

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2599 OF 2021

Salbaya Irayya Swami Died His LRs..

1. Vishal Salbaya Swami
Age-41 years, Occ- Agril.,
2. Sunil Salbaya Swami
Age- 39 years, Occ- Agril.,
3. Rahul Salbaya Swami
Age- 32 years, Occ- Agril,
All are R/o. Kesgaon, Tq. Tuljapur,
Dist. Osmanabad.

....PETITIONER
[Original Claimant]

Versus

1. The State of Maharashtra
Through The Collector, Osmanabad.
2. Special Land Acquisition Officer,
Manjara Project, at Osmanabad.
3. The Executive Engineer
Irrigation Department,
Zilla Parishad, Osmanabad.

....RESPONDENTS
[Orig. Respondents]

Mr. Ramesh V. Naiknavare h/f. Ms. R.V. Ghogare, Advocate for the Petitioner.

Mr. Y.G. Gujarathi, AGP for State.

Mr. P.P. More, Advocate for Respondent No. 3.

.....
[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 17th AUGUST, 2022

ORAL JUDGMENT :

1. The learned advocate for the petitioners is permitted to correct the prayer clause. Correction to be carried out during the course of the day.

2. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

3. This petition filed under Article 227 of the Constitution of India, impugns the order dated 09.10.2015 passed below Exhibit-1 in Land Acquisition Reference No. 821 of 2011, by the learned 3rd Joint Civil Judge, Senior Division, Osmanabad, thereby rejecting the land acquisition reference as the petitioner failed to adduce evidence.

4. Indisputably the issue involved in this petition is covered by the judgment of this Court (Coram: V.K. Jadhav, J.) in Writ Petition No. 12795 of 2019 and connected writ petitions, wherein this Court has held that the reference has to be decided on merits. Since, in those matters, references were rejected due to failure on the part of the petitioners therein to adduce evidence, this Court has held that the reference Court did not decide the references on merits and therefore set aside the orders passed by the reference Court and restored the references and directed to decide the references on merits.

5. Admittedly, in the present case also the reference is not decided on merits and the same is rejected solely on the ground that the petitioner failed to adduce evidence. The present case is therefore squarely covered by the above-referred decision. Hence, the following order:-

ORDER

- (I) The writ petition is allowed.
- (II) The impugned order dated 09.10.2015 passed by the learned 3rd Joint Civil Judge, Senior Division, Osmanabad, in Land Acquisition Reference No. 821/2011 is hereby quashed and set aside.
- (III) The matter is relegated back to the concerned reference Court for decision on merits, after giving an opportunity to the respective parties.
- (IV) The reference Court shall expedite the hearing of the matter and decide the same within a period of six months from the date of receipt of this order. Parties to co-operate.

Rule is made absolute in the above terms.
No costs.

[NITIN B. SURYAWANSHI, J.]