

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4520 OF 2021

1. Dattatraya S/o Maratandrao Kulkarni
Age: 61 years, Occu.: Agriculture,
R/o. Bhaswadi, Tq. Mukhed
Dist. Nanded.

2. Digambar S/o Martandrao Kulkarni
Age: 56 years, Occu.: Agriculture,
R/o. Bhaswadi, Tq. Mukhed
Dist. Nanded.

.... Petitioners

Versus

1. The State of Maharashtra
Through : District Collector,
Collector Office, Nanded.

2. The Special Land Acquisition Officer,
Minor Irrigation Work, Collector Office,
Nanded.

3. The Executive Engineer,
Vishnupuri Project Division-1,
Nanded.

.... Respondents

.....

Mr. K.M. Nagarkar, Advocate for the Petitioners
Mr. R.B. Bagul, AGP for Respondent Nos.1 and 2

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 28th APRIL, 2023

ORAL JUDGMENT :

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

2. Though served, non appears for respondent No.3.

3. This petition filed under Article 227 of the Constitution of India, impugns the order dated 18/09/2018, passed by learned Civil Judge, Senior Division, Mukhed, in Land Acquisition Reference No.193 of 2007 (Old Land Acquisition Reference No.181 of 2006), thereby rejecting the land acquisition reference, as the petitioners failed to adduce evidence.

4. 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.

5. 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."*

6. 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 decision.

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

ORDER

- (I) The writ petition is allowed.
- (II) The impugned order dated 18/09/2018 passed by learned Civil Judge, Senior Division, Mukhed, in Land Acquisition Reference Nos. 193 of 2007 (Old Land

Acquisition Reference No.181 of 2006), 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. 18/09/2018 till today.

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

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane