

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5433 OF 2023

1. Salim Khan Rahiman Khan PETITIONERS
Age – 53 years, Occ – Agriculture
R/o Deulghat,
Taluka and District - Buldhana

2. Liyakat Ali Khan Ajij Khan (Died)
Through LRs

Sajid Ali Khan Liyaqat Ali Khan
Age – 45 years, Occ – Agriculture
R/o Dhad, Taluka and District – Buldhana

3. Sayed Afsar Sayed Kalu (Died)
Through LRs

Sayyed Aasif Sayyed Afsar
Age – 52 years, Occ – Agriculture
R/o Dhad, Taluka and District - Buldhana

VERSUS

1. The State of Maharashtra RESPONDENTS
Through its Secretary
Water Re-Sources Department
Mantralaya, Mumbai - 32

2. The State of Maharashtra
Through
Special Land Acquisition Officer
J. P. No. 2, Collector Office
Aurangabad

State of Maharashtra
Through Sub Divisional Officer
(Land Acquisition Officer) Sillod
Taluka – Sillod, District – Aurangabad

3. Executive Engineer
Irrigation Division, Local Sector
District – Aurangabad

District Water Conservation Officer
Soil and Water Conservation Department
Aurangabad
Near Gajanan Mandir Road,
Aurangabad

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Mr. Suresh N. Rdge, Advocate for the petitioners
Mr. P. N. Kutti, AGP for respondents No.1 to 3 - State.
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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th JUNE, 2023

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Learned Assistant Government Pleader waives service for the respondents. Heard finally with the consent of the parties.

2. This petition filed under Article 227 of the Constitution of India, impugns order dated 28.02.2020, passed by learned Civil Judge, Senior Division, Aurangabad, in Land Acquisition Reference No. 469/2009, thereby rejecting the land acquisition reference as the petitioners 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 *Writ Petition No. 1448 of 2021 (Bharat Laxmidas Thakkar vs. State of Maharashtra & Others)*, learned Single Judge of this Court has held:

"4. It is trite that it is a reference under Section 18 of the Land Acquisition Act and is not an adversarial litigation. Once a reference is made by the Special Land Acquisition Officer, it is imperative for the reference court to decide it on merits either way. It is apparent that by the impugned order, the reference court has simply dismissed it in default instead of deciding it on merits.

5. 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 his 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 petitioners failed to adduce evidence. The present case is therefore, squarely covered by the above-referred decisions.

6. In view of aforesaid observations, following order:-

ORDER

- (I) The writ petition is allowed.
- (II) Impugned order dated 28.02.2020 passed by learned Civil Judge, Senior Division, Aurangabad, in Land Acquisition Reference No. 469/2009, 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 petitioners shall not be entitled to claim any interest for the period from the date of dismissal of the proceeding i.e. 28.02.2020 till today.
- (VI) Rule is made absolute in the above terms. No costs.

[NITIN B. SURYAWANSHI, J.]

drp