IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 23rd OF AUGUST, 2024

MISC. PETITION No. 1603 of 2021

GULAB BAI

Versus

THE LAND ACQUISITION REHABILITATION OFFICER AND OTHERS

Appearance:

Shri Shashank Upadhyay - Advocate for petitioner.

Shri Dheeraj Tiwari - Panel Lawyer for respondents/State.

ORDER

The present petition has been filed challenging the order dated 06.07.2012 passed by the First Additional District Judge Khandwa (M.P.) whereby the reference application filed by the petitioner under Section 18 of the Land Acquisition Act, 1894 has been dismissed in default.

2. The case of the petitioner is that the reference Court was required to answer the reference and it could not have been dismissed without answering the same.

3. This Court, under similar circumstances in the case of Sahib S/o Salikram vs Land Acquisition Rehabilitation Officer and others : MP No.3933 of 2018 decided on 31.03.2022 while relying upon the decision of

the Hon'ble Supreme Court in the case of Khazan Singh (Dead) By LRs vs Union of India reported in (2002) 2 SCC 242, has proceeded to quash the impugned order therein and relegated the matter back to the authorities concerned for fresh decision of the reference on merits in accordance with law. It has been observed as follows : -

> *5. From the perusal of the record, it is seen that with respect to the acquisition proceedings the final award was passed in the matter and as the amount of award is on lower side then an application under Section 18 was preferred and the matter was referred to the District Judge in reference. The reference case was registered and the same has been dismissed by the impugned order.*
> *6. Counsel appearing for the State has further pointed out that the order impugned does not only reflect that it is dismissed for want of prosecution rather the objection filed by the petitioner was also taken into consideration and not found to be satisfactory, therefore, the reference was rejected, but the fact remains that the order impugned does not reflect any application of mind by the Authorities. There is no consideration of any objection filed by the petitioner. No reasons are assigned while rejecting the reference. The reasons are the heart beats of the orders or judgments as has been held by the Hon'ble Supreme Court in the case of Kranti Associates Private Limited and Anr. vs. Masood Ahmed Khan and others, reported in (2010) 9 SCC 496 wherein the Hon'ble Supreme Court has held as under :-*
> *47. Summarizing the above discussion, this Court holds:-*
> *(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
> *(b) A quasi-judicial authority must record reasons in support of its conclusions.*
> *(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
> *(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
> *(e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*

(f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
(g) Reasons facilitate the process of judicial review by superior Courts.
(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice
(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
(j) Insistence on reason is a requirement for both judicial accountability and transparency. (k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.
(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).
(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".
7. In view of the aforesaid judgment passed by the Hon'ble Supreme Court the order impugned is a non-speaking order and does not reflect application of mind.
8. From the judgment passed by the Supreme Court in the case of Khazan Singh (supra) it is apparently clear that the reference cannot be dismissed for want of prosecution. *The Hon'ble Supreme Court has held as under :-*

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. 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 concerned party. But non-participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference for default.

9. After going through the aforesaid order of the Court, it is clear that reference could not be dismissed for want of prosecution.

10. It is seen from the record that the petitioner could have very well filed an application for restoration of the reference under Order Rule 9 of C.P.C. read with Section 151 of C.P.C., as the same was held to be maintainable, in view of the judgment passed in the case of Jogi Sahu Vs. Collector reported in AIR 1991 Orissa 283. This Court in the case of Abdul Karim Vs. State of M.P. reported in AIR 1964 MP 1 has also considered the similar controversy and has held that non-participation of any party could not confer jurisdiction on the Civil Court to dismiss the reference for default.

11. As far as delay in filing the present petition is concerned, in the case of Khazan Singh (supra), the petition was filed with a considerable delay before this Court and the same was entertained and ***it was held that reference cannot be dismissed for want of prosecution****. In para 4 of the writ petition, it is submitted that no information was sent to the petitioner by his counsel that the case has been dismissed for want of prosecution and the petitioner was having no knowledge about the same. As far as delay in filing the writ petition is concerned, it is settled that for fault of counsel party should not suffer as has been held by the Hon'ble Supreme Court in the case of M.K. Prasad Vs. P. Arumugam, AIR 2001 SC 2497, Dindayal Bansal Vs. Gwalior Nagar Tatha Gram Vikas Pradhikaran, 2007 (5) MPHT 470, Rafiq and Another Vs. Munshilal and Another AIR 1981 SC 1400. It is argued that <u>it was the duty of the Reference Court to decide the reference on merits that is not being done in the present case.</u>*

12. In such circumstances and in view of the settled legal proposition of law that a reference cannot be dismissed for want of prosecution, the order impugned is unsustainable and is hereby set aside/quashed. The matter is remanded back to the District Judge for reconsideration of the reference case. It is directed that the reference should be decided on merits.

13. With the aforesaid observations, this petition is disposed of."

4. Learned counsel for the respondents/State does not dispute the aforesaid proposition.

5. Accordingly, the impugned order dated 06.07.2012 is set aside. The matter is remanded back to the concerning authorities for fresh decision of the reference on merits in accordance with law.

6. With the aforesaid observations, this petition is **disposed of** finally.

(VISHAL MISHRA)
JUDGE

VV