

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 WRIT PETITION NO.2698 OF 2021

DHANGIR PANDURANG GOSAVI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Ingale Vivekanand V.
AGP for Respondents: Mr. K B Jadhavar
Advocate for Respondent no.3 : Smt. S D Shelke

..

AND

933 WRIT PETITION NO.2747 OF 2021

BASHIR CHANDRAKANT PATHAN DIED THR LRS IRPHAN BASHIR
PATHAN
VERSUS
THE STATE OF MAHARASHTRA THR COLLECTOR OSMANABAD

...
Advocate for Petitioners : Mr. Ingale Vivekanand V.
AGP for Respondents: Mr. K B Jadhavar

...

AND

935 WRIT PETITION NO.2752 OF 2021

SUDHIR MADHAVACHARYA JOSHI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Petitioner : Mr. Ingale Vivekanand V.
AGP for Respondents: Mr K B Jadhavar.

...

AND

943 WRIT PETITION NO.2771 OF 2021

VITHAL MARUTI JIWANGE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Ingale Vivekanand V.
AGP for Respondents: Mr K B Jadhavar
Advocate for Respondent no.3 : Smt. S D Shelke

...

AND

947 WRIT PETITION NO.2775 OF 2021

WAMAN RANGRAO PAWAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THR COLLECTOR OSMANABAD

...
Advocate for Petitioners : Mr Ingale Vivekanand V.
AGP for Respondents: Mr K B Jadhavar.

...

AND

995 WRIT PETITION NO.381 OF 2021
WITH CA/10578/2019 IN WP/381/2021

BIRU DHONDAPPA GHODAKE
VERSUS
THE STATE OF MAHARASHTRA, THROUGH COLLECTOR
OSMANABAD, DIST. OSMANABAD AND OTHER

...
Advocate for Petitioner : Mr. Ingale Vivekanand V.
AGP for Respondents: Mr. K B Jadhavar
Advocate for Respondent 3 : Smt. S.D. Shelke

...

AND

996 WRIT PETITION NO.382 OF 2021
WITH CA/9585/2018 IN WP/382/2021

PANDURANG KRISHNA INGALE (DIED) THROUGH L.RS. RUKMINBAI
PANDURANG INGALE AND ANOTHER
VERSUS

THE STATE OF MAHARASHTRA, THROUGH COLLECTOR, LATUR

...
Advocate for Petitioners : Mr. Ingale Vivekanand V.
AGP for Respondents: Mr K B Jadhavar.

...

AND

997 WRIT PETITION NO.383 OF 2021
WITH CA/13669/2018 IN WP/383/2021

GUNDU SHRIDHAR POTDAR (DIED) THROUGH L.RS. BHAGWAT
GUNDU POTDAR AND OTHER
VERSUS

THE STATE OF MAHARASHTRA THROUGH COLLECTOR
OSMANABAD,DIST. OSMANABAD AND ANOTHER

...
Advocate for Petitioners : Mr. Ingale Vivekanand V.
AGP for Respondents: Mr R D Sanap

...

998 WRIT PETITION NO.384 OF 2021
WITH CA/9133/2018 IN WP/384/2021

LIMBRAJ TUKARAM RAJGURU
VERSUS
THE STATE OF MAHARASHTRA, THROUGH COLLECTOR
OSMANABAD

...
Advocate for Petitioner : Mr. Ingale Vivekanand V.
AGP for Respondents: Mr. S B Pulkundwar
...

AND

999 WRIT PETITION NO.385 OF 2021
WITH CA/9586/2018 IN WP/385/2021

DHONDABAI RAMRAO SALUNKE
VERSUS
THE STATE OF MAHARASHTRA, THROUGH COLLECTOR,
OSMANABAD

...
Advocate for Petitioner : Mr. Ingale Vivekanand V.
AGP for Respondents: Mr S P Deshmukh
...

AND

1000 WRIT PETITION NO.386 OF 2021
WITH CA/7413/2019 IN WP/386/2021

ZUMBAR SHRINIWAS KULKARNI
VERSUS
THE STATE OF MAHARASHTRA TROUGH COLLECTOR, OSMANABAD

...
Advocate for Petitioner : Mr. Ingale Vivekanand V.
AGP for Respondents: Mr K B Jadhavar
...

AND

1001 WRIT PETITION NO.387 OF 2021
WITH CA/10577/2019 IN WP/387/2021

PRABHAKAR YESHWANT PATIL
VERSUS
THE STATE OF MAHARASHTRA TROUGH COLLECTOR
OSMANABAD, DIST. OSMANABAD AND OTHER

...
Advocate for Petitioner : Mr. Ingale Vivekanand V.
AGP for Respondents: Mr K B Jadhavar
Advocate for Respondent 3 : Smt. S.D. Shelke
...

-4-

AND

1002 WRIT PETITION NO.388 OF 2021
WITH CA/9879/2017 IN WP/388/2021

MALLIKARJUN APPANNA MANALE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA TROUGH COLLECTOR OSMANABAD
AND OTHERS

...
Advocate for Petitioners : Mr. Ingale Vivekanand V.
AGP for Respondents: Mr R D Sanap
Advocate for Respondent 3 : Smt. S.D. Shelke

...
AND

1003 WRIT PETITION NO.389 OF 2021
WITH CA/1099/2019 IN WP/389/2021

UDHAV PANDURANG JAWALE
VERSUS
THE STATE OF MAHARASHTRA TROUGH COLLECTOR OSMANABAD
AND OTHER

...
Advocate for Petitioners : Mr. Ingale Vivekanand V.
AGP for Respondents: Mr S B Pulkundwar
Advocate for Respondent 3 :Mr. S.D. Shelke

...
AND

1004 WRIT PETITION NO.391 OF 2021
WITH CA/10981/2019 IN WP/391/2021

SURESH GURSIDAPPA INDE
VERSUS
THE STATE OF MAHARASHTRA, HROUGH COLLECTOR
OSMANABAD, DIST. OSMANABAD

...
Advocate for Petitioner : Mr. Ingale Vivekanand V.
AGP for Respondents: Mr K B Jadhavar

...

CORAM : V. K. JADHAV, J.
DATED : 10th FEBRUARY, 2021

PER COURT :-

1. 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 order.

2. 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 the order	Name of the Reference Court	W.P. No.	Name of the petitioner
1	86 of 2008 06.11.2008	C.J.S.D. Omerga	2698 of 2021	Dhangir Pandurang Gosavi
2	275 of 2004 22.08.2006	C.J.S.D. Omerga	2747 of 2021	Bashir Chandkhan Pathan (died) through Lrs. Irphan Bashir Pathan.
3	17 of 2008 (old 145 of 2002) 26.02.2013	C.J.S.D. Omerga	2752 of 2021	Sudhir Madhavacharya Joshi.
4	852 of 2005 (old 355 of 2001) 25.04.2012	C.J.S.D. Omerga	2771 of 2021	Vithal Maruti Jiwange
5	203 of 2013 23.11.2018	2 nd C.J.S.D. Omerga	2775 of 2021	Waman Rangrao Pawar and another.
6	893 of 2005 31.03.2012	C.J.S.D. Omerga	381 of 2021	Biru Dhondappa Ghodake
7	906 of 1998 (old 99 of 1998) 29.10.2005	Adhoc District Judge, Nilanga, Dist. Latur.	382 of 2021	Pandurang Krishna Ingale (Died) through L.Rs. Rukminbai w/o Pandurang Inglae and another.
8	606 of 2005 (old No.284 of 2000) 03.01.2009	C.J.S.D. Omerga	383 of 2021	Gundu s/o Shridhar Potdar (Died) through Lrs. Bhagwat s/o Gundu Potdar and others.
9	148 of 1996 25.03.2011	C.J.S.D. Osmanabad	384 of 2021	Limbraj Tukaram Rajguru

10	06 of 2011 12.01.2016	C.J.S.D. Omerga, Dist. Osmanabad	385 of 2021	Dhondabai Ramrao Salunke.
11	777 of 2009 08.11.2013	C.J.S.D. Omerga, Dist. Osmanabad	386 of 2021	Zumbar Shriniwas Kulkarni
12	656 of 2009 21.01.2016	C.J.S.D. Omerga, Dist. Osmanabad	387 of 2021	Prabhakar Yeshwant Patil
13	62 of 2014 01.01.2016	C.J.S.D. Omerga, Dist. Osmanabad	388 of 2021	Mallikarjun Appanna Manale and another.
14	27 of 2002 08.02.2013	C.J.S.D. Osmanabad	389 of 2021	Udhav Pandurang Jawale.
15	415 of 2004 03.08.2006	C.J.S.D. Omerga, Dist. Osmanabad	391 of 2021	Suresh Gursidappa Inde.

3. 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.

4. 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.

5. 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 to 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.

6. 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."

7. 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.

8. 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."

9. 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.

10. 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 order, are not sustainable in the eyes of law and thus required to be quashed and set aside.

11. 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 06.11.2008 passed by Civil Judge, Senior Division, Omerga in L.A.R. No. 86 of 2008 (writ petition No. 2698 of 2021), dated 22.08.2006 passed by Civil Judge, Senior Division, Omerga in L.A.R. No. 275 of 2004 (old No. 296 of 1994) (writ petition No. 2747 of 2021), dated 26.02.2013 passed by Civil Judge, Senior Division, Omerga in L.A.R. No. 17 of 2008 (old No. 145 of 2002) (writ petition No. 2752 of 2021), dated 25.04.2012 passed by Civil Judge, Senior Division, Omerga in L.A.R. No. 852 of 2005 (Old No. 355 of 2001) (writ petition No. 2771 of 2021), dated 23.11.2018 passed by 2nd Jt. Civil Judge, Senior Division,

Omerga in L.A.R. No. 203 of 2013 (writ petition No. 2775 of 2021), dated 31.03.2012 passed by Civil Judge, Senior Division, Omerga in L.A.R. No. 893 of 2005 (writ petition No. 381 of 2021), dated 29.10.2005 passed by Ad-hoc District Judge, Nilanga, district Latur in L.A.R. No. 906 of 1998 (writ petition No. 382 of 2021), dated 03.01.2009 passed by Civil Judge, Senior Division, Omerga in L.A.R. No. 606 of 2005 (Old 284 of 2000) (writ petition No. 383 of 2021), dated 25.03.2011 passed by Civil Judge, Senior Division, Osmanabad in L.A.R. No. 148 of 1996 (writ petition No. 384 of 2021), dated 12.01.2016 passed by Civil Judge, Senior Division, Omerga in L.A.R. No. 6 of 2011 (writ petition No. 385 of 2021), dated 08.11.2013 passed by Civil Judge, Senior Division, Omerga in L.A.R. No. 777 of 2009 (Old No. 473 of 2003) (writ petition No. 386 of 2021) dated 21.01.2016 passed by the Civil Judge, Senior Division Omerga in L.A.R. No. 656 of 2009 (writ petition No. 387 of 2021), dated 01.01.2016 passed by the Civil Judge, Senior Division, Omerga in L.A.R. No. 62 of 2014 (writ petition No. 388 of 2021), 08.02.2013 passed by the Civil Judge, Senior Division, Osmanabad in L.A.R. No. 27 of 2002 (writ petition No. 389 of 2021) and dated 03.08.2006 passed by the Civil Judge, Senior Division, Omerga in L.A.R. No. 415 of 2004 (old No. 40 of 1996) (writ petition No. 391 of 2021) 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 10.03.2021.
- VI. The concerned Reference Court shall dispose of the Land Acquisition Reference as expeditiously as possible, preferably within a period of six months from 10.03.2021.
- 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.
- IX. In view of disposal of writ petitions, all pending civil applications are also disposed of.

(V. K. JADHAV, J.)

rlj/