

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12795 OF 2019

Walmik s/o Trimbak Tupe
Age 56 years, Occ. Agriculture
R/o. At post Babhulgaon,
Tq. Vaijapur, District Aurangabad

...Petitioner

versus

1. The State of Maharashtra
Through Special Land Acquisition
Officer, Jayakwadi Project
Collector Office at Aurangabad

2. Executive Engineer,
Minor Irrigation Division No.1,
Aurangabad
Tq. and District Aurangabad

...Respondents

.....
Mr. Yogesh D. Kale advocate for the petitioner
Mr. K. B. Jadhavar, A.G.P. for respondent No.1-State
Mr. S. G. Sangle, advocate for respondent No.2.

.....

WITH
WRIT PETITION NO. 3153 OF 2015

Anna s/o Vithoba Wagh
Age major, Occ. Agriculture
R/o. Babra, Tq. Sillod,
District Aurangabad

...Petitioner

versus

1. The State of Maharashtra
Through its Secretary of
Education and Employment
Department, Mantralaya, Mumbai

2. The Special Land Acquisition Officer,
Jaikwadi Project-1, Collector Office
Aurangabad

3. Executive Engineer,
Minor Irrigation Local Division No.1
Aurangabad

...Respondents

.....
 Ms. Maya R. Jamdhade, advocate for the petitioner
 Mr. K. B. Jadhavar, A.G.P. for respondent Nos.1 and 2

WITH
 WRIT PETITION NO. 14380 OF 2019

Ashok s/o Parasram Jagtap
 Age major, Occ. Agriculture
 R/o. Ballalisagaj, Tq. Vaijapur,
 District Aurangabad ...Petitioner

versus

1. The State of Maharashtra
 Through Collector, Aurangabad
 Through its irrigation department
 Mantralaya, Mumbai
2. The Special Land Acquisition Officer,
 Krushna Khore, Aurangabad
 and Sub Divisional officer, Vaijapur
 Tq. Vaijapur, District Aurangabad
3. Executive Engineer,
 Minor Irrigation (Local) Division
 Aurangabad ...Respondents

.....
 Ms. Maya R. Jamdhade, advocate for the petitioner
 Mr. A. M. Phule, A.G.P. for respondent No.1

WITH
 WRIT PETITION NO. 15446 OF 2019

Baburao s/o Nagnath Wazire
 Age 70 years, Occ. Agriculture
 R/o. Babhalgaon,
 Tq. and district Latur ...Petitioner

versus

1. The State of Maharashtra
 Through Collector, Latur
2. The Executive Engineer,
 Local Minor Irrigation Division
 Latur

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3. The Special Land Acquisition Officer
Local Minor Irrigation Division,
Latur ...Respondents

.....
Mr. S. S. Manale, advocate for the petitioner
Mr. K. B. Jadhavar, A.G.P. for respondent Nos.1 and 3

.....

WITH
WRIT PETITION NO. 15447 OF 2019

Govind s/o Kashinath Gunthe
Age 36 years, Occ. Agriculture
R/o. Babhalgaon,
Tq. and district Latur ...Petitioner

versus

1. The State of Maharashtra
Through Collector, Latur
2. The Executive Engineer,
Local Minor Irrigation Division
Latur
3. The Special Land Acquisition Officer
Local Minor Irrigation Division,
Latur ...Respondents

.....
Mr. S. S. Manale, advocate for the petitioner
Mr. K. B. Jadhavar, A.G.P. for respondent Nos.1 and 3

.....

WITH
WRIT PETITION NO. 15448 OF 2019

Tarunabai Rajendra Patil
Age 36 years, Occ. Agriculture
R/o. Virwade, Tq. Chopda
District Jalgaon ...Petitioner

versus

1. The State of Maharashtra
Through the Collector, Jalgaon
2. The Special Land Acquisition Officer
Uppar Tapi project (Hatnur)/Minor Irrigation
Jalgaon, District Jalgaon

3. The Executive Engineer,
Uppar Tapi project (Hatnur)/Minor Irrigation
Chopda, Tq. Chopda,
District Jalgaon

...Respondents

.....
Mr. V. B. Patil, advocate for the petitioner
Mr. K.B. Jadhavar, A.G.P. for respondent Nos.1 and 2
Mrs. Vaishali D. Jadhav-Patil, advocate for respondent No.3
.....

WITH
WRIT PETITION NO. 15449 OF 2019

Pandurang @ Pandhari Tukaram Bhosale
(Died) through His Legal heirs

- 1) Pralhad Pandurang @ Pandhari Bhosale
Age 74 years, Occ. Agriculture
R/o. Sangvi (Bhi), Tq. Omerga
District Osmanabad
at present R/o. Padmanagar Society
near Usha Kiran Talkies
Latur, District Latur
- 2) Shivaji Pandurang @ Pandhari Bhosale
Age 66 years, Occ. Agriculture
R/o. Sangvi (Bhi), Tq. Omerga
District Osmanabad
at present R/o. Shriram Theater,
Omerga, Tq. Omerga,
District Osmanabad
- 3) Waman Pandurang @ Pandhari Bhosale
Age 47 years, Occ. Service
R/o. As above
- 4) Sham Pandurang @ Pandhari Bhosale
Age 58 years, Occ. Agriculture & Service
R/o. Sangvi (Bhi), Tq. Omerga
District Osmanabad
at present R/o. Sane Guruji Nagar,
Omerga, Tq. Omerga,
District Osmanabad

...Petitioners

versus

1. The State of Maharashtra
Through the Collector, Osmanabad
2. The Special Land Acquisition Officer

Krishna Khore Vikas Mahamandal
Office, Osmanabad

3. The Executive Engineer,
Osmanabad Medium Project,
Osmanabad

...Respondents

.....

Mr. Mahesh S. Patil, advocate for the petitioners
Mr. K. B. Jadhavar, A.G.P. for respondent No.1
Mr. S. G. Sangle, advocate for respondent No.3

.....

WITH
WRIT PETITION NO. 15450 OF 2019

Diwakar s/o Prabhakar Chopade
Age 44 years, Occ. Agriculture and service
R/o. Sawaladbara, Tq. Soyegaon
District Aurangabad

...Petitioner

versus

1. The Sub Divisional Officer
(Land Acquisition Officer),
Sillod, District Aurangabad
2. The Executive Engineer (Civil),
Maharashtra State Electricity Board,
Aurangabad, District Aurangabad

...Respondents

.....

Mrs. Anita A. Gadekar, advocate for the petitioner
Mr. K.B. Jadhavar, A.G.P. for respondent No.1

.....

WITH
WRIT PETITION NO. 15451 OF 2019

Santosh Harsay Agrawal
Age 56 years, Occ. Agriculture
R/o. Virwade, Tq. Chopda
District Jalgaon

...Petitioner

versus

1. The State of Maharashtra
Through the Collector, Jalgaon
2. The Special Land Acquisition Officer
Uppar Tapi Project (Hatnur)/Minor Irrigation

Jalgaon, District Jalgaon

3. The Executive Engineer,
Uppar Tapi project (Hatnur)/Minor Irrigation
Chopda, Tq. Chopda,
District Jalgaon ...Respondents

.....

Mr. V.B. Patil, advocate for the petitioner
Mr. K.B. Jadhavar, A.G.P. for respondent Nos.1 and 2
Mrs. Vaishali D. Jadhav-Patil, advocate for respondent No.3

.....

WITH
WRIT PETITION NO. 15452 OF 2019

Kailas Bhiva Thakur
Age 45 years, Occ. Agriculture
R/o. Virwade, Tq. Chopda
District Jalgaon ...Petitioner

versus

1. The State of Maharashtra
Through the Collector, Jalgaon
2. The Special Land Acquisition Officer
Uppar Tapi Project (Hatnur)/Minor Irrigation
Jalgaon, District Jalgaon
3. The Executive Engineer,
Uppar Tapi Project (Hatnur)/Minor Irrigation
Chopda, Tq. Chopda,
District Jalgaon ...Respondents

.....

Mr. V. B. Patil, advocate for the petitioner
Mr. K. B. Jadhavar, A.G.P. for respondent Nos.1 and 2
Mrs. Vaishali D. Jadhav-Patil, advocate for respondent No.3

.....

WITH
WRIT PETITION NO. 15453 OF 2019

Sneha Pravin Agrawal
Age 40 years, Occ. Agriculture
R/o. Virwade, Tq. Chopda
District Jalgaon ...Petitioner

versus

1. The State of Maharashtra
Through the Collector, Jalgaon
 2. The Special Land Acquisition Officer
Uppar Tapi Project (Hatnur)/Minor Irrigation
Jalgaon, District Jalgaon
 3. The Executive Engineer,
Uppar Tapi Project (Hatnur)/Minor Irrigation
Chopda, Tq. Chopda,
District Jalgaon
- ...Respondents

.....

Mr. V.B. Patil, advocate for the petitioner
 Mr. K.B. Jadhavar, A.G.P. for respondent Nos.1 and 2
 Mrs. Vaishali D. Jadhav-Patil, advocate for respondent No.3

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CORAM : V. K. JADHAV, J.
DATED : 17th JANUARY, 2020

JUDGMENT :-

1. Rule. Rule made returnable forthwith. By consent, heard finally at admission stage.
2. Being aggrieved by the judgment and orders passed by the Reference Courts in all Land Acquisition References, thereby dismissing the Land Acquisition References filed by the petitioners herein, these writ petitions have been preferred raising common question of law and as such all these writ petitions are being decided by this common judgment.
3. The petitioners herein being aggrieved and dissatisfied with the awards passed by the Land Acquisition Officers, had preferred Land Acquisition References as per the details given below:-

Sr. No.	LAR No. and date of order	Name of Reference Court	W.P. No.		Name of petitioner
1	205 of 2011 10.01.2017	C.J.S.D. Vaijapur	12795 2019	of	Walmik Trimbak Tupe
2	243 of 2007 05.09.2012	2 nd Jt. C.J.S.D. Aurangabad	3153 2015	of	Anna Vithoba Wagh
3	155 of 2010 10.10.2018	C.J.S.D. Vaijapur	14380 2019	of	Ashok Parasram Jagtap
4	259 of 2010 09.03.2017	Jt. C.J.S.D. Latur	15446 2019	of	Baburao Nagnath Wazire
5	262 of 2010 09.03.2017	Jt. C.J.S.D. Latur	15447 2019	of	Govind Kashinath Gunthe
6	98 of 2013 02.01.2017	C.J.S.D. Amalner	15448 2019	of	Tarunabai Rajendra Patil
7	180 of 2011 30.07.2015	C.J.S.D. Omerga	15449 2019	of	Pandurang @ Pandhari Tukaram Bhosale (Died through L.Rs.) Pralhad Pandurang @ Pandhari Bhosale and others
8	204 of 2009 09.12.2016	6 th Joint C.J.S.D. Aurangabad	15450 2019	of	Diwakar Prabhakar Chopade
9	93 of 2013 02.01.2017	C.J.S.D. Amalner	15451 2019	of	Santosh Harsay Agrawal
10	101 of 2013 02.01.2017	C.J.S.D. Amalner	15452 2019	of	Kailash Bhiva Thakur
11	96 of 2013 02.01.2017	C.J.S.D. Amalner	15453 2019	of	Sneha Pravin Agrawal

4. It is almost a common ground raised by all the petitioners that due to some unavoidable circumstances the petitioners could not adduce the evidence before the Reference Court. The Reference Court has considered the award and the sale instances relied upon by the Special Land Acquisition Officer and dismissed the Land Acquisition References. In some of the cases, the petitioners have filed applications before the Reference Court for restoration of the said Land Acquisition Reference, however, those applications came

to be rejected by the Reference Court.

5. Learned counsel for the petitioners in respective writ petitions, submit that the Division Bench came to be constituted by the Hon'ble the Chief Justice to consider "*where a reference under Section 18 of the Land Acquisition Act was dismissed otherwise than on merits, a civil revision application under Section 115 of the Civil Procedure Code was permissible and to consider also as to whether the appeal is maintainable*". The Division Bench of this Court (Coram: Prasanna B. Varale and Avinash G. Gharote, JJ.) while dealing with the said question, by referring the case of ***Khazan Singh vs. Union of India, reported in 2002 (2) SCC 242***, has held that the reference has to be decided by the civil court on the basis of the material before it, on merits, alongwith the other findings recorded as summarized in para 31 of the said judgment. Learned counsel submit that in view of the observations made by the Supreme Court in the case of ***Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona and another, reported in AIR 1988 SC 1652***, the impugned orders passed by the Reference Courts are liable to be quashed and set aside.

6. Learned A.G.P. for the respondent State and its authorities submit that though the reference petitions are pending since long, the petitioners herein failed to lead oral and documentary evidence to substantiate their claim for enhanced compensation. Learned Judge

of the Reference Court has recorded finding to the effect that the Special Land Acquisition Officer has awarded compensation as per the market price and there is no evidence produced by the petitioners claimants to show that the compensation awarded by the Special Land Acquisition Officer is inadequate. Learned A.G.P. submit that even learned Judges of the respective Reference Courts have also considered the sale instances referred in the awards and also the opinion recorded by the S.L.A.O. while discussing and analyzing the sale instances and other evidence for awarding the compensation. The learned A.G.P. submit that all Land Acquisition Reference petitions came to be decided on merits and as such, these writ petitions are not maintainable. All writ petitions are thus liable to be dismissed.

7. On perusal of the judgment delivered the Division Bench of this Court (Coram: Prasanna B. Varale and Avinash G. Gharote, JJ.) in civil revision application No. 63 of 2017 and other connected matters, in para 31 of the judgment, the Division Bench has made the following observations:-

“31. In the result, we hold as under :

(A) that a civil revision application u/s. 115 of C.P.C. against, any order passed, otherwise than on merits, in an application u/s. 18 of the L.A. Act by the Civil Court, is not maintainable.

(B) We also hold that the judgments in the case of **Kawadu Madhav Bansod, Appasaheb Mohanrao Chede, Kamlakar Laxman Suryawanshi and Irnappa @ Irappa Angire** (supra), holding that a civil revision application is maintainable, are rendered per-incuriam to the statutory provisions as contained in the proviso to sub-section (1) of section 115 of the Code of Civil Procedure and are also rendered per-incuriam in view of the judgment of the Hon'ble Apex Court in the case of **Shiv Shakti** (supra).

(C) We also hold that an 'order otherwise than on merits', passed in proceedings u/s. 18 of the L.A. Act, by the Civil Court, cannot be considered as an award and, therefore, does not amount to a decree, as defined in Section 2(2) of C.P.C. by virtue of the deeming provision u/s. 26(2) of the L.A. Act and, therefore, an appeal against it also would not be maintainable.

(D) We hold that the judgment in **Venkat's** case (supra), holding that an appeal is maintainable, is on a different footing altogether considering that the judgment passed therein was on merits after considering the evidence and, therefore, was an award and consequently a decree u/s. 2(2) of C.P.C. by application of Section 26(2) of the L.A. Act.

(E) We further hold that a reference u/s. 18 of the L.A. Act, in the light of the mandate as laid down by the Hon'ble Apex Court in the case of **Khazan Singh** (supra), has to be decided by the Civil Court on the basis of the material before it, on merits.

(F) We further hold that an 'order passed otherwise than on merits' in proceedings u/s. 18 of the L.A. Act by the Civil Court, in case it has been so passed, would be susceptible to a challenge under Article 227 of the Constitution of India before the High Court in its supervisory jurisdiction, or u/o IX Rule 9

r/w. Sec. 151 CPC. by virtue of section 53 of the L.A. Act.”

8. In the case of ***Khazan Singh vs. Union of India, reported (supra)*** the Supreme Court has held that the Civil Court hearing a reference has no jurisdiction to dismiss reference for default.

9. In the case of ***Chimanlal Hargovinddas vs. Special Land Acquisition Officer, Poona and another, (supra)*** the Supreme Court, in para 4 of the judgment, has made the following observations:-

“4. The following factors must be etched on the mental screen:

(1) A reference under section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition officer and the material utilized by him for making his valuation cannot be utilized by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition officer, as if it were an appellate court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on

the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under sec. 4 of the Land Acquisition Act (dates of Notifications under secs. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under sec. 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) only genuine instances have to be taken into account. (Some times instances are rigged up in anticipation of Acquisition of land).

(9) Even post notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the

norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has there after to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

Plus factors	Minus factors
1. Smallness of size	1. largeness of area
2. proximity to a road.	2. situation in the interior at a distance from the road
3. frontage on a road	3. narrow strip of land with very small frontage compared to depth.
4. nearness to developed area.	Lower level requiring the depressed portion to be filled up.
5. regular shape	5. remoteness from developed locality.
6. level vis-a-vis land under acquisition	6. some special disadvantageous factor which would deter a purchaser
7. special value for an owner of an adjoining property to whom it may have some very special advantage.	

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For

instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds cannot be compared with a large tract or block of land of say 10000 sq. yds or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense."

10. In para 4 (1) of the aforesaid case, the Supreme Court observed that a reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the said material is produced and proved before the court. In almost all the land Acquisition references, which are subject matter of the present writ petitions, the learned Judges of the respective Reference Courts *suo moto* gone through the award and sale instances relied upon by the Land Acquisition Officers even

though the said sale instances are not produced and proved before the Reference Courts.

11. In view of the same, even though there was an attempt on the part of Reference Courts to decide the reference on merits, however, in the given set of facts and in terms of the ratio laid down by the Supreme Court in the cases, as referred above, I conclude that the Land Acquisition Reference petitions, which are subject matter of these writ petitions, are not decided on merits and as such, the impugned judgment and orders passed by the respective Reference Courts in Land Acquisition References, as mentioned in the chart in para 3 of this judgment, are not sustainable in the eyes of law and thus required to be quashed and set aside.

12. Learned A.G.P. in the alternate vehemently submits that the petitioners are at fault in not adducing oral and documentary evidence for long period to substantiate their case and for that purpose the State should not be held liable to pay the interest. However, it is for the Reference Courts to consider the said issue and pass appropriate orders considering the facts and circumstances of each and every case and no general direction can be given in this regard. In view of the discussion above, I proceed to pass the following order:-

O R D E R

- I. All these writ petitions are partly allowed.
- II. The judgment and orders dated 10.01.2017 passed by Civil Judge, Senior Division, Vaijapur in L.A.R. No. 205 of 2011 (writ petition No. 12795 of 2019), dated 05.09.2012 passed by 2nd Joint Civil Judge, Senior Division, Aurangabad in L.A.R. No. 243 of 2007 (writ petition No. 3153 of 2015), dated 10.10.2018 passed by Civil Judge, Senior Division, Vaijapur in L.A.R. No. 155 of 2010 (writ petition No. 14380 of 2019), dated 09.03.2017 passed by Joint Civil Judge, Senior Division, Latur in L.A.R. No. 259 of 2010 (writ petition No. 15446 of 2019), dated 09.03.2017 passed by Joint Civil Judge, Senior Division, Latur in L.A.R. No. 262 of 2010 (writ petition No. 15447 of 2019), dated 02.01.2017 passed by Civil Judge, Senior Division, Amalner in L.A.R. No. 98 of 2013 (writ petition No. 15448 of 2019), dated 30.07.2015 passed by Civil Judge, Senior Division, Omerga in L.A.R. No. 180 of 2011 (writ petition No. 15449 of 2019), dated 09.12.2016 passed by 6th Joint Civil Judge, Senior Division, Aurangabad in L.A.R. No. 204 of 2009 (writ petition No. 15450 of 2019), dated 02.01.2017 passed by Civil Judge, Senior Division, Amalner in L.A.R. No. 93 of 2013 (writ petition No. 15451 of 2019), dated 02.01.2017 passed by Civil Judge, Senior Division, Amalner in L.A.R. No. 101 of 2013 (writ petition No. 15452 of 2019) and dated 02.01.2017 passed by Civil Judge, Senior Division, Amalner in L.A.R. No. 96 of 2013 (writ petition No. 15453 of 2019) are hereby quashed and set aside.
- III. All the Land Acquisition References are hereby restored to its respective original position.

- IV. The concerned Reference Courts shall permit the respective petitioner/s-claimant/s to lead oral and documentary evidence in support of his/her/their contentions so also permit the respondent-State or the acquiring body, as the case may be, to lead oral and documentary evidence in support of their rival contentions.
- V. The petitioners shall appear before the concerned Reference Court in their respective Land Acquisition References on 24.02.2020.
- VI. The concerned Reference Court shall dispose of the Land Acquisition Reference as expeditiously as possible, preferably within a period of six months from 24.02.2020.
- VII. The petitioners shall cooperate the concerned Reference Court to dispose of the pending reference petitions in time bound manner, as directed by this court.
- VIII. Writ petitions are accordingly disposed of. Rule made absolute in the above terms.

(V. K. JADHAV, J.)

rlj/