

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

WRIT PETITION NO. 3464 OF 2022

1. Abasaheb Narayanrao Kawde
(Died Through Legal Heirs)
- 1.A. Padmabai w/o Abasaheb Kawde
Age: 50 years, Occ. Agril,
- 1.B. Deepak Abasaheb Kawde
Age: 45 years, Occ. Agril,
- 1.C. Shrawan Abasaheb Kawde
Age: 43 years, Occ. Agril,
- 1.D. Dnyaneshwar Abasaheb Kawde
Age: 41 years, Occ. Agril,
All R/o Nagapur, Tq. Partur,
Dist. Jalna.

.. **Petitioners**

Versus

1. The State of Maharashtra,
Through its Collector Jalna,
Collector Office, Jalna.
2. The Special Land Acquisition Officer,
(Krishna Khore) at Jalna, Dist. Jalna.
3. The Executive Engineer,
Lower Dudhna Project Division,
Selu, Tal. Selu, Dist. Parbhani.

.. **Respondents**

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Advocate for Petitioner : Mrs. Manjushri Narwade h/f. V.P. Narwade
APP for Respondent-State: Mr. K.B. Jadhavar
Advocate for R/3-Acquiring Body : Mr. S.C. Arora
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CORAM : M.G. SEWLIKAR, J.

DATE : 27th July, 2022

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. The petitioners are assailing the legality and propriety of the judgment and award dated 3rd November, 2008 passed by the learned District Judge, Jalna in LAR No.264/2002, whereby, the District Judge (Reference Court) dismissed the reference for non-prosecution.

3. The petitioners aver that the petition is dismissed as the petitioners failed to lead evidence.

4. I have heard learned counsel Smt. Narwade for the petitioners, Shri Jadhavar learned AGP for the State and learned counsel Shri S.C. Arora for the respondent no.3-acquiring body.

5. Learned counsel for the petitioners submit that Reference Court has no jurisdiction to dismiss the reference for default in appearance of the claimants. The Reference Court has not considered any material on record. She has placed reliance on the case of **Vinayak S/o. Trimbak Tribhuvan V/s. The State of Maharashtra** (*Writ Petition No.3992/2021*) of this Court for this

proposition. She submits that she would waive the interest for the period from the date of the dismissal till the date of filing of the petition.

6. Learned counsel Shri Arora and learned AGP Shri Jadhavar submit that the petitioners have not assigned any reason for inordinate delay of 25 years in preferring the petition. They submit that the State would be unnecessarily put to heavy financial burden and therefore pray for dismissal of the petition.

7. In the Civil Revision Application no.63/2017, the Division Bench of this Court referred to settled legal position in this regard. In para 31, the Division Bench of this Court held thus:

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

(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.

(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. This clearly indicates that reference cannot be dismissed as evidence was not lead. The Reference Court has to consider the record collected by the S.L.A.O. and on that basis the Reference Court can pass the award.

9. A Single Judge of this Court in the case of **Walmik Trimbak Tupe V/s. The State of Maharashtra and Anr.** (*Writ Petition No.12795/2019*) has remitted the matter to the Reference Court by setting aside the orders of dismissal of the reference otherwise than on merits. This is also a reference otherwise on merit. Therefore, it will have to be remitted to the Reference Court. In this view of the matter, the following order is passed:

ORDER

- I) The Writ Petition is allowed.
- II) Judgment and award dated 3rd November, 2008 in LAR No. 264/2002 passed by the District Judge, Jalna is quashed and set aside. LAR is restored to the file of the Reference Court.

- III) The Reference Court shall decide the reference in accordance with law within six months from the receipt of writ. The petitioner shall not be entitled to interest from the date of dismissal of reference till the date of this order.
- IV) Rule made absolute in above terms.

[M.G. SEWLIKAR, J.]