

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12433 OF 2023

Vasant Tukaram Jaybhaye
Age – 62 years, Occ – Agriculture
R/o Pimpalner, Taluka – Shirur (Ka)
District - Beed

PETITIONER

VERSUS

1. The State of Maharashtra
Through District Collector,
Aurangabad

RESPONDENTS

2. The Executive Engineer,
(Special Project PWD)
Aurangabad

.....

Mr. Shantaram R. Dheple, Advocate for the petitioner
Mr. S. N. Kendre, AGP for respondent - State

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 9th OCTOBER, 2023

JUDGMENT:

1. Rule. Learned Assistant Government Pleader waives service of Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.

2. This petition filed under Article 227 of the Constitution of India, impugns the order dated 2nd January, 2018 passed below Exhibit-11 in Land Acquisition Reference No. 237 of 2010, by the

learned 3rd Joint Civil Judge, Senior Division, Aurangabad, thereby rejecting the land acquisition reference, as the petitioner failed to adduce evidence.

3. The petitioner owned and possessed land Gut No. 3 *ad measuring* 76 Are situated at Daulatpur, Taluka and District – Aurangabad. The said land was acquired by the respondents for the purpose of diversion road from Sawangi to Chikalthana (Cambridge School Bypass). The Special Land Acquisition Officer passed the Award, however, since adequate compensation was not granted, the petitioner filed Land Acquisition Reference No. 237 of 2010 under section 18 of the Land Acquisition Act, 1894.

4. The Reference of the petitioner is rejected on the ground that the petitioner failed to produce any document in support of his claim and has not led any evidence. Therefore, the petitioner failed to prove his claim for enhancement of compensation. Hence, the present writ petition.

5. Heard learned advocate for the petitioner and learned Assistant Government Pleader for the respondents.

6. Indisputably the issue involved in this petition is covered by 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.

7. 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.”

8. Admittedly, in present case also, the reference is not decided by the Reference Court on merits and the same is rejected on the ground that the petitioner failed to adduce evidence. The present case, therefore, is squarely covered by

the above referred decisions.

9. In the result, following order :

ORDER

- (I) The writ petition is allowed.
- (II) The impugned order dated 2nd January, 2018 passed by the learned 3rd Joint Civil Judge, Senior Division, Aurangabad, in Land Acquisition Reference No. 237 of 2010 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 this order. Parties to co-operate.
- (V) The petitioner shall not be entitled to receive interest on enhanced amount, if any, from 2nd January, 2018 till today.

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

**[NITIN B. SURYAWANSHI]
JUDGE**