

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1767 OF 2019**

Gangabai Purushottam Sakhre & Ors ...Appellants
Versus
Special Land Acquisition Officer ...Respondent

**INTERIM APPLICATION ST. NO. 3464 OF 2021
IN
FIRST APPEAL NO. 1767 OF 2019**

Gangabai Purushottam Sakhre (deceased) ...Appellants
through LRs Alpana Subhash Virkar & Ors
Versus
Special Land Acquisition Officer & Anr ...Respondents

**Mr Eshan Khaire, i/b Shriram S Kulkarni, for the Appellants.
Smt Tanaya Goswani, AGP, for the Respondent-State.**

**CORAM: G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 15th November 2021**

PC:-

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SANKPAL

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1. Admit.

INTERIM APPLICATION ST. NO. 3464 OF 2021 IN FIRST APPEAL NO. 1767 OF 2019:

2. The application is for bringing legal heirs on record. For the reasons stated in the Civil Application, it is made absolute. Amendments are permitted and to be carried out on or before 22nd November 2021 without need of reverification.

FIRST APPEAL NO. 1767 OF 2019

3. Admit. By consent, taken up forthwith for hearing and final disposal.

4. Heard learned counsel for the Appellants and learned AGP for the Respondents. By the impugned Judgment and Order, the reference LAR No. 1104 of 2000 was disposed of on merits on 10th August 2017. It is the contention of the learned Advocate for the Appellants that the Appellants had remained absent and, therefore, at the most, the LAR should have been dismissed for default. However, the learned Judge disposed of the land reference on merits.

5. Mr Khaire, learned Advocate for the Appellants, has relied on order dated 30th August 2019 passed by this Court in First Appeal No. 1091 of 2019. There, the Division Bench of this Court found that the impugned order dated 10th August 2017 passed by the Joint

Civil Judge Senior Division, Alibag in LAR No. 1104 of 2000 clearly showed that the Appellant was absent and in spite of that, the learned Trial Court proceeded with the hearing of the LAR and passed the impugned order by which the LAR was rejected on merits. The Division Bench hearing the First Appeal set aside the trial court order and remanded the reference to the Reference Court for decision on merits after hearing the appellant.

6. Mr Khaire submits that the present case is on an identical footing and should receive a similar order. He is correct in saying that the learned Judge could have dismissed the matter in for default but could not have disposed of the LAR on merits.

7. In view of this, the Judgment and Order dated 10th August 2017 passed in LAR No. 1104 of 2000 by the learned Joint Civil Judge Senior Division, Alibag is quashed and set aside. LAR No. 1104 of 2000 is remanded to the Civil Court for disposal on merits after giving the Appellant an opportunity to appear and make submissions. Mr Khaire on instructions states that the Appellant will not seek adjournments before the Civil Court. We accept the undertaking.

8. The learned Joint Civil Judge Senior Division, Alibag is requested to dispose of the same at the earliest and in any case, within a period of three months from today.

9. The First Appeal is disposed of in these terms. There will be no order as to costs.

10. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)