

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

WRIT PETITION NO.3668 OF 2022

Gundappa Dhondiba Mashale (Died)
Through LRS

- 1A. Hirabai Gundappa Mashale
Age 75 years, Occ : Agri
- 1B. Kisan Gundappa Mashale
Age 60 years, Occ : Agri
- 1C. Ratan Gundappa Mashale
Age 50 years, Occ : Agri
- 1D. Pandit Gundappa Mashale
Age 55 years, Occ : Agri
- 1E. Lochanabai Ganpati Birajdar
Age 49 years, Occ : Agri & H.H.
- 1F. Dhondabai Permeshwar Kadedore
Age 45 Years, Occ : Agri
- 1G. Suman Kashinath Kharate
Age 40 years, Occ : Agri & H.H.
- 1H. Drupatabai Sudhakar Honemane
Age 37 years, Occ: Agri & H.H.
All R/o Khasagi, Tq. Omerga
Dist : Osmanabad

... Petitioners

Versus

The State of Maharashtra,
Through, Collector Osmanabad,
Dist : Osmanabad.

... Respondent

...
Advocate for Petitioners : Mr. Vivekanand V. Ingale
AGP for Respondents – State : Mr. S. N. Morampalle
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 19th SEPTEMBER, 2022

ORAL JUDGMENT :

1. **RULE.** Rule made returnable forthwith. Heard finally by the consent of the parties.

2. This petition impugns the judgment and order dated 28/04/2008, passed by learned Civil Judge, Senior Division, Omerga, in Land Acquisition Reference No.405/2004, thereby dismissing land acquisition reference as the petitioner failed to adduce evidence.

3. Indisputably the issue involved in this petition is already 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, reference was rejected due to failure on the part of 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 reference Court and restored the references and directed to decide the references on merits.

4. Admittedly, in the present case also the reference is not decided on merits and the same is dismissed solely on the ground

that petitioner failed to adduce evidence. The present case is, therefore, squarely covered by the above referred decision. Hence, the following order:-

ORDER

- (I) Writ petition is allowed in terms of prayer clause 'C'.
- (II) The impugned judgment and order dated 28/04/2008, passed by learned Civil Judge, Senior Division, Omerga, in Land Acquisition Reference No.405/2004, 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.
- (V) Rule is made absolute in above terms. No costs.

(NITIN B. SURYAWANSHI, J.)