

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.6551 OF 2022**

**SARASWATIBAI KISANRAO KULKARNI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Mrs. P. G. Sontakke h/f Mr. G. K. Sontakke, Advocate for the
Petitioner.

Mr. S. B. Pulkundwar, AGP for Respondents-State.

Mr. S. C. Arora, Advocate for Respondent No.2.

...

AND

WRIT PETITION NO.6552 OF 2022

**GURUNATH S/O MADHAWARAO MIRKALE (PATIL)(DIED)
THROUGH LEGAL REPRESENTATIVE RAJABAI W/O
GURUNATH MIRKALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Mrs. P. G. Sontakke h/f Mr. G. K. Sontakke, Advocate for the
Petitioners.

Mr. S. B. Pulkundwar, AGP for Respondents-State.

Mr. M. N. Navandar, Advocate for Respondent No.2.

AND

WRIT PETITION NO.6553 OF 2022

**VIRNATH S/O MADHAWARAO MIRCALE (PATIL)
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Mrs. P. G. Sontakke h/f Mr. G. K. Sontakke, Advocate for the
Petitioner.

Mr. S. B. Pulkundwar, AGP for Respondents-State.

Mr. M. N. Navandar, Advocate for Respondent No.2.

AND

WRIT PETITION NO.6554 OF 2022

**PANDURANG S/O VITHAL NAGARGOJE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Mrs. P. G. Sontakke h/f Mr. G. K. Sontakke, Advocate for the
Petitioner.

Mr. S. B. Pulkundwar, AGP for Respondents-State.
Mr. S. C. Arora, Advocate for Respondent No.2.

AND

WRIT PETITION NO.6555 OF 2022

BANESHWAR S/O PANDURANG NAGARGOJE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mrs. P. G. Sontakke h/f Mr. G. K. Sontakke, Advocate for the
Petitioner.

Mr. S. B. Pulkundwar, AGP for Respondents-State.
Mr. S. C. Arora, Advocate for Respondent No.2.

AND

WRIT PETITION NO.6556 OF 2022

MADHUBALA W/O RAOSAHEB PATIL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Mrs. P. G. Sontakke h/f Mr. G. K. Sontakke, Advocate for the
Petitioner.

Mr. S. B. Pulkundwar, AGP for Respondents-State.
Mr. S. C. Arora, Advocate for Respondent No.2.

AND

WRIT PETITION NO.6557 OF 2022

MAROTI S/O RAMRAO SURNAR DIED THROUGH LEGAL
HEIRS SAVITRIBAI MAROTI SURNAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Mrs. P. G. Sontakke h/f Mr. G. K. Sontakke, Advocate for the
Petitioner.

Mr. S. B. Pulkundwar, AGP for Respondents-State.
Mr. S. C. Arora, Advocate for Respondent No.2.

AND

WRIT PETITION NO.6558 OF 2022

SONAJI S/O MOHANRAO DURUGAKAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mrs. P. G. Sontakke h/f Mr. G. K. Sontakke, Advocate for the
Petitioner.

Mr. S. B. Pulkundwar, AGP for Respondents-State.
Mr. M. N. Navandar, Advocate for Respondent No.3.

CORAM : SANDEEP V. MARNE, J.
DATED : 06th DECEMBER, 2022.

PER COURT:-

1. By these petitions, petitioners assail the judgments and orders passed by the Reference Courts dismissing their References essentially on account of failure to lead evidence. The References have been dismissed long time ago. However, petitioners had adopted the remedy of filing First Appeals challenging the orders passed by the Reference Courts and those Appeals have been subsequently withdrawn with liberty to file writ petitions. Details of the date of passing of the judgments by the Reference Courts and the date withdrawal are as under:

NAME OF PETITIONERS	DATE OF JUDGMENT IN L.A.R.	CA IN FA NO	DATE OF FILING FA	DELAY IN FILING FA	DATE OF WITHDRAWAL OF FA	DATE OF FILING WP
SARASWATI KULKARNI	26/07/2010 02/2000	CA/4530/16 IN FA/3559/16	16/03/2016	Delay of 1901 days condone on 29.08.2016	30/09/2021	WP/6551/22 22/03/2022
GURUNATH MIRKALE DIED THRS AND OTH.	20/09/2013 359/2002	CA/8104/17 IN FA/ 1711/2020	06/05/2017	Delay of 1234 days condone on 02.12.2019	30/09/2021	WP/6552/22 22/03/2022
VIRNATH MIRKALE DIED THRS AND OTH.	20/09/2013 361/2002	CA/8105/17 IN FA/ 1710/2020	06/05/2017	Delay of 1234 days condone on 02.12.2019	30/09/2021	WP/6553/22 22/03/2022
1. SOMAJI DURUGKAR AND OTHER WITH 2. DNYANOBA MADREWAR	30/01/2014 615/2003 30/01/2014 938/2006	CA/2736/17 IN FA/33/17 WITH CA/2737/17 IN FA/34/17	20/02/2016 20/02/2016	Delay of 659/665 days condone on 22.08.2016	30/09/2021	WP/6558/22 22/03/2022
MADHUBALA PATIL	11/09/2013 264/2001	CA/184/16 IN FA/ 617/2019	04/12/2015	Delay of 639 days condone on 04/02/2019	30/09/2021	WP/6556/22 22/03/2022
1. MAROTI SURNAR AND OTHERS	22/07/2010 560/2001	CA/ 16823/15 IN	20/03/2015	Delay condone on 24/02/2017	25/10/2021	WP/6557/22 22/03/2022

2. DIGAMBAR SURNAR AND OTHERS	561/2001	FA/ 3926/2017 WITH CA/ 16829/15 IN	15/05/2015			
3. DHONDIBA HEMNAR	562/2001	FA/ 3927/2017 WITH CA/ 16826/15 IN FA/ 3928/2017	15/05/2015			
PANDURANG NAGARGOJE	08/12/2015 296/2008	CA/ 13044/19 IN FA/ 33303/2019	16/10/2019	==	30/09/2021	WP/6554/22 22/03/2022
BANESHWAR NAGARGOJE	08/12/2015 297/2008	CA/ 13045/19 IN FA/ 33305/2019	16/10/2019	==	30/09/2021	WP/6555/22 22/03/2022

2. Ms. Sontakke, the learned counsel appearing for petitioners would submit that Land Reference is not in the nature of an Appeal against the award and therefore, the claimant is required to be given opportunity to lead evidence. She would rely upon orders of this Court in **Walmik Trimbak Tupe Vs. State of Maharashtra and Another, Writ Petition No.12795/2019** with connected writ petitions decided on 17.01.2020 and **Vinayak Trimbak Tribhuvan Vs. The State of Maharashtra and Anr., Writ Petition No.3992/2021** decided on 03.03.2021.

3. Per contra Mr. Arora and Mr. Navandar, learned counsel would oppose the petitions and support the orders passed by the Reference Courts and submit that petitioners did produce documentary evidence in support of their claims for enhanced compensation and mere failure to lead oral evidence cannot be a ground to remand the References for fresh trial.

4. After having heard learned counsel for parties, I am of the view that by now it is trite that the Land Acquisition Reference is not an Appeal against the award and the Court cannot take into consideration the material relied upon by Land Acquisition Officer in award unless the said material is produced and proved before the Court. This Court has taken consistent view that the Land Acquisition References should ideally not be decided in absence of evidence being led by the claimants in support of their claims for enhanced compensation. In this regard reliance is placed by Ms. Sontakke on the judgment of this Court in **Walmik Trimbak Tupe** and **Vinayak Trimbak Tribhuvan** (supra) is apposite.

5. At the same time petitioners cannot be permitted to take benefit of their own wrong. Even though the remedy of filing Appeals against the decisions of Reference Courts were erroneously adopted by petitioners which are subsequently withdrawn with liberty to file present petitions, there was delay in filing those First Appeals. While condoning the delay by order dated 29.08.2016 in one of the First Appeal this Court passed following order:

“1. Heard. Delay of 1901 days has occurred in filing the present appeal by the original claimant in exception to the Award passed in LAR No. 02/2000.

2. Learned Counsel appearing for the applicant/appellant has tendered across the Bar an undertaking sworn in by the applicant to the effect that, she will not claim or ask for any interest for the period of delay. The said undertaking is taken on record. The learned Counsel submitted that though in the undertaking submitted, the delay is mentioned of the period of 1895 days, the same is in fact of

1901 days, but inadvertent mistake has occurred in mentioning the period of delay in the undertaking.

3. Learned AGP has opposed for condoning the delay.

4. Having considered the reasons for occurrence of the delay and more particularly in view of the undertaking submitted by the appellant, referred to above, I am inclined to allow the present application.

5. The delay occurred in filing the appeal is condoned. The appeal be registered in accordance with law.

6. It is clarified that the appellant/applicant will not be entitled for any interest of the period of delay, i.e. For the period of 1901 days, in the event of success of the appeal and consequently her matter is remitted back to the Reference Court and the amount of compensation is enhanced by the Reference Court.

7. The Civil Application stand disposed of.

8. Copy of this order be kept in the papers of Appeal.”

6. Thus it was specifically clarified while condoning the delay that petitioners would not be entitled to any interest for the period of delay.

7. Accordingly, the present petitions are allowed. The orders passed by the Reference Courts in respective Land Acquisition References are set aside and the Land Acquisition References are restored to be decided on merits after granting due opportunities to petitioners to lead evidence, both the oral as well as documentary. Such evidence may be produced by petitioners within a period of four weeks from today. Needless to say that,

failure on the part of petitioners to produce such evidence within a stipulated time shall result in summary dismissal of the Land Acquisition References. The petitioners shall not be entitled for interest in respect of the delay in filing First Appeals. Similarly, petitioners shall also not be entitled to any interest in respect of the period from the date of withdrawal of First Appeal and the dates of filing of the present writ petitions. The Reference Courts shall expedite the hearing of the Land Acquisition References and shall make an endeavour to decide the same as expeditiously as possible and preferably within a period of one year from today.

(SANDEEP V. MARNE)
JUDGE