

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

908 WRIT PETITION NO.9623 OF 2022

GIRDHARSINH DASHRATSINH GOHILOT DIED THROUGH L.RS.
CHAINABAI GIRDHARSINGH GAHILOT AND OTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH COLLECTOR, NANDED,
COLLECTOR OFFICE, NANDED AND OTHER

...
Advocate for Petitioners : Mr.Nagarkar Kiran M.
AGP for Respondents-State : Mr.S.B.Pulkundwar
ASG for Respondent - UOI : Mr. Suresh W. Munde.
...

CORAM : SANDEEP V. MARNE, J.
DATE : 18.10.2022.

PER COURT :

1. By this petition, the petitioners have challenged the judgment and order dated 08.07.2019 passed by the Civil Judge, Senior Division, Nanded, dismissing the L.A.R. No. 420 of 1993 on the ground of failure of the petitioners to adduce the evidence. The trial Court has proceeded to reject the reference as the Claimants failed to adduce evidence despite passage of 25 years.

2. The learned Counsel appearing for the petitioners relies upon the judgment of this Court in **Walmik s/o Trimbak Tupe Vs. The State of Maharashtra and Anr** in W.P. No. 12795 of 2019 decided on 17.01.2020, as well as order passed in **Raosaheb Rama Gobade (Died) LR Vs. The State of Maharashtra and Anr.** in Writ Petition No. 14929 of 2021 decided on 22.07.2022. In both the decisions a view

is taken that the reference cannot be dismissed without affording an opportunity of adducing evidence to the Claimant.

3. In the present case, the reference has been pending since the year 1993 and the Claimant appears to be totally negligent in prosecuting the reference. I do not find any error being committed by the reference Court in dismissing the reference.

4. However, at the same time, in **Walmik** (supra) and **Raosaheb** (supra) this Court has taken a consistent view that failure of the claimants to adduce evidence should ideally not be a ground to dismiss the reference. This Court has granted an opportunity to the Claimants in those cases to adduce the evidence.

5. Mr. Nagarkar, learned Counsel for the petitioners, on instructions, makes a statement that the petitioners are ready and willing to forgo interest on enhanced amount of compensation, if granted, from the date of judgment i.e. 08.08.2019 till the decision of the reference.

6. Considering the above position I proceed to pass following order :

ORDER

- a) The Judgment and order dated 08.07.2019 passed by the Civil Judge, Senior Division, Nanded in LAR No. 420 of 1993 is set aside and LAR No.

420 of 1993 is restored on the file of Civil Judge, Senior Division, Nanded. Petitioners shall be given an opportunity to file their affidavit of evidence and supporting documents within a period of 4 weeks from today.

b) In the event of failure on the part of the petitioners to file affidavit along with supporting documents within a stipulated time, the Reference Court shall proceed to dismiss the LAR No. 420 of 1993.

c) In the event enhanced compensation is granted in LAR No. 420 of 1993, the petitioners shall not be entitled to any interest w.e.f. 08.07.2019 till decision of the LAR No. 420 of 1993.

d) Parties to appear before the Civil Judge, Senior Division, Nanded on 09.11.2022.

e) Writ Petition is disposed of in above terms.

(SANDEEP V. MARNE)
JUDGE

mahajansb/