

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1938 OF 2022**

KHUBA BHILA RATHOD DIED HIS LRS MOTABAI KHUBA
RATHOD DIED LRS AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Ms. Laxmi R. Thakur h/f Mr. Laxmikant C. Patil, Advocate for the
Petitioners.

Mrs. G. L. Deshpande, AGP for Respondents-State.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 27th FEBRUARY, 2023.**

PER COURT:-

1. Heard.

2. The challenge in the petition is to the judgment and order dated 21.01.2014 passed in Land Acquisition Reference No.912/2009 dismissing the reference for non-prosecution.

3. Learned counsel for the petitioners submits that the impugned judgment and order is not an award within the meaning of Section 26 of the Land Acquisition Act. She would further submit that the dismissal is for non-prosecution and she is squarely covered by the decision of this Court in the case of *Walmik S/o Trimbak Tupe Vs. The State of Maharashtra & anr.; Writ Petition No.12795/2019* with connected writ petitions decided on **17.01.2020**.

4. Per contra, the learned A.G.P. submits that the burden was upon the claimants to prove the entitlement to enhance the compensation and as the claimants failed to produce the evidence, the Reference came to be dismissed and as such, it is

a decision on merits. She would further submit that there has been considerable delay which has not been properly explained.

5. Considered the rival submissions of the parties and perused impugned judgment and order.

6. The Reference Court after noticing the decision of the Apex Court in case of *Trivenidevi Vs. Collector*, reported in *AIR 1972 Supreme Court 1417*, wherein the Apex Court had referred to the method of valuation which is to be adopted for ascertaining the market value, has thereafter proceeded to dismiss the reference on the ground that the original claimant was continuously absent for the cross-examination and as such, although original claimants had filed on record the certified copies of the award as well the some instances were failed to prove the contents of the documents.

7. Although the Reference Court was right in relying upon the decision of the Apex Court, the Reference Court failed to take into consideration that the judgment and order has to take the form of an award which should meet the requirements of Section 26 of the Land Acquisition Act. In the present case, the reference has been dismissed on account of non-prosecution.

8. Learned counsel appearing for the petitioners submits that the original claimant was rustic villager and due to his old age could not remain present. Considering the decision of this Court relied upon by the learned counsel for the petitioners and that the Reference Court did not decide the reference on merits, the impugned judgment and award is liable to be quashed and set aside. In the result, the following order:

ORDER

- a. Writ Petition is allowed in terms of prayer Clause (B) and the impugned judgment and order dated 21.01.2014 is hereby quashed and set aside.
- b. Land Acquisition Reference No.912/2009 is restored to file.
- c. Petitioners to appear before the Reference Court on 27.03.2023 and take appropriate steps for being impleaded as a legal heirs of the original claimant and to adduce necessary evidence in support of their claim for enhanced compensation.
- d. Considering the delay, the petitioners are not entitled to the interest on the enhanced compensation, if any, for the period from the date of dismissal of the Reference i.e. from 21.01.2014 till the decision of the Reference Court on merits.
9. Writ Petition stands allowed in the above terms.

(SHARMILA U. DESHMUKH)
JUDGE