

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5238 OF 2022

Vishwanath s/o Rustumrao Kakde
Age: 70 years, Occ- Agril.,
R/o. Nagpur, Tq. Partur,
Dist. Jalna.

...PETITIONER

VERSUS

1. The State of Maharashtra
Through its Collector, Jalna
Collector Office, Jalna.
2. The Special Land Acquisition Officer,
(Krishna Khore) at Jalna, Dist. Jalna.
2. The Executive Engineer Lower
Dudhna Project Division, Selu
Tal. Selu, Dist. Parbhani.

...RESPONDENTS

Mrs. Manjushri V. Narwade, Advocate for the petitioners.
Mrs. G.L. Deshpande, AGP for Respondents No. 1 and 2.
Mr. Shyam C. Arora, Advocate for respondent No. 3.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 23rd MARCH, 2023

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally
with the consent of the parties.

2. This petition filed under Article 226 and 227 of the
Constitution of India, impugns the order dated 01.12.2009
passed by District Judge-2, Jalna in Land Acquisition Reference

No. 253 of 2002, thereby rejecting the land acquisition reference as the petitioner failed to adduce evidence.

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

4. In view of such state-of-affairs, with a rider that the petitioner is not allowed to reap the benefit of his own wrong and making him to forgo their claim for the interest for the intervening period, the writ petition can be allowed.

5. Admittedly, in the present case also the reference is not decided on merits and the same is rejected solely on the ground that the petitioner failed to adduce evidence. The present case is therefore squarely covered by the above-referred

decision. Hence, the following order:-

ORDER

- (I) The writ petition is allowed.
- (II) The impugned order dated 01.12.2009 passed by learned District Judge-2, Jalna, in Land Acquisition Reference No. 253 of 2002 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 writ of this order. Parties to co-operate.
- (V) The petitioner shall not be entitled to claim any interest for the period from the date of dismissal of the proceeding i.e. 01.12.2009 till today.

Rule is made absolute in the above terms.
No costs.

[NITIN B. SURYAWANSHI, J.]