

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

**WRIT PETITION NO.10113 OF 2023**

Tryambak S/o Bhivaji Mehtre  
 Since deceased through his L.Rs.

1. Vrundavan W/o Tryambak Mehtre,  
 Aged: 65 years, Occu.: Household,  
 R/o. Ambulga (Bk.), Tq. Nilang,  
 Dist. Latur, Now, at B-704, Leon  
 Orbit, Near Royal Park, Pimpale  
 Saudagar, Pimpri-Chinchwad,  
 Dist. Pune.
2. Dattatraya S/o Tryambak Mehtre,  
 Aged: 45 years, Occu.: Business,  
 R/o. Ambulga (Bk.), Tq. Nilanga,  
 Dist. Latur, Now, at B-704, Leon  
 Orbit, Near Royal Park, Pimpale  
 Saudagar, Pimpri-Chinchwad,  
 Dist. Pune.
3. Sow. Saroja W/o Ashok Dhumal  
 Aged: 42 years, Occu.: Household,  
 R/o Parali Vaijnath, Dist. Beed.
4. Sow. Sunita W/o Sachin Sontakke,  
 Aged: 40 years, Occ.: Household,  
 R/o Solapur, Tq. and Dist. Solapur.
5. Sow. Manisha W/o Manoj Dolare  
 Aged: 37 years, Occ.: Household,  
 R/o Osmanabad,  
 Tq. & Dist. Osmanabad.

.... Petitioners

Versus

1. The Executive Engineer,  
 Minor Irrigation Local Sector,  
 Latur, Dist. Latur.
2. The State of Maharashtra  
 Through the Collector, Latur.
3. The Sub Divisionl Officer,  
 Sub-Division, Nilanga,  
 Dist. Latur

.... Respondents

.....  
Mr. Shashikiran N. Patil, Advocate for the Petitioners  
Mr. P.N. Kutti, AGP for Respondent Nos. 1 to 3  
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 17<sup>th</sup> AUGUST, 2023

**ORAL JUDGMENT :**

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

2. The petitioners – legal representatives of deceased Tryambak Bhivaji Mehtre filed Miscellaneous Application No. 15 of 2021 in the Court of learned Civil Judge, Senior Division, Nilanga for condonation of delay of 11 years, in filing restoration application in Land Acquisition Reference No. 146 of 2006. It is contended by the petitioners that deceased Tryambak had filed LAR No. 146 of 2006 for enhancement of compensation. The said reference is dismissed in default on 17<sup>th</sup> June, 2010. Deceased Tryambak was suffering from cancer and was bedridden, since 2008 onwards. He was under daily treatment, therefore, he could not attend the Court proceedings. Tryambak expired on 31<sup>st</sup> March, 2011 and the petitioners were unaware about the land acquisition reference proceedings. When other agriculturists from the same land

acquisition proceedings enquired with the petitioners about the amount of compensation, at that time, they came to know that deceased Tryambak had filed land acquisition proceedings. On inquiry, they came to know that the said land acquisition reference is dismissed in default on 17<sup>th</sup> June, 2010. Deceased Tryambak or the petitioners have not deliberately remained absent in the LAR proceedings. On these contentions, the petitioners prayed for condonation of delay of 11 years.

3. The Reference Court rejected the application on the ground that the petitioners have failed to produce any document in support of their contention that deceased Tryambak was suffering from cancer and was bedridden.

4. Learned advocate for the petitioners submits that during the Covid period, the petitioners could not produce the relevant medical documents about ailment suffered by the deceased. They have placed on record the copy of C.T. scan report of Trymbak, which indicates that Tryimbak has undergone C.T. scan at Vivekanand Hospital, Latur on 29/01/2011, which suggests *malignancy* like *Ca esophagus*.

5. There appears substance in the contention of the petitioners that Trymbak Mehtre was suffering from cancer and

was bedridden, and therefore, this supports the contention of the petitioners that Trymbak Mehtre was suffering from throat cancer and he is expired on 31<sup>st</sup> March, 2011. The contention of the petitioners that they were unaware about the proceeding filed by their father, Trymbak Bhivaji Mehtre is also plausible in the peculiar facts of the present case, and their contention that when other agriculturists were granted enhanced compensation, they came to know about the same, and they have approached to the Court is liable to be accepted. Though there is inordinate delay of more than 11 years, considering the fact valuable rights of the petitioner to seek enhanced compensation are involved in the matter, this Court, in the interest of justice and with a view to give fair opportunity to the petitioners to lead evidence in the matter in support of their claim, is inclined to allow the writ petition.

6. In the result, the writ petition is allowed.

7. The impugned order dated 15.11.2022 passed by learned Civil Judge, Senior Division, Nilanga in Misc. Application (N.R.J.I.) No.15 of 2021, is hereby quashed and set aside.

8. The matter is remanded back to the Reference Court for consideration on merits.

9. The reference Court shall give opportunity to the parties to lead evidence in support of their respective claims.

10. The petitioners, however, shall not be entitled to claim interest from 17/06/2010 till today.

Rule is made absolute in above terms.

**[ NITIN B. SURYAWANSHI ]**  
**JUDGE**

S.P Rane