



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 8589 of 2022

Wasudeo S/o Barku Lende

Versus

The State of Maharashtra, through Secretary, Ministry of Irrigation
Department, Mumbai and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.V.Ingole, Advocate for the petitioner.

Shri Deepak Thakare, Addl.G.P. for the respondent nos.
1, 4 and 5.

Ms. Mallika Babhulkar, Advocate for the respondent
no.3.

CORAM : ANIL S. KILOR, J.

DATED : 4th OCTOBER, 2023.

Heard.

2. In this matter the reference under Section 18 of the Land Acquisition Act, came to be rejected vide impugned order dated 22nd June, 2011 passed by the learned Joint Civil Judge, Senior Division, Bhandara in LAC No. 34 of 2006, on the ground that the petitioner failed to produce any evidence in support of his claim, is under challenge in this writ petition.

3. The objection is raised by the learned counsel for the respondent to the tenability of the present writ petition on the ground that the appeal would lie against the impugned award. Whereas, the learned counsel for the petitioner points out from the judgment of the Larger Bench in the case of *Diwakar Prabhakar Chopade Vs. Sub Divisional Officer, (Land Acquisition Officer), Aurangabad and others*¹ that if the reference is not decided on merit, the writ petition is maintainable.

3. The Co-ordinate Bench of this Court in the matter of *Chandaba Gangaram Pauyed and others Vs. State of Maharashtra and others*² in similar circumstance has held thus:

21. In L.A.R. No. 100 of 2011, the reference Court framed the following issues:

1. Does claimant prove that the compensation of the acquired property awarded to him is inadequate and insufficient?
2. (a) Is claimant entitled for enhancement in the compensation ?
(b) If yes, at what rate ?
3. Whether claim is within limitation?
4. What order, award and costs?

22. The findings on the issues were answered in the negative on the ground that in spite of sufficient opportunities given to the claimant, the claimant has failed to adduce evidence and hence the land acquisition reference is dismissed with costs.

¹ 2019(6) Mh.L.J 591

² 2023(1) Bom.C.R. 723

23 to 28...

29. In all the above references, neither the claimants nor the Special Land Acquisition Officers have led any evidence. 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 impugned Award shows that the issues were framed and in the absence of the parties and in the absence of any oral or documentary evidence on part of both the parties, the claimant has been held not entitled for enhancement in the amount of compensation. 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).]”.

30. 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.

31. In my opinion, considering the form that the award has to take which is specified in section 26 of the Land Acquisition Act, the Award which has been passed by the reference Court in these writ petitions 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.”

4. In that view of the matter, I am of the opinion that writ petition is maintainable.

5. Furthermore, the Co-ordinate Bench of this Court in the matter of *Chandaba Gangaram Pauyed and others Vs. State of Maharashtra and others* (supra) has observed thus:

36. Considering the position which has been reiterated by several decision that the reference Court is required to decide the claim on merits, in my opinion an opportunity is required to be given to the claimants to lead evidence in support of their claim for enhanced compensation. As far as the submissions by the learned Counsel for the petitioners that they are ready to waive the interest from the date of the dismissal of the Land Acquisition Reference, in my view the petitioners shall not be entitled to claim any interest for the period from the date of dismissal of LARs in default till the final disposal of the LARs by the trial Court. In view of the above, the following order is passed

6. In the circumstances, as the learned Reference Court failed to decide the reference on merit, I am of the opinion that the matter needs to

be remanded back to the Reference Court to decide the same. Accordingly, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The order dated 22nd June, 2011 passed by the learned Joint Civil Judge, Senior Division, Bhandara in L.A.C No. 34 of 2006 is hereby quashed and set aside;
- iii. The matter is remanded back to the learned Reference Court to decide the same afresh on merit in accordance with law subject to filing of undertaking by the petitioner that the petitioner would not claim any interest on the amount of compensation including the statutory amount, from the date of dismissal of the reference till the date of award.
- iv. Such undertaking shall be filed by the petitioner before the Reference Court on the date of appearance.
- v. The Reference Court is directed to decide the reference on merit within nine months from the date of appearance.
- vi. The parties shall appear before the learned Reference Court along with certified copy on **6th November, 2023.**

[ANIL S. KILOR, J.]