

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

WRIT PETITION NO.4066 OF 2021

SHANKAR GANPATI SALUNKE THROUGH LRS SHAKUNTALA SHANKAR
SALUNKE AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA THROUGH THE COLLECTOR
OSMANABAD

...

Advocate for the Petitioners : Shri Patil Ganesh Vilasrao

AGP for the Respondent/ State : Shri Kiran B. Jadhavar

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 05th January, 2022

Per Court:

1. Heard the learned counsel for the petitioners and the learned AGP for the State of Maharashtra, sole respondent to the petition.

2. The petitioners are aggrieved by the order passed below Exhibit 35 by the learned Second Joint Civil Judge, Senior Division, Umarga in Land Acquisition Reference No.1272/2009 (old No.156/1998), under which, the application filed by the petitioners/ claimants seeking amendment to the reference petition by adding the Special Land Acquisition Officer, Manjara Project, Osmanabad, as a party respondent, has been rejected.

3. Pertinent to note that the agricultural land of the petitioners was acquired for rehabilitation of the earthquake affected persons being

located in village Kondjigad, Taluka Umarga. The award being passed, the petitioners filed the reference petition under Section 18 of the Land Acquisition Act for enhancement of compensation and it is this Land Acquisition Reference, which was pending on the file of the learned Joint Civil Judge, Senior Division, Umarga.

In the said Land Reference application, the application vide Exhibit 35 was taken out for impleading the Land Acquisition Officer as a party respondent, particularly in the wake of the order passed by this Court in Civil Revision Application (Stamp) No.29142/2014 on 09.10.2015, when the land reference was restored to its original position after quashing and setting aside the impugned judgment and award. This Court had specifically recorded that on the matter being restored to its original position, the parties shall appear before the Reference Court on the given date and they are permitted to adduce evidence.

4. When the application is made by the claimants, it came to be rejected by citing the reason that the proceedings are very old i.e. of the year 1996 and since the last 22 years, they are pending. It is also recorded by the learned Judge that as per the directions of this Court, old matters are to be disposed of on top priority. Projecting the filing of the said application to implead the Land Acquisition Officer as a party respondent, to be an attempt to protract the litigation and attributing the delay and negligence on the part of the claimants, the application was rejected by

terming it as an abuse of process of law.

5. The learned counsel for the petitioners has invited my attention to the order passed by this Court in Writ Petition No.4309/2019 in the same land acquisition proceedings wherein, the impleadment of the acquiring body was sought for, in the wake of the decision of the Honourable Supreme Court in *NTPC Ltd. vs. State of Bihar and others, reported in 2004 (12) SCC 96*, wherein, it has been held that the award passed, in the absence of the acquiring body on whose behalf the land has been acquired, cannot be sustained and by an order dated 31.01.2020 passed in Writ Petition No.4309/2019, the application vide exhibit 55 came to be allowed by directing the impleadment of the Acquiring Body, as also the Special Land Acquisition Officer in the proceedings of LAR No.454/2015.

In the wake of the aforesaid order, the present Writ Petition also deserve to be allowed, not only on the basis of the order passed in the collateral proceedings, but also on the ground that the learned Judge has erred in adopting hyper technical view in the matter, when it is necessary in law to implead the Special Land Acquisition Officer as a party respondent to the reference proceedings and in his absence, the proceedings cannot proceed further.

6. As such, the Writ Petition is allowed and the impugned order is quashed and set aside, by allowing the application filed by the claimants

and permitting the impleadment of the Land Acquisition Officer as a party respondent in the reference proceedings. No order as to costs.

kps

(SMT. BHARATI H. DANGRE, J.)