



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

933 WRIT PETITION NO. 10412 OF 2023

Vijay Desairao Deshmukh

VERSUS

The State Of Maharashtra Through District Collector And Others

...

Advocate for the Petitioner : Mr. Gadegaonkar Bharat N.

AGP for Respondents: Mrs. K. R. Jamdhade

Advocate for Respondent No.3 : Mr. Warad Sunil V.

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CORAM : R. M. JOSHI, J.

Dated : July 10, 2024

PER COURT :-

1. Heard. By consent of both sides, heard finally at the stage of admission.
2. At the outset learned Counsel for the respondents raises objection with regard to the maintainability of the writ petition with contention that in the present case there is no order of dismissal of Reference for default and as there is a decree drawn after the said order, writ does not lie.
3. Learned Counsel for the petitioner submits that since the impugned order is not passed on merits, the same cannot sustain and in view of the law settled by this Court a writ petition is maintainable against such order.
4. Petitioner is original claimant in LAR No.123/2008. Admittedly impugned order dated 03/08/2015 came to be passed without recording

evidence of the claimant as after granting many opportunities to lead evidence, claimant failed to avail it. It is thus clear that the Reference has not been decided on the merit. 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, while passing impugned award. Similarly it is settle 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. Division bench of this Court in case of ***Diwakar Prabhakar Chopade vs. Sub-Divisional officer, (land Acquisition Officer), Aurangabad and Others, reported in (2019) 6 Mah LJ 591 : (2019) 6 AIR Bom R 476***, has held that against that order Writ Petition would lie. Hence, it is held that present petition is maintainable.

5. 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.

6. 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 relegates the matter back to the Reference Court for its decision afresh.

7. 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.

8. In the instant case, the Reference is of year 2008. For inaction of petitioner, the same is dismissed in the year 2015. Petitioner waits for seven 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 at 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.

9. This Court finds that the Judgments cited supra do not take into consideration the fact that there is statutory interest @ 15 % per annum payable to the claimant on the amount of compensation to be granted for compulsory acquisition. 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. The 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.123/2008 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.

10. Since the Reference is of the year 2008, the Reference Court is directed to decide the same on merit within a period of six months. 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.

11. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

vj gawade/-.