

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

WRIT PETITION NO.3795 OF 2023

1) Shaikh Burahan S/o Shaikh Fattemohammad
(Died) Through his L.Rs.

1-a) Saberabee Shaikh Burahan
Age: 55 years, Occu: Agril.,

1-b) Arif Shaikh Burahan
Age: 38 years, Occu: Agril.,

1-c) Abdullha Shaikh Burahan
Age: 35 years, Occu: Agril.,

ALL R/o: Islamwadi, Tq. Jalna
Dist. Jalna.

2) Shaikh Mojioddin Shaikh Fattemohammad
Age: 60 years, Occu: Agril.,
R/o Islamwadi, Tq. & Dist. Jalna

...Petitioners

Versus

1) The State of Maharashtra
Through Collector, Jalna,
Tq. & Dist. Aurangabad.

2) The Special Land Acquisition Officer,
(B & C), Jalna,
Tq. & Dist. Jalna.

3) The Executive Engineer,
Minor Irrigation Division,
Zilla Parishad, Jalna,
Tq. & Dist. Jalna.

...Respondents

...

Advocate for Petitioner : Mr. D.A. Mane, Advocate h/f
Mr. Durgesh M. Pingale

AGP for Respondent Nos. 1 & 2 : Mr. S.R. Yadav Lonikar

Advocate for Respondent No.3 : Mr. V.P. Narwade

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 16th JUNE, 2023

ORAL JUDGMENT:

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

2. This petition filed under Article 226 of the Constitution of India, impugns the judgment and award dated 15/10/2012, passed by learned 2nd Joint Civil Judge, Senior Division, Jalna, in Land Acquisition Reference No.1750/2010, 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 decision.

6. In view of aforesaid, following order is passed:-

ORDER

- (I) The writ petition is allowed.
- (II) The impugned judgment and award dated 15/10/2012, passed by learned 2nd Joint Civil Judge, Senior Division, Jalna, in Land Acquisition Reference No.1750/2010, 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 petitioner shall not be entitled to claim any interest for the period from the date of dismissal of the proceeding i.e. 15/10/2012 till today.

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

(NITIN B. SURYAWANSHI, J.)