

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9832 OF 2021**

SITARAM TUKARAM RUDRE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE
COLLECTOR AND ANOTHER

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Mr. Yogesh K. Bobade, Advocate for the Petitioners.
Mr. S. N. Morampalle, AGP for Respondents-State.

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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 09.07.2020 rejecting the Reference under Section 18 of the Land Acquisition Act.
3. Learned counsel appearing for the petitioners submit that Reference has been rejected for non-prosecution. He would further submit that in view of the decision of this Court in 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*** the Reference has to be decided on merits.
4. Per contra, learned AGP submits that the burden was upon the claimant to prove the entitlement to the enhanced compensation. As the claimant has failed to adduce the evidence, the Reference has been rightly rejected.
5. An Affidavit in reply has been filed by the Respondent No 2 – acquiring body stating that despite sufficient opportunity

the Petitioner did not prosecute the Petition and as such the Reference Court was constrained to pass the impugned judgment and order. It is further stated that there is no explanation as regards the failure to adduce evidence.

6. Considered the rival submission of the parties.

7. This Court in the case of ***Walmik S/o Trimbak Tupe*** (supra), after considering various judicial pronouncements on the subject has held that the Reference under Section 18 of the Land Acquisition Act has to be decided on merits. The provisions of Section 26 of the Land Acquisition Act sets out the contents of Award. Against the background of the judicial pronouncement and Section 26 of the Land Acquisition Act, I have perused the impugned Judgment and order, The Reference Court after framing the issue as regards the inadequacy of the compensation, has rejected the Reference as there was no evidence led by either party. The decision as such cannot be said to be a decision on merits, complying with the provisions of Section 26 of the Land Acquisition Act.

8. The Reference was rejected in the year 2020 and considering the pandemic situation, the present proceedings have been initiated in the year 2023.

9. For the reasons above, the impugned judgment and order dated 09.07.2020 is hereby quashed and set aside. The Land Acquisition Reference No.47/2014 is restored to file. The petitioners are directed to appear before the Reference Court on 27.03.2023 for the purpose of leading evidence.

10. The Reference Court is requested to decide the Land Acquisition Reference within a period of six months from the date of this order.

11. Writ Petition stands allowed in the above terms.

(SHARMILA U. DESHMUKH)
JUDGE

Devendra/February-2023