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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.174 OF 2022

Keshav Ganpati Devkate (Died) LRs

PETITIONERS

VERSUS

The State of Maharashtra and Others

RESPONDENTS

.....

Mr. Kiran M. Nagarkar, Advocate for the petitioners

Mr. R. B. Bagul, AGP for respondent - State

Ms. Sarita Gaikwad, Advocate for respondent No.3

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 24th APRIL, 2023

ORDER :

1. Learned advocate for the petitioner seeks permission to delete name of respondent No.4 from the array of the respondents, as according to him, respondent No.4 has been transposed as legal heir of the deceased petitioner.
2. Permission granted.
3. Deletion be carried out forthwith.
4. This petition filed under Article 227 of the Constitution of India, impugns order dated 18th December, 2017 passed by Civil Judge, Senior Division, Mukhed in Land Acquisition Reference

No.531 of 2007, thereby rejecting the land acquisition reference since the petitioner failed to adduce evidence.

5. Indisputably, the issue involved in this petition, is covered by the judgment of this Court 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 claimants to adduce evidence, this Court has held that the Reference Court did not decide the references on merits and, therefore, set aside the order passed by the Reference Court and restored the references with direction to decide the Reference on merits.

6. In Writ Petition No. 1448 of 221 (*Bharat Laxmidas Thakkar V/s State of Maharashtra and 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 in stead of decided 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”

7. Admittedly, in the present case also, the reference is not decided on merits and the same is rejected solely on the ground that the petitioner has failed to adduce evidence. The present case is, therefore, squarely covered by the above reference decisions.

8. In view of aforesaid, following order-

ORDER

- I) Writ petition is allowed.
- II) Impugned order dated 18th December, 2017 passed by Civil Judge, Senior Division, Mukhed in Land Acquisition Reference No.531 of 2007 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 of hearing to the respective parties.
- IV) The Reference Court shall expedite 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 shall cooperate.

- V) The petitioner shall not be entitled to claim interest for the period from the date of dismissal of proceedings i.e. 18th Decfember, 2017 till today.

[NITIN B. SURYAWANSHI]
JUDGE

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