

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15841 OF 2024

Appasha Gurunath Birajdar

....*Petitioners*

:*Versus*:

The State of Maharashtra & Ors.

....*Respondents*

WITH

WRIT PETITION NO. 15843 OF 2024

Kallappa Nagappa Gogave

....*Petitioners*

:*Versus*:

The State of Maharashtra & Ors

....*Respondents*

WITH

WRIT PETITION NO. 15923 OF 2024

Mahadev Maruti Fulari (Since Deceased)

Through Legal Heirs

Rukmini Mahadev Fulari & Ors.

....*Petitioners*

:*Versus*:

The State of Maharashtra & Ors.

....*Respondents*

Mr. Abhijit Patil, *for the Petitioner in all Writ Petitions.*

Ms. Dhruti Kapadia, *AGP for the Respondent/State in Writ Petition Nos. 15841/2024 and 15923/2024.*

Mr. S .D. Chipade, *AGP for the Respondent/State in Writ Petition Nos. 15843/2024.*

CORAM : SANDEEP V. MARNE, J.

Dated : 30 January 2025.

P.C. :

1) These petitions are filed challenging the orders dated 17 February 2014 and 21 February 2021 passed by the Jt.Civil Judge Senior Division, Solapur answering the References for enhancement of compensation in the negative. The References are answered in the negative essentially on account of failure on the part of the Petitioners to lead evidence in support of their claim for enhanced compensation. The Reference Court has specifically held in the impugned order that there is lack of oral and documentary evidence to prove entitlement of enhanced compensation.

2) The issue involved in the present petitions is squarely covered by several judgments rendered by this Court. A reference in this regard can be made to the order dated 27 February 2023 passed by this Court in *Bhika Chandu Rathod Vs. The State of Maharashtra & Ors.* in Writ Petition No. 2331/2023 in which it is held as under :

2. The challenge in the petition is to the judgment and order dated 03.01.2014 passed in Land Acquisition Reference No.914/2009 dismissing the reference for non-prosecution.

3. Learned counsel for the petitioners submits that the impugned judgment and order is not a award within the meaning of Section 26 of the Land Acquisition Act. She would further submit that the dismissal is for non-prosecution and she is squarely covered by the decision of this Court in the case of Walmik S/o Trimbak Tupe Vs. The State of Maharashtra & anr.; Writ Petition No.12795/2019 with connected writ petitions decided on 17.01.2020.

4. Per contra, the learned A.G.P. submits that the burden was upon the claimants to prove the entitlement to enhance the compensation and as the claimants failed to produce the evidence,

the Reference came to be dismissed and as such, it is a decision on merits. He would further submit that there has been considerable delay which has not been properly explained.

5. Considered the rival submissions of the parties and perused impugned judgement and order.

6. The Reference Court after noticing the decision of the Apex Court in case of Trivenidevi Vs. Collector, reported in AIR 1972 Supreme Court 1417, and the decision in case of Chimanlal Hargovindas us Special Land Acquisition Officer, AIR 1988 Supreme Court, 1652 wherein the Apex Court had referred to the method of valuation which is to be adopted for ascertaining the market value has thereafter proceeded to dismiss the reference on the ground that the original claimant had failed to adduce evidence. It was held by the Reference Court that the claimant has failed to adduce any oral or documentary evidence to support his claim and held that the market value which was awarded was proper and just.

7. Although the Reference Court was right in relying upon the decision of the Apex Court, the Reference Court failed to take into consideration the fact that the Reference has to take the form of an award which should meet the requirements of Section 26 of the Land Acquisition Act. In the present case, the reference has been dismissed for failure on part of the claimant to adduce evidence.

8. Learned counsel appearing for the petitioner submits that the original claimant was rustic villager. The Counsel engaged by the Petitioner did not appear in the matter nor informed the Petitioner that the matter is fixed for evidence. As the advocate of the Petitioner did not inform him about the decision of the Reference Court, there is delay in filing the present Petition. Considering the decision of this Court relied upon by the learned counsel for the petitioners and considering that the Reference Court did not decide the reference on merits, the impugned judgment and award is liable to be quashed and set aside. However the Petitioner is not entitled to interest on enhanced compensation, if any, from the date of dismissal of the reference till the decision of the Reference Court on merits on remand. In the result, the following order:

ORDER

a. Writ Petition is allowed in terms of prayer Clause (B) and the impugned judgment and order dated 03.01.2014 is hereby quashed and set aside.

b. Land Acquisition Reference No.914/2009 is restored to file.

C. Petitioners to appear before the Reference Court on 27.03.2023 and to adduce necessary evidence in support of their claim for enhanced compensation.

d. Considering the delay, the petitioners are not entitled to the interest on the enhanced compensation, if any, for the period from the date of dismissal of the Reference i.e. from 03.01.2014 till the decision of the Reference Court on merits.

3) Resultantly, the petitions partly succeeds. The impugned orders dated 17 February 2014 and 21 February 2014 are set aside.

4) References being LAR Nos.116/2006, 122/2006 and 119/2006 are restored on the file of the Reference Court which shall proceed to decide the same after grant of opportunity to the Petitioners to lead evidence in support of their claim for enhanced compensation.

5) Considering the delay in filing the present petitions, as well as failure on the part of the Petitioners to lead evidence, they shall not be entitled to any interest for the period from 17 February 2014/21 February 2014 till the decision of the Reference Court on merits, in the event their claim for enhanced compensation is accepted.

6) With the above directions, the Writ Petitions are **allowed and disposed of.**

[SANDEEP V. MARNE, J.]

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