

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

WRIT PETITION NO. 8384 OF 2022

Narayan Shankar
(Deceased) through legal heirs
Balaji Narayan Hamand
Deceased through L.Rs.
Anusayabai and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Bharat N. Gadegaonkar, Advocate for the Petitioners.
Mrs. G. L. Deshpande, A.G.P. for the Respondent Nos. 1 and 2.
Shri Vinod P. Patil, Advocate for the Respondent No. 3.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 09TH FEBRUARY, 2023.**

FINAL ORDER :

. By this petition, the challenge is to the judgment dated 25th June, 2018, whereby reference under Section 18 of the Land Acquisition Act came to be dismissed by the Reference Court.

2. Learned counsel appearing for the petitioners submits that reference filed under Section 18 of the Land Acquisition Act, 1894 cannot be dismissed for non prosecution. He would further urge that the reference Court has not decided the claim on merits and dismissed the reference on the ground that the claimant failed to lead evidence. He would further submit that, the petitioners were informed by their counsel that they will be

intimated when their presence is required. Therefore, for lack of communication from advocate, evidence could not be led. Learned counsel further submits that, the petitioners are agreeable to waive the interest for the delayed period.

3. Per contra, learned Assistant Government Pleader for respondent and the learned counsel for the respondent No. 3 vehemently oppose the petition and would submit that, as the petitioner failed to lead evidence, the Reference Court has rightly decided the matter on the basis of material on record. Therefore, no interference is called for in the impugned order.

4. Learned counsel for the petitioners have placed reliance on the judgment of this Court **dated 02.02.2023 in Writ Petition No. 13332 of 2022** in the case of **Chandabai W/o Gangaram Paayed Vs. The State of Maharashtra and another** with other connected writ petitions and judgment **dated 17.08.2022 passed in Writ Petition No. 2649 of 2021 in the case of Kundlik S/o Limbraj Gore Vs. The State of Maharashtra and others.**

5. Heard learned counsel for respective parties.

6. A detailed order has been passed by this Court on 02nd February, 2023 in Writ Petition No. 11332 of 2021 with other connected writ petition. This Court has held that the order of Reference Court under the Land Acquisition Act has to comply with form of the award prescribed by Section 26 of the Land

Acquisition Act (for short “L. A. Act”). Admittedly the reference was filed U/Sec. 18 of the L. A. Act and the judgment dated 25th June, 2018 shows that the Reference has been dismissed for failure on part of petitioners to adduce evidence in support of their claim. By no stretch of imagination the judgment can be said to be a decision on merits. As held by this Court in the case of **Kundlik S/o Limbraj Gore Vs. The State of Maharashtra and others** and in the case of **Chandabai W/o Gangaram Pauyed Vs. The State of Maharashtra and another** reference has to be decided on merits.

7. The issue being covered by both the decisions cited above, the impugned judgment dated 25th June, 2018 is required to be quashed and set aside. Considering that the reference was of year 2008 and came to be dismissed in the year 2018, in my opinion, the petitioners/claimants will not be entitled to any interest from the date of judgment dismissing the reference i. e. 25.06.2018 till the final disposal of the reference.

8. Hence the following order.

O R D E R

A. Judgment dated 25th June, 2018 passed in L.A.R. No. 364 of 2008 is hereby quashed and set aside.

B. L. A. R. No. 364 of 2008 is hereby restored to its original position.

C. The petitioners-claimants shall appear before the Reference Court on 06.03.2023.

D. The Reference Court shall permit the petitioners - claimants to lead oral and documentary evidence in support of their contention so also permit the respondent-State or the acquiring body, as the case may be, to lead oral and documentary evidence in support of their rival contentions.

E. The concerned Reference Court shall dispose of the Land Acquisition Reference as expeditiously as possible, preferably within a period of six months from 06th March, 2023.

G. The petitioners - claimants shall not be entitled to any interest on the enhanced amount of compensation, if awarded from the date of dismissal of LAR till the final disposal of the LAR by the Reference Court.

H. The writ petition is allowed in the aforesaid terms.

[SHARMILA U. DESHMUKH, J.]

bsb/Feb. 23