

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

WRIT PETITION NO. 3742 OF 2022

1. Pandurang Sadhu Patade (Died)
Through LRs.

1A. Nanasaheb Pandurang Patade,
Age : .. years, Occu: Agri.,
R/o. Kamtha, Tal. Tuljapur,
Dist. Osmanabad.

1B. Ramhari Pandurang Patade,
Age : .. years, Occu: Agri.,
R/o. Kamtha, Tal. Tuljapur,
Dist. Osmanabad.

2. Maruti Sadhu Patade (Died)
Through Lrs,

2A. Nagarbai W/o. Dagadu Late,
Age : .. years, Occu: Agri.,
R/o. Kamtha, Tal. Tuljapur,
Dist. Osmanabad.

3. Dnyanoba Sadhu Patade (Died),
Through Lrs,

3A. Laxmi W/o. Sampat Jamdade,
Age : .. years, Occu: Agri.,
R/o. Kamtha, Tal. Tuljapur,
Dist. Osmanabad.

...Petitioners

Versus

1. The State Of Maharashtra
Through Collector Osmanabad,
Collector Office, Osmanabad,
Dist. Osmanabad.

2. The Executive Engineer,
Osmanabad Medirum Project Division,
Zilla Parishad, Osmanabad.

3. The Special Land Acquisition Officer,

Manjra Prkalp, Osmanabad,
Tal & Dist.Osmanabad.

...Respondents

...

Advocate for Petitioners : Mr.Sushant B. Choudhari
AGP for Respondent Nos. 1 & 3 : Mr. S.N. Kendre
Advocate for Respondent No. 2 : Mr. P.P. More

...

CORAM : SHAILESH P. BRAHME, J.

Judgment reserved on : 25th October, 2023

Judgment pronounced on : 06th November,2023

JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard both the sides finally at the admission stage.

2. The petitioners are challenging judgment and order dated 02.01.2020, passed by learned joint civil judge senior division, Osmanabad in LAR No. 328 of 2014 rejecting the reference.

3. The petitioners are the claimants and the land was acquired by the Respondent Nos. 2 & 3. An award was passed under section 11 of the Land Acquisition Act, 1894 (hereinafter referred to as "Act" for the sake of convenience and brevity) of 07.06.2002 by the Respondent No.3/ Special Land Acquisition Officer. The petitioners were aggrieved by inadequate compensation and they submitted application to refer the matter under section 18 of the act on 11.04.2014. The matter was referred to Collector,Osmanabad wherein the petitioners had claimed

enhanced compensation of Rs. 3,22,500/- (Three lacs twenty two thousand five hundred only) per acre.

4. The petitioners were represented by lawyers before reference court. The issues were framed on 24.09.2018. No evidence was adduced by the petitioners from 30.08.2014 till 02.01.2020. Despite the opportunities, the petitioners did not respond and ultimately it was rejected. Due to communication gap, the petitioners were unable to adduce evidence. It is contended by them that they were not aware of the dates and progress of the reference. The learned counsel for the petitioner submits that the matter needs to be remitted back to the reference court for extending an opportunity of hearing. Due to Pandemic of Covid-19, the petitioners could not immediately approach their advocate and file this petition.

5. Learned counsel for the petitioner has placed reliance upon a judgment passed by this Court in the matter of *Walmik Trimbak Tupe Versus The State of Maharashtra*, in Writ Petition No. 12795/2019, *Ganpati Rama Hazare versus The State of Maharashtra*, in Writ Petition No. 10237/2022, *Maroti Ambadas Dhumal died Thr. Lrs, Versus The State of Maharashtra*, in Writ Petition No. 12319/2022 and the judgment of the Division Bench of this court in the matter of *Diwakar Prabhakar Chopade versus Sub-divisional Officer,(Land Acquisition Officer), Aurangabad and others*, reported in **2019(6) Mh.L.J.591**.

6. Mr. More, learned counsel appearing for the Respondent No.2 has raised preliminary objection contending that the reference court decided the matter on merits though the petitioners failed to adduce the evidence. He submits that issues are framed and merits are dealt with. By speaking order the court decided reference which amounts to an award. He submits that present writ petition is not maintainable because there is statutory appeal provided against award. He would submit that it is not a case of dismissal in default. The petitioners chose not to lead evidence.

7. Learned counsel for the respondent No. 1 and 3 also would support and adopt the submissions of the learned counsel for the Respondent No. 2. Additionally, it is submitted that the state has to pay the interest though the petitioners are at fault, in case the matter is remanded to the reference court. He would further point out that there are laches on part of the petitioners and this is not a fit case to remand the matter.

8. I have considered rival submissions canvassed by the parties to consider the preliminary objection as well as merits of the matter. Undisputed fact is that petitioners have not lead any evidence before the reference court. They were represented by lawyers. Issues were framed. Their reference is rejected by the impugned judgment and order on 24.09.2018.

9. An award of Special Land Acquisition Officer (SLAO) is an offer. The reference is like a suit. The claimants are under obligation to make out a case for enhanced compensation. The issues are framed on 24.09.2018 and the petitioners failed to adduce evidence for considerable period. There is no reason to infer that they might not have deliberately adduced evidence.

10. Just because issues were framed and sufficient time was given to the petitioners to lead evidence do not mean that the matter is dealt with on merits. In the absence of evidence on part of the petitioners, it can not be said that it is an award. There is a consistent view in support of this proposition which I propose to adopt. A reference to following judgments is useful :

i) *Diwakar Prabhakar Chopade versus Sub-Divisional Officer (Land Acquisition Officer), Aurangabad*, **reported in 2019(6) Mh.L.J. 591** ;

ii) *Walmik Trimbak Tupe (supra)* ;

iii) *Ganpati Rama Hazare versus The State of Maharashtra and Others* in Writ Petition No.10237/2022 ;

iv) *Maroti Ambadas Dhumal through LRs versus The State of Maharashtra*, in Writ Petition No.12319/2022.

The preliminary objection raised by the respondent stands overruled.

11. The petitioners are entitled to get opportunity to lead evidence. The concern expressed by learned AGP regarding payment of interest can be considered while deciding reference on merit. In view of above, I propose to pass following Order :

ORDER

- i) The judgment and order dated 02.01.2020 passed by Joint Civil Judge Senior Division, Osmanabad in LAR No. 328/14 is quashed and set aside.
- ii) LAR No. 328/14 shall stand restored to the file of Joint Civil Judge Senior Division for deciding it afresh.
- iii) It shall be permissible for the parties to lead oral and documentary evidence in support of their claim. After extending an opportunity of hearing to the parties, the reference court shall decide the reference preferably within period of six months from today.
- iv) The reference court shall decide the rate of interest in accordance with law laid down by the High Courts and Supreme Court.
- v) The petitioners shall pay cost of Rs. 15000/- (Fifteen Thousand Rupees Only) to the respondents.

vi) The petitioners shall appear before the reference court on 09.11.2023.

vii) The writ petition is disposed of in above terms.

[SHAILESH P. BRAHME, J.]

spc/