

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1920 OF 2022**

GOVIND MUKINDA HUBEWAD DIED THROUGH LRS
SHANKAR GOVIND HUBEWAD
VERSUS
THE STATE OF MAHARASHTRA AND ORS

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Mr. Kiran M. Nagarkar, Advocate for the Petitioner.
Mr. S. N. Morampalle, AGP for Respondents-State.
Mr. Sudhir G. Bhalerao, Advocate for Respondent No.3.

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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 15.10.2005 rejecting the Reference under Section 18 of the Land Acquisition Act.
3. Learned counsel appearing for the petitioner submit that Reference has been rejected for non-prosecution.
4. Learned counsel appearing for respondent no.2 submits that the perusal of the impugned judgment and award shows that it is a on merits. He has invited the attention of this Court to paragraph no.10 of the impugned judgment and award to submit that at the time of considering the Reference, the Reference Court has considered the copy of the award and as such, the decision is itself on merits.
5. Considered the rival submissions of the parties.

6. 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*** after considering various judicial pronouncements has observed that Supreme Court in case of ***Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and another***, reported in ***AIR 1988 SC 1652*** has observed that Reference under Section 18 of the Land Acquisition Act is not an Appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the said material is produced and proved before the Court.

7. In my opinion, the observation of this Court in the ***Walmik S/o Trimbak Tupe*** (supra) is an answer to the submission raised by the learned counsel for respondent no.2. In the present case the impugned judgment and order is not a decision on merits and Reference has been dismissed for non-prosecution. As such, the impugned judgment and order do not meet with the requirements of the award under Section 26 of the Land Acquisition Act.

8. For the reasons above, the petition succeeds. The impugned judgment and order dated 15.10.2005 is hereby quashed and set aside. The Land Acquisition Reference No.43/2003 is restored to file. The petitioner to appear before the Reference Court on 27.03.2023 for leading evidence. The petitioner will not be entitled for the interest on the enhanced compensation, if any, during the period from 15.10.2005 i.e. the

date of dismissal of the Reference Petition till the decision of the Reference Court pursuant to the remand of the Reference.

9. Writ Petition stands allowed in the above terms.

(SHARMILA U. DESHMUKH)
JUDGE

Devendra/February-2023