

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

**WRIT PETITION NO. 9438 OF 2019**

**KAILAS RAJARAM CHAUDHARI AND ANOTHER  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER**

...  
Advocate for the Petitioners : Shri Y. D. Kale  
AGP for Respondent Nos. 1 and 2 : Shri N. T. Bhagat

...

**CORAM : RAVINDRA V. GHUGE, J.**

**DATED : 1<sup>st</sup> AUGUST, 2019.**

...

***PER COURT :***

1. The learned Advocate for the petitioners prays for leave to add prayer Clause B-1 to challenge the order dated 19/01/2017 passed by the LAR Court. Leave granted. Addition be carried out forthwith.

2. The petitioners are aggrieved by the order of the LAR Court dated 19/01/2017, by which, LAR No. 1/2011 was dismissed. The ground for dismissal was said to be that the Executive Engineer of Minor Irrigation Department, Aurangabad was not impleaded as a respondent. The petitioners approached the same Court with an application

bearing MARJI No. 7/2017 filed on 04/02/2017 which is on the 15<sup>th</sup> Day. A grievance was made that the order was passed in the absence of the parties. The evidence was closed on 04/01/2017 and thereafter, the proceedings were dismissed on 19/01/2017.

3. By the second impugned order dated 03/01/2019, the learned Court has concluded that the LAR proceedings were not dismissed in default but by a speaking order and neither Order IX Rule 8 nor Order IX Rule 9 would be attracted so as to restore the original proceedings.

4. The learned AGP points out that the LAR Court has, closed the evidence of the petitioners as they were absent and proceeded to deliver its judgment on 19/01/2017 concluding that the proceedings deserve to be dismissed for non joinder of necessary party. The learned Court has rightly concluded that it cannot recall its own order since it is not an order which would be covered by Order IX Rules 8 or 9 of the Code of Civil Procedure.

5. The learned Advocate for the petitioner submits that he has challenged even the order dated 19/01/2017 which has been passed only on account of the absence of the petitioners. Their evidence was closed and, therefore, they were virtually rendered defenceless. No issue as regards non joinder of a necessary party, was framed by the LAR Court.

6. Considering the above and taking into account that these petitioners are agriculturists who have lost their land in a public project, they are virtually rendered remediless by the order dated 19/01/2017. The MARJI application was not maintainable and, therefore, the second order dated 03/01/2019 would not call for an interference and the said application, therefore, deserves to be disposed off.

7. In view of the above, this petition is partly allowed. The impugned order dated 19/01/2017 is quashed and set aside and LAR No. 01/2011 is restored to the file of the learned Civil Judge Senior Division, Vaijapur.

8. The litigating sides shall appear before the LAR Court on

26/08/2019.

9. In the event, the petitioners move an application for addition of a party, the LAR Court would consider the same on its own merits. So also the applicants would be at liberty to lead oral evidence without seeking unnecessary adjournments. The petitioner shall be precluded from seeking adjournments on unreasonable grounds and shall fully cooperate with the Trial Court for an expeditious decision. The Trial Court would endeavour to decide LAR No. 1/2011 as expeditiously as possible and preferably on or before 29/02/2020. In the event, these petitioners succeed in the proceeding, they shall be deprived of the interest component on the enhanced amount from 19/01/2017 till the passing of this order.

**(RAVINDRA V. GHUGE, J.)**

shp/-