



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 251 OF 2025

(Baburao Gangaramji Tayade (dead) through LRs Vs. The State of Maharashtra & Anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. P.P. Sarise with Mr. Vicky Gokhale, Counsel for the
petitioners.

Mr. H.R. Dhumale, A.G.P for the respondents/State.

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CORAM : ANIL L. PANSARE, J.
FEBRUARY 10, 2025

Heard. Perused the impugned order, which
reads thus :

*“The appellant and advocate absent when
called out. No application and No cause has
been shown. Hence, award is confirmed on
failure to lead evidence.”*

3] As could be seen, the trial Court has
dismissed the reference as not prosecuted.

4] The order is apparently perverse inasmuch
as the law is well settled on this point that reference
under Section 18 of the Land Acquisition Act, 1894 (for
short “Act of 1894”), cannot be dismissed for want of
prosecution.

5] The Co-ordinate Bench of this Court in
*Chandaba w/o Gangaram Pauyed Vs. State of
Maharashtra and others [2023(4) Mh.L.J. 292]*, by
referring to various judgments, has held that dismissal of
the reference on the ground of non-adducing of
documentary or oral evidence by the claimant cannot be

said to be an award on merits. Accordingly, the reference was remitted back to the reference Court with a rider that the claimants will not be entitled to any interest on the enhanced amount of compensation, if awarded from the date of dismissal of reference till final disposal.

6] The Hon'ble Supreme Court in the case of *Khazan Singh (Dead) By Lrs Vs. Union of India [(2002) 2 SCC 242]*, in paragraph 7, has held that the provisions above subsumed would thus make it clear that the civil court has to pass an award in answer to the reference made by the Collector under Section 18 of the Act of 1894. If any party to whom notice has been served by the civil court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the party concerned. But non-participation of any party would not confer jurisdiction on the civil court to dismiss the reference for default.

7] The learned A.G.P submits that though law is well settled on this point, the petitioners have challenged order dated 11/6/2002 without explaining delay of about 23 years.

8] Mr. Vicky Gokhale instructed by Mr. R.J. Shinde, learned Counsel for the petitioners, submits that the petitioners having come to know of the judgment of this Court in the aforesaid case, approached the Counsel, and upon his advice, the petition is filed. In doing so, the petitioners themselves have submitted that they will waive the interest from the date of dismissal of reference till the date of filing of the present petition.

9] That being so, since the order is apparently contrary to the settled principles of law and since the land of the petitioners has been compulsorily acquired, in my view, the petitioners should be afforded an opportunity with a condition that for the intervening period, they will not be entitled for interest. Hence, following order :

ORDER

I] The petition is allowed.

II] Order dated 11/6/2002 passed by the Civil Judge Senior Division, Achalpur, in L.A.C. No. 9/1994, is quashed and set aside.

III] L.A.C. No. 9/1994 is restored on the file of the Civil Judge Senior Division, Achalpur, for decision afresh in accordance with law with a rider that the petitioners will not be entitled for interest, including interest on statutory benefits, from the date of dismissal of suit till filing of petition.

IV] The petitioners shall appear before the trial Court on 6/3/2025.

10] The petition is disposed of in above terms.
No costs.

(ANIL L. PANSARE, J.)

Sumit