

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1483 OF 2022

Sukesh Sambhaji Bhosale
Age : 40 years, Occu. Agril,
R/o. Rampur, Tq. Omerga,
Dist. Osmanabad1

.... Petitioner

Versus

1. The State of Maharashtra
Through Collector, Osmanabad
2. The Special land Acquisition Officer
Manjara Project at Osmanabad
3. The Executive Engineer,
Minor Irrigation Department,
Osmanabad.

.... Respondents

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Mr. Pravin B. Rakhhunde, Advocate for the Petitioner
Mr. P.N. Kutti, AGP for Respondent Nos. 1 and 2
Ms. R.D. Reddy, Advocate for Respondent No.3

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th JUNE, 2023

ORAL JUDGMENT :

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

2. This petition filed under Article 227 of the Constitution of India, impugns the order dated 04/03/2014, passed by learned Civil Judge, Senior Division, Omerga, in Land Acquisition Reference Nos. 1257 of 2009, thereby rejecting the land acquisition reference, as the petitioners failed to adduce evidence.

3. Heard the learned advocate for the petitioner, learned advocate for respondent No.3 and the learned Assistant Government Pleader for Respondent Nos. 1 and 2. Perused the writ petition memo, annexures thereto, impugned order, and the citations relied upon by the learned advocate for the petitioner and respondent No.3.

4. Learned advocate for the petitioner, by relying upon the decisions of learned Single Judge of this Court in writ petition No.12795 of 2019 and connected writ petitions, writ petition No.1448 of 2021, writ petition No.13977 of 2021, and writ petition No.13332 of 2022 with connected writ petitions, submits that a consistent view is taken by this Court that reference has to be decided on merits, however, in the present case, the Reference Court has dismissed the reference as the petitioner failed to adduce evidence.

5. Learned Assistant Government Pleader submits that in view of consistent view taken by this Court, appropriate orders may be passed.

6. Learned advocate for respondent No.3 vehemently opposed the petition by relying upon the decision of the learned Single Judge of this Court in writ petition No.718 of

2022 and connected writ petitions, she submits that there is inordinate delay on the part of the petitioner in seeking restoration of the reference. The reference was dismissed in the year 2014, and the writ petition is filed in the year 2022, hence, the petitioner is not entitled for the relief claimed in the petition.

7. In the decision relied upon by the learned advocate for the respondent, restoration of the reference was sought after a delay of 8 to 14 years, hence, the learned Single Judge of this Court has dismissed the writ petition on the ground of delay and laches on the part of the petitioners.

8. The reference under Section 18 of the Land Acquisition Act is not an appeal against the award. The Reference Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it. It is a settled legal position of law that the decision of the Reference Court is required to be examined as to whether the said decision can be said to be a decision on merits. (Vide *Chimanlal Hargovinddas vs Special Land Acquisition Officer, Poona and Anr.*, AIR 1988 SC 1652,)

9. 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.

10. 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."

11. In writ petition No.13332 of 2022 and connected writ petitions, the learned Single Judge of this Court has considered the arguments on delay in filing of writ petitions, in para 34 of the said judgment, it is held:

"34. In my view, this Court is required to be mindful of the fact that the lands of the petitioners have been acquired by providing some compensation, which compensation has not been found adequate by the claimants, which has constrained them to file references. Most of these petitioners are agriculturists residing in remote areas and cannot be said to be well informed about their rights. What is worthwhile to note is that most of the petitioners are from rural area and have been deprived of their private property, by of course, providing compensation however the amount of compensation is required to be adjudicated and there has to be a satisfaction the acquisition of the property has taken place after providing adequate compensation. Considering the fact that some justification has been provided in each of these writ petitions, the submission of the AGP seeking rejection of the writ petitions on the ground of delay is not acceptable."

12. Admittedly, in the present case also the references 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.

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

ORDER

- (I) The writ petition is allowed.
- (II) The impugned order dated 04/03/2014 passed by learned Civil Judge, Senior Division, Omerga, in Land Acquisition Reference Nos. 1257 of 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.

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- (V) The petitioner shall not be entitled to claim any interest for the period from the date of dismissal of the proceeding i.e. 04/03/2014 till today.

Rule is made absolute in the above terms.

No costs.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane