



IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8741 OF 2023

Shankar Mahadhu Patade Died
Through Lrs Ramling Shankar Patade
VERSUS
The State Of Maharashtra And Others

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Mr. S. B. Choudhari, Advocate for the Petitioner
Mrs. K. R. Jamdhade, AGP for Respondent Nos. 1 and 3
Mr. S. B. Ghute, Advocate for Respondent No. 2

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CORAM : R. M. JOSHI, J.

Dated : JULY 22, 2024

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. Petitioner is original claimant in LAR No.329/2014. Admittedly, impugned order dated 02.01.2020 came to be passed without recording evidence of the claimant as after granting many opportunities to lead evidence, claimant failed to avail it. Reference, therefore, stood dismissed by passing impugned order.

3. According to learned Counsel for Petitioner, due to the fault of the Advocate, party cannot be made to suffer, and hence, he prays for setting aside the impugned order and relegating matter back to the

Reference Court for its decision on merits.

4. Learned Counsel for Respondent submits that the Petitioner has been adopting dilatory tactics, and as such, he would not be entitled to get any interest on enhanced compensation, even if this Court find it appropriate to relegate the matter back to the Reference Court for its decision afresh.

5. Hon'ble Supreme Court in case of Chimanlal Hargovinddas vs. Special Land Acquisition officer, Poona and Anr., reported in AIR 1988 SC 1652, has held that it is not open for Reference Court to pass order relying upon evidence before Special Land Acquisition officer. Similarly, it is settled law that a Reference under Land Acquisition Act, cannot be dismissed in default. Thus, merely because Reference Court does not use word dismissal of Reference in default, it does not become an order on merit. A reference could not have been decided except

on merit. This Petition, therefore, deserves to be entertained and order impugned deserves to be set aside. LAR No. 329/2014 needs to be relegated back to Trial Court for decision afresh.

6. This Court in following decisions denied the interest up to the date of dismissal of Reference.

(1) Bharat Laxmidas Thakkar vs. The State of Maharashtra, Writ Petition No.1448/2021, decided on 20/10/2021,

(2) Vilas Shankarrao Kulkarni and Another vs. The State of Maharashtra, Writ Petition No.8609/2022, decided on 18/10/2022,

(3) Dnyanoba s/o Gopa Pawar vs. The State of Maharashtra, Writ Petition No.2773/2021, decided on 03/05/2023.

7. In the instant case, the Reference is of year 2014. For inaction of Petitioner, the same is dismissed in the year 2020. Petitioner waits for three long years to file Writ Petition before this Court and now this Petition is decided in the year

2024. All these aspects clearly indicate that the Petitioner has attempted to delay proceedings. According to this Court, obvious reason for the same lies in provision of Land Acquisition Act of mandatory interest payable @ 15% per annum on amount of compensation. It cannot be ignored that payment of such amount towards interest is from the public exchequer, i.e. taxes paid by the common people. From long delay caused in filing Writ Petition and no efforts being taken for its early disposal, only inference which can be drawn is that, pendency of litigation is aimed at earning 15% statutory interest, which would be never received otherwise by any other investment.

8. This Court finds that the Judgments cited supra do not take into consideration this aspect. While considering request of payment of interest, Court is required to consider the bona fides of the party before passing any order of denial or grant of

interest. Petitioner though alleges negligence on the part of his Advocate but nothing is placed on record to show any steps been taken against him. Reasons sought to be put forth placing blame on Advocate is nothing but a created excuse for getting order of dismissal of Reference set aside and also to seek interest. This Court, therefore, finds that though in view of settled law, the impugned order deserves to be set aside and LAR No.329/2014 and matter is required to be relegated back to the Reference Court for its decision on merit, Petitioner would not be entitled to seek any interest till today on enhanced amount, if granted by the Reference Court. It is however clarified that he would be entitled to receive interest on the compensation awarded by Special Land Acquisition Officer, as provided by law.

9. Since the Reference is of the year 2014, the Reference Court is directed to decide the same on merit within a period of six months from today. In

case Reference Court comes to the conclusion that proceeding is not decided early for the reasons attributable to Petitioner, the said aspect be taken into consideration while passing final order.

10. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

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