

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2690 OF 2017

Pralhad s/o Ramrao Nagare,
Died Through L.Rs.

1(a) Smt. Parwatabai w/o Pralhad Nagare,
Age 65 years, Occ. Household.

1(b) Sandeep s/o Pralhad Nagare
Age 42 years, Occ. Agriculturist,

1(c) Pradeep s/o Pralhad Nagare,
Age 40 years, Occ. Agriculturist,

All R/o Civil Colony, Deulgaon Raja,
Tq. Deulgaon Raja, Dist. Buldhana.

...Petitioner
(Ori. Claimants)

Versus

1. The State of Maharashtra
Through Collector,
Jalna
2. The Special Land Acquisition Officer,
Khadakpurna Project, Krushanakhore,
Jalna.
3. Executive Engineer,
Khadakpurna Project, Deulgaon Mahi,
Tq. Deulgaon Raja, Dist. Buldhana

...Respondents
(Ori. Respondents)

...

Mr. Sachin S. Deshmukh, Advocate for petitioners.
Mr. S. B. Deshpande, Advocate for respondent no. 3.
Mr. S. N. Morampalle, Assistant Government Pleader for
respondents no. 1 and 2.

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[CORAM: SUNIL P. DESHMUKH, J.]
Date: 9th October, 2018

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. Petitioners who are legal heirs of original claimant in Land Acquisition Reference bearing no. 2154 of 2010, pending before the 6th joint civil judge, senior division, Jalna, are before this court against order dated 5th January, 2017, passed on application Exhibit-38 imposing cost of Rs.10,000/- payable to respondent no. 1 and respondent no. 2. Run up to present petition shows that original claimant-father of present petitioners had been prosecuting matter in reference court.

3. In paragraph 2 of application Exhibit-38, it has been adverted to that after prosecution of matter for sometime, petitioners could not attend to the same due to the circumstances as are appearing in said paragraph. Paragraph no. 4 of impugned order would show original claimant had filed application for amendment.

Subsequently, he died on 23rd March, 2016. Thereafter, present petitioners had filed application for bringing them on record as legal heirs of deceased original claimant. They have accordingly been brought on record and the matter had been fixed for evidence, however, petitioners could not adduce evidence in hard-pressed circumstances and as such, no evidence order was passed. Thereafter, petitioners had on 29th November, 2016 applied under Exhibit -38 for setting aside no evidence order dated 16th November, 2016 and permitting them to lead evidence. The same has been allowed but with costs of Rs.10,000/- to respondents no. 1 and 3.

4. Learned counsel for petitioners states that land holding of petitioners has been small, and with acquisition of their land, the families have been deprived of source of income and the amount awarded is even meagre. In the circumstances, the economic condition of the petitioners had worsened. Costs of Rs. 10,000/- to be paid to respondents no. 1 and 3 for the petitioners who are poor agriculturists and have no source of income worth the name to earn their livelihood is difficult to meet with. He

submits that court ought to have considered that after bringing legal heirs of deceased original claimant on record after petitioners filed application Exhibit-38, the evidence came to be closed. He further submits that matter before reference court has not proceeded further.

5. Learned counsel for respondent no. 3, Mr. S. B. Deshpande and Mr. S. N. Morampalle, learned Assistant Government Pleader for respondents no. 1 and 2, submit that discretionary order has been passed by the court and the matter has been pending since 2010, however, they are not in position to question veracity of economic position stated by petitioners.

6. Having regard to overall circumstances and considering that the petitioners are land losers and particularly looking at that they are small land holders, it appears to be a case wherein imposition of costs would be rather harsh on them and may not be proper.

7. In view of aforesaid, petition succeeds. Impugned order passed by the reference court is set aside. Reference would be disposed of as early as possible,

preferably by the end of this financial year. Parties to cooperate the court in expeditious disposal of the reference.

8. Rule made absolute as aforesaid. Writ petition disposed of.

[SUNIL P. DESHMUKH, J.]