

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1275 OF 2022

Shri. Ramesh Popat Gawali
Since deceased hence through Legal
Representatives
Smt. Sushilabai Ramesh Gawali & Others Petitioners

Versus

The State Of Maharashtra And Others Respondents

Mr. Mukul Kulkarni, Advocate for the petitioners.
Mr. S.W. Munde, Advocate for respondent No. 1.
Mr. M.K. Deshpande, Advocate for respondents No. 3A, 3D to 3I.
Mr. S.N. Pawde h/f. Mr. M.K. Bhosale, Advocate for respondent
No. 4.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 18th JULY, 2023

ORDER :

1. Right of one of the claimant to argue the reference is forfeited by the impugned order passed by learned 2nd Joint Civil Judge, Senior Division, Dhule, below Exhibit-19 in Land Acquisition Reference No. 355/2012.

2. The learned Senior Advocate who was to argue the matter appeared before the Reference Court at about 1.00 pm. The Reference Court conveyed him that he should attend the Court at 3.50 pm, when the other advocates were to argue the

matter. In the afternoon session, it was informed to the Reference Court that the Senior Advocate has left for Aurangabad in order to attend his son, who has been seriously unwell. The Reference Court in the impugned order has observed that, no adjournment application to that effect has been moved and considering the age of the matter and stage of the reference, the reason given by learned advocate is not justifiable. Applicant No. 2/petitioner is playing tactics to prolong the matter. It is informed by the learned advocate for the petitioner that after passing of the impugned order, the matter was adjourned to 15th January, 2022 and in the meanwhile, the petitioner has challenged the said order.

3. Having heard the learned advocates for the parties and on perusing the memo of writ petition, documents and the impugned order, this Court is of the opinion that the impugned order is unsustainable as it denies reasonable and fair opportunity of being heard to the petitioner. Reference Court may be right in holding that the application ought to have been filed by the petitioner citing the ground of personal difficulty of learned Senior Advocate but on that ground alone, the Reference Court was not justified in forfeiting the petitioner's right to argue

the reference. The impugned order, therefore cannot be sustained. Hence, the following order:

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 05.01.2022, passed by learned 2nd Joint Civil Judge, Senior Division, Dhule, below Exhibit-19 in Land Acquisition Reference No. 352/2012, is hereby quashed and set aside.
- (III) Reference Court shall hear all the parties on merits and decide the reference in accordance with law.
- (IV) Since, the reference is of the year 2012, hearing is expedited.

[NITIN B. SURYAWANSHI, J.]