

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

WRIT PETITION NO.6855 OF 2017

**INDUBAI VAIJINATH MADGE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioners : Mr. Kiran M. Nagarkar
AGP for Respondent Nos. 1 & 2 : Mr. P.N. Kutti
Advocate for Respondent No.3 : Mr. R.C. Patil

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 26th JUNE, 2023

PER COURT :

1. By this petition filed under Articles 226 and 227 of the Constitution of India, petitioners challenge order dated 20/02/2013, passed by learned Civil Judge, Senior Division, Kandhar, in R.J.E. No.11/2009, thereby rejecting the petition filed by petitioners seeking condonation of delay in filing restoration application.
2. Husband of petitioner No.1 and father of petitioner Nos. 2 and 3 Vaijanath filed L.A.R. No.266/1997, under Section 18 of the Land Acquisition Act for enhancement of compensation of his acquired land Survey No.61, admeasuring 2 H 39 R, situated at village Goundgaon Taluka Loha, Dist. Nanded. The said reference was dismissed in default on 17/01/2002. Vaijanath expired in motor accident on 01/03/2005. Thereafter, petitioners filed present application seeking condonation of delay of 07 years and 04 months

for restoration of L.A.R. No.266/1997. Reason assigned in the application is that they were not aware about said proceedings. The application is rejected by the reference Court. Hence, the present petition.

3. Heard learned advocate for petitioners, learned Additional Government Pleader for respondent Nos.1 and 2 and learned advocate for respondent No.3. Perused the memo of writ petition, annexures thereto and the impugned order.

4. Learned advocate for petitioners relied on 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. Learned advocate for respondent No.3 vehemently opposed the petition stating that there is inordinate and unexplained delay on the part of petitioners in approaching reference Court. He submits that when the reference was dismissed, original claimant Vaijanath was alive. He has failed to take any steps for restoration of reference. After his death

petitioners have failed to seek restoration of the reference within reasonable time. Therefore, according to him the reference Court is justified in rejecting the application filed by petitioners.

6. In similar set of facts, learned Single Judge of this Court in ***Chandaba Gangaram Pauyed Vs. State of Maharashtra, AIR Online 2023 Bom 81***, held that:-

"34. In my view, this Court is required to be mindful of the fact that the lands of the petitioners have been acquired by providing some compensation, which compensation has not been found adequate by the claimants, which has constrained them to file references. Most of these petitioners are agriculturists residing in remote areas and cannot be said to be well informed about their rights. What is worthwhile to note is that most of the petitioners are from rural area and have been deprived of their private property, by of course, providing compensation however the amount of compensation is required to be adjudicated and there has to be a satisfaction the acquisition of the property has taken place after providing adequate compensation. Considering the fact that some justification has been provided in each of these writ petitions, the submission of the AGP seeking rejection of the writ petitions on the ground of delay is not acceptable.

35. ...

36. Considering the position which has been reiterated by several decisions that the reference Court is required to decide the claim on merits, in my opinion, an opportunity is required to be given to the claimants to lead evidence in support of their claim for enhanced compensation. As far as the submissions by the learned counsel for the petitioners that they are ready to waive the interest from the date of the dismissal of the Land Acquisition Reference, in my view the petitioners shall not be entitled to claim any interest for the period from the date of dismissal of LARs in default till the final disposal of the LARs by the trial Court."

7. I am in respectful agreement with the above quoted observations and they are applicable to the facts of the present case.

8. Though it is true that there is inordinate delay on the part of petitioners in filing application for restoration of land acquisition reference, we cannot be oblivious of the fact that poor agriculturists whose land is acquired, are seeking enhancement of compensation. They cannot be denied fair opportunity to contest the matter on merit. Keeping this aspect in mind, this Court is inclined to allow the petition and restore the land acquisition reference.

9. In the result, following order:-

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 20/02/2013, passed by learned Civil Judge, Senior Division, Kandhar, in R.J.E. No.11/2009, is quashed and set aside. R.J.E. No.11/2009 is hereby allowed.
- (III) Land Acquisition Reference No.266/1997, is restored to its original file.
- (IV) The petitioners shall not be entitled to claim any interest for the period from the date of dismissal of the proceeding i.e. 17/01/2002 till today.

(NITIN B. SURYAWANSHI, J.)