

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

51 WRIT PETITION NO. 3447 OF 2022

Babu S/o. Eknath Kulkarni,
Deceased through his L.Rs.

1. Sojarbai Wd/o. Baburao Kulkarni,
2. Nanda W/o. Giridhar Aaglawe,
3. Indu W/o. Sunil Dabadgaonkar,
4. Sunita W/o. Ram Kulkarni,
5. Namdeo W/o. Baburao Kulkarni,
6. Bhagyashri W/o. Gopal Dande.Petitioners

Versus

1. The State of Maharashtra and othersRespondents

Advocate for Petitioners : Mr. P.V. Ambade
AGP for Respondent Nos. 1 & 2 : Mr. B.V. Virdhe

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CORAM : SHAILESH P. BRAHME, J.

DATED : 23 OCTOBER 2023

JUDGMENT :

1. Heard both the sides finally at the admission stage.
2. The petitioner has taken exception to the judgment and award dated 29.01.2013, passed by Joint Civil Judge Senior Division, Omerga, in LAR No. 256 of 2009 (Old No. 316 of 2000). The Reference is dismissed by the impugned judgment and award.

3. The petitioners are legal heirs of original claimant Babu Eknath Kulkarni. Their house was acquired. An award was passed on 10.03.1997. Being aggrieved by the quantum, LAR No. 256 of 2009 (Old No. 316 of 2000) was filed before Civil Judge Senior Judge, Omerga, claiming enhancement of Rs. 2,52,750/- along with other benefits. The reference was filed by deceased Babu Eknath Kulkarni through a lawyer.

4. On 29.01.2013, the Reference Court dismissed it because the claimant did not lead any evidence and no material was brought on record to support the claim of enhancement. On 05.05.2018, original claimant died. It is contended by the petitioner that in the last week of November 2021, they got knowledge about rejection of the Reference. Thereafter, the steps were taken to secure the certified copies. On 22.12.2021, Writ Petition is filed challenging the order of the Reference Court.

5. Learned counsel for the petitioner submits that original claimant Babu did not apprise his siblings about the proceedings of Reference. There is no co-ordination between the claimant and the Lawyer. The petitioners were not aware about the result of the Reference. Even Babu, during his lifetime also was not aware about the result. Hence, the learned counsel for the petitioners prays for extending an opportunity to lead evidence by remanding the matter to the Reference Court.

6. Learned counsel for the petitioner would submit that the delay / laches is not intentional. The petitioner is prepared to give up the interest from 29.01.2011 till final decision of LAR. He would rely upon the judgment passed in the matter of *Maruti Ambadas Dhumal Versus State of Maharashtra*, *Vilas Shankarrao Kulkarni Versus State of Maharashtra*, *Tanaji Naranrao Patil Versus State of Maharashtra*, and *Asaram Hari Shinde Versus State of Maharashtra*.

7. Learned AGP appearing for the respondents supports impugned judgment and order. He submits that the approach of the petitioner is very casual and there is huge delay of about 15 years. He would submit that original claimant was alive when impugned order was passed. He died on 05.05.2018. The laches from 29.01.2013 to 05.05.2018, have not been explained and condonable. He would submit that the petitioners have failed to explain the laches. According to learned AGP the judgment cited by the petitioners are not applicable to the present case. According to him, the petitioner is not entitled to interest from date of award till the future disposal of LAR by the Reference Court. Alternately, he would insist to impose heavy costs.

8. I have considered rival submissions canvassed by the parties. Original claimant Babu was prosecuting LAR No. 256 of 2009. On 29.01.2013, the Reference Court dismissed the Reference

for want of evidence and material on record. Thereafter, Babu died on 05.05.2018.

9. In view of the decision cited at the bar by the petitioner in the matter of *Maroti Ambadas Dhumal* (supra) and *Asaram Hari Shinde* (supra), the order passed by the Reference Court which is under challenge, is not an award. The Reference Court failed to undertake an exercise as contemplated by the law laid down by Apex Court in the matter of *Chimanlal Hari Govindas Versus Special Land Acquisition Officer*, **AIR 1988 SC 1652**. The Reference Court instead of assessing the material on record preferred to dismiss the Reference only on the ground that no further evidence was led by the claimant.

10. Considering the consistent view taken by this Court in the matters stated above as well as in matters of *Vilas Shankarrao Kulkarni* (supra) and *Tanaji Narayanrao Patil* (supra), the opportunity is required to give the claimants to lead evidence in support of claim for enhancement of compensation. I propose to follow the course adopted by High Court in any above matters.

11. The submission of the petitioner that original claimant did not apprise his siblings about pendency of the Reference and only in November 2021, the impugned order was disclosed, appears to be probable. Under normal course of circumstances, the claimants would not have waited to challenge the order of

Reference Court. I do not accept the submissions of learned AGP that laches are casual and unpardonable.

12. The submission of learned AGP that laches are not properly explained, has no merit. In paragraph nos. 7 to 9 of memo of the petition, the explanation is tendered which I find to be logical and acceptable.

13. The consistent view of High Court in such a situation is to deprive the claimant for interest on the enhanced amount of compensation, if awarded, from order of the Reference Court till the decision of LAR. I propose to follow the same course. The impugned judgment and order is unsustainable. I pass following order :

ORDER

i. The judgment and order dated 29.01.2013, passed by Joint Civil Judge Senior Division, Omerga, in LAR no. 256 of 2009 is quashed and set aside and LAR No. 256 of 2009, is restored to the file of the Reference Court.

ii. The same shall be decided on its own merits by extending opportunity of hearing to the parties within a period of three months from today.

iii. In the event of any enhanced compensation being awarded by the Reference Court, the

petitioners/claimants shall not be entitled for interest from 29.01.2013 till the decision of the Reference Court.

iv. The parties shall appear before the Joint Civil Judge Senior Division, Omerga, on 03.11.2023.

v. Considering the laches a cost of of Rs. 10,000/- is imposed on the petitioners to be paid to the respondents within a period of four weeks which shall be the condition precedent for proceeding with LAR No. 256 of 2009, afresh.

[SHAILESH P. BRAHME, J.]