

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11506 OF 2021

Lala Mahadu Hubewad
Age- 60 years, Occ: Agriculture,
R/o. Therban, Tq. Bhokar,
Dist. Nanded

...Petitioner

Versus

1. The State of Maharashtra
Through Collector, District Collector.
Collector Office, Nanded.
2. The Special Land Acquisition
Officer, P.T. Minor Irrigation
Work No. 1 Collector Office
Nanded.
3. The Executive Engineer
Minor Irrigation Division,
Jangamwadi, Nanded.

...Respondents

Mr. K.M. Nagarkar, Advocate for the petitioner.
Mr. S.W. Munde, AGP for respondents No. 1 and 2.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st APRIL, 2023

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally
with the consent of the parties.
2. By this petition filed under Article 227 of the
Constitution of India, petitioner challenges the order dated

14.10.2005 passed by 2nd Joint Civil Judge, Senior Division, Nanded in Land Acquisition Reference No. 38 of 2003, thereby deciding the reference in absence of the petitioner, on merits.

3. Heard the learned advocate for the petitioner and learned Assistant Government Pleader for respondents No. 1 and 2. Though served, none appears for respondent No. 3. Perused the writ petition memo, annexures thereto and the impugned order.

4. Admittedly, before deciding the reference on merits, no opportunity of hearing is given to the petitioner. When the judgment is delivered on merits, the petitioner/claimant and his advocate were absent. The impugned order is passed in violation of principles of natural justice and since it denies the reasonable and fair opportunity to contest the reference on merits, the same cannot be sustained.

6. In *Writ Petition No. 1448 of 2021 (Bharat Laxmidas Thakkar vs. State of Maharashtra & 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 instead of deciding 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. In view of aforesaid observations, following order:-

ORDER

- (I) The writ petition is allowed.
- (II) The impugned order dated 14.10.2005 passed by learned 2nd Joint Civil Judge, Senior Division, Nanded, in Land Acquisition Reference No. 38 of 2003 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 to the respective parties.
- (IV) The reference Court shall expedite the 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 to co-operate.

- (V) The petitioner shall not be entitled to claim any interest for the period from the date of dismissal of the proceeding i.e. 14.10.2005 till today.

Rule is made absolute in the above terms. No costs.

[NITIN B. SURYAWANSHI, J.]