

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2395 OF 2023**

MIYASAB SAYADUSAB, DIED THROUGH IT S L.RS.
MOHMADSAB MIYASAB SHAIKH AND OTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH DISTRICT
COLLECTOR, NANDED AND OTHER

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Mr. Kiran M. Nagarkar, Advocate for the Petitioners.
Mrs. G. L. Deshpande, AGP for Respondents-State.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 27th FEBRUARY, 2023.**

PER COURT:-

1. Heard.
2. The challenge in the petition is to the judgment and order dated 11.09.2018 rejecting the Reference under Section 18 of the Land Acquisition Act.
3. Learned counsel appearing for the petitioners submit that Reference has been rejected for non-prosecution. He would further submit that in view of the decision of this Court in case of ***Walmik S/o Trimbak Tupe Vs. The State of Maharashtra & anr.; Writ Petition No.12795/2019*** with connected writ petitions decided on ***17.01.2020*** the Reference has to be decided on merits.
4. Per contra, learned AGP submits that the burden was upon the claimant to prove the entitlement to enhance compensation. As the claimant has failed to adduce the evidence, the Reference has been rightly rejected.
5. Considered the rival submission of the parties.

6. This Court in the case of ***Walmik S/o Trimbak Tupe*** (supra) after considering various judicial pronouncements on the subject has held that the Reference under Section 18 of the Land Acquisition Act has to comply with the requirements of the award provided under Section 26 of the Land Acquisition Act. I have perused the impugned Judgment and Order dated 11.09.2018. The Reference Court in answer to the issues framed have held that the Counsel for the Claimant was continuously not present before the Court and more than sufficient opportunity has been extended. It has been held that as there is no evidence on record, it cannot be concluded that the Special Land Acquisition Officer has not considered the claim properly and has awarded inadequate compensation.

7. In the present case the determination by the Reference Court cannot be said to be a determination on merits so as to comply with the provisions of Section 26 of the Land Acquisition Act. The order dated 11.09.2018 is dismissal of the Reference for non-prosecution and cannot be construed as an award within the meaning of Section 26 of the Land Acquisition Act.

8. Considering the settled position in law that the Reference has to be decided on merits, the impugned judgment and order is not a decision on merits and cannot be sustained. In the present case the order of dismissal dated 11.09.2018 had been challenged on 15.02.2019 by way of separate Revision Petition, which was thereafter permitted to be converted into the present writ petition. As far as non-adducing of evidence is concerned it is pleaded in the petition that during the pendency of the petition

the original claimant expired on 07.05.2009. However, due to a lack of knowledge the present petitioners who are legal heirs of the deceased petitioner could not take appropriate steps. On 02.06.2018 they have opted legal heirship certificate from the gram panchayat office and the knowledge about the dismissal of the Reference was acquired recently by the petitioners.

9. For the reasons above, the impugned judgment and order dated 11.09.2018 is hereby quashed and set aside. The Land Acquisition Reference No.192/2007 is restored to file. The petitioners are directed to appear before the Reference Court on 27.03.2023 for the purpose of leading evidence.

10. The Reference Court is requested to decide the Land Acquisition Reference within a period of six months from the date of this order.

11. Writ Petition stands allowed in the above terms.

(SHARMILA U. DESHMUKH)
JUDGE