

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1429 OF 2021

Pandurang s/o. Bhagwanata Bhagnure died through Lrs. & Ors.
Vs.The State of Maharashtra & Ors.

AND

WRIT PETITION NO.1433 OF 2021

Ankush Govind Bhagnure Vs. The State of Maharashtra & Ors.

AND

WRIT PETITION NO.1442 OF 2021

Maroti Pandurang Bhagnure Vs. The State of Maharashtra &
Ors.,

AND

WRIT PETITION NO.1443 OF 2021

Anandrao Subha Bhagnure Vs. The State of Maharashtra & Ors.,

AND

WRIT PETITION NO.1445 OF 2021

Chandrabhagabai Kerba Kendre Vs. The State of Maharashtra &
Ors.

AND

WRIT PETITION NO.1447 OF 2021

Babu Shankar Kendre Vs. The State of Maharashtra & Anr.

Mr.S.N. Janakwade, Advocate for the petitioners.

Mr.R.D. Sanap, AGP for respondent/State [WP No.1429,
1433, 1443, 1447 of 2021].

Mr.S.B. Pulkundwar, AGP for respondent/State [WP No.1442
and 1445 of 2021].

CORAM : N.J.JAMADAR, J.

DATE : 08.03.2021

PC :-

01. The challenge in these petitions is to the judgment and order passed by the Reference Courts, in the respective land acquisition references, whereby the land acquisition references were dismissed for failure of the

claimants to adduce evidence.

02. The details of the proceedings and the date and the particulars of the judgment and order impugned in the respective petitions are as under:-

Sr.No.	Writ Petition No.	LAR No.	Date of impugned Judgment and order
1.	WP/1429/2021	252/2009	01.07.2014
2.	WP/1433/2009	239/2009	02.08.2014
3.	WP/1442/2021	183/2011	23.03.2015
4.	WP/1443/2021	242/2009	26.12.2014
5.	WP/1445/2021	491/2009	30.04.2014
6.	WP/1447/2021	238/2009	02.08.2014

03. It is a common ground that the petitioners-claimants in the respective petitions could not lead evidence in support of the claims in the references on account of unavoidable circumstances. In any event, the Reference Court could not have dismissed the references otherwise than on merits. The impugned orders, which have been simply passed for default in appearance and failure to lead evidence, are thus legally unsustainable.

04. The question is no longer res-integra. A Division Bench of this Court in the case of Diwakar Prabhakar Chopade Vs. The Sub-Divisional Officer & Anr., 2019(6)Mh.L.J.591, has culled out the principles as under:-

"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."

05. In the backdrop of the aforesaid enunciation of the legal position, the order dismissing the land references made under section 18 of the Land Acquisition Act, 1894 otherwise than on merits is legally infirm and untenable.

06. It would be contextually relevant to note that, following the aforesaid pronouncement in the case of **Diwakar Prabhakar Chopade (Supra)**, this Court has set aside such orders of dismissing the land references otherwise than on merits in the case of Walmik s/o. Trimbak Tupe Vs. The State of Maharashtra & Anr. [Writ

petition No.12795 of 1990] and connected matters by judgment and order dated 17th January, 2020, and in the case of Dhangir Pandurang Gosavi & The State of Maharashtra & Ors. [Writ Petition No.2698 of 2021] and connected matters by judgment and order dated 10th February, 2021.

07. Resultantly, all these writ petitions deserve to be allowed. The land references are required to be restored to the file of the concerned Court. Hence, the following order :-

08. All the writ petitions stand allowed in the following terms:-

The judgment and orders passed by the Civil Judge, Senior Division, Kandhar, Dist. Nanded in LAR No.252 of 2009 dated 01.07.2014, LAR No.239 of 2009 dated 02.08.2014, LAR No.242 of 2009 dated 26.12.2014, LAR No.491 of 2009 dated 30.04.2014, LAR No.238 of 2009 dated 02.08.2014 and judgment and order passed by Civil Judge, Senior Division, Link Court, Mukhed, Dist. Nanded in LAR No.183 of 2011 dated 23.03.2015 are set aside.

The above numbered Land Acquisition References are hereby restored to their respective original position.

The concerned Reference Courts shall permit the respective petitioner/s-claimant/s to lead oral and documentary evidence in support of his/her/their claims 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 contentions.

The petitioners shall appear before the concerned Reference Court in their respective Land Acquisition References on 26.04.2021.

The concerned Reference Court shall dispose of the Land Acquisition Reference as expeditiously as possible, preferably within a period of one year from 26.04.2021.

The parties shall cooperate the concerned Reference Court to dispose of the pending references in time bound manner, as directed by this Court.

Writ petitions are accordingly disposed of.

[N. J. JAMADAR, J.]