1908).]

15. In order to constitute an Award within the meaning of Section 26 of the Act, the Award to be passed by the Court in answer to the reference made by Collector under Section 18 of the Act has to specify the amount awarded under clause first of sub-section (1) of Section 23, and also the amounts respectively awarded under each of the other clauses of the same sub section, together with the grounds of awarding each of the said amounts. Sub-section 2 of Section 26 of the Act provides that every such award shall be deemed to be a decree and statement of grounds of every such award a judgment within the meaning of Section 2, clause (2), and Section 2, clause (9), respectively of the Code of Civil Procedure, 1908.

16. In my opinion, considering the form that the award has to take which is specified in Section 26 of the Land Acquisition Act, the order which has been passed by the reference Court in L.A.R. No.897 of 2010 cannot be said to be an award within the meaning of Section 26 of the Act. The determination of the issues has to be on the basis of merits and by taking into consideration the factors which are set out in Section 23 of the Act. In the absence of any such exercise being carried out by the reference Court dismissal of the reference on the ground of non-adducing of documentary or oral evidence by the claimant cannot be said to be a decision on merits.

17. As regards the submission of the learned AGP that the decision of the reference Court is by following the procedure envisaged under Order-XVII, Rule-2 and 3 of the Code of Civil Procedure is concerned, as per Section 53 of the Land Acquisition Act the provisions of Code of Civil Procedure, 1908 applies save in so far as they may be inconsistent with anything contained in this Act. The form of Award of the Reference Court is set out in Section 26 of the Land Acquisition Act and the Reference Court is to follow the procedure set out in Part-III of the Land Acquisition Act and after taking into consideration the guidelines which have been set out by the Apex Court in the case of **Chimanlal Hargovinddas** (*supra*),

Award is to be passed. The submission of learned AGP that the decision is on merits as the procedure under Order XVII Rule 2 and 3 of Code of Civil Procedure is followed is liable to be rejected. The decision of the reference Court cannot be said to be a decision on merits. This is also for the reason that an award under Section 26 of the Land Acquisition Act is deemed to be a decree and the definition of the decree within the meaning of Section 2, clause (2), and the judgment within the meaning of Section 2, clause (9) envisages the formal expression of an adjudication and it specifically excludes any order of dismissal for default. The reference Court is bound to assess the material, which has been produced on record and after taking into consideration the factors laid down in Section 23 and 24 of the Land Acquisition Act to come to a definite finding as to the amount of compensation which the claimant is entitled to. In this petition, there is no adjudication by the reference Court as regards the amount of compensation and the reference is dismissed.

18. As regards the submissions of the learned AGP on the ground of delay, the learned AGP has pressed into service a decision of this Court in the case of **Housabai w/o. Gahininath Pawar vs. The State of Maharashtra with connected writ petitions decided on 25.11.2022** wherein this Court has applied doctrine of delay and

laches and has held that the claimants who have simply slept over their dismissed LARs for number of years cannot be permitted to misuse the said principle by seeking to infuse life into dead claims dismissed number of years ago. What is required to be noted is that the said decision was rendered in the facts of that case wherein there was no sufficient justification given for the delay. This Court in the case of **Asaram Hari Shinde through LRs Laxman Asaram Shinde & Others vs. The State of Maharashtra & another** decided on **05.12.2022** has condoned the delay and has restored the land acquisition reference as there was some explanation provided to justify the delay.

19. In my view, this Court is required to be mindful of the fact that the land of the petitioner – claimant has been acquired by providing some compensation, which compensation has not been found adequate by the claimant, which has constrained him to file reference. The petitioner is agriculturist and residing in remote area and cannot be said to be well informed about his right. What is worthwhile to note is that the petitioner is from rural area and has been deprived of his private property, by of course, providing compensation however the amount of compensation is required to be adjudicated and there has to be a satisfaction the acquisition of the

property has taken place after providing adequate compensation. Considering the fact that some justification has been provided in this petition, the submission of the AGP seeking rejection of the writ petition on the ground of delay is not acceptable.

20. The learned AGP placed reliance on the decision of this Court in the case of **Venkat Baburao Karle Vs. State of Maharashtra and Ors, 2012 (4) Mh.L.J. 350**. The case of **Venkat (*supra*)** was a decision on merits and in the present case it is observed that the decision of the reference court is not a decision on merits. Therefore, the citation relied by the learned AGP is not applicable in the present case.

21. Considering the position which has been reiterated by several decisions that the reference Court is required to decide the claim on merits, in my opinion, an opportunity is required to be given to the claimant to lead evidence in support of his claim for enhanced compensation. As far as the submission by the learned counsel for the petitioner that the petitioner is ready to waive the interest from the date of the dismissal of the Land Acquisition Reference, in my view the petitioner shall not be entitled to claim any interest for the period from the date of dismissal of LAR in default till the final disposal of

the LAR by the trial Court. In view of the above, the following order is passed.

ORDER

- (i) The order dated 14.08.2012 passed in L.A.R. No.897 of 2010 is hereby quashed and set aside.
- (ii) Land Acquisition Reference 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 contention 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 15th February, 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 15th February, 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 LAR in default till the final disposal of the LAR by the Reference Court.

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

(viii) Rule is made absolute accordingly.

(SHARMILA U. DESHMUKH, J.)

GGP