

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.786 OF 2022

1. Narayan S/o Gyanba Wadane Died
Through his legal heirs
Janak Narayan Wadane Died through
his legal heirs

- (i) Mandakani Janak Wadane
Age: 65 years, Occ- Agril
- (ii) Nana S/o Janak Wadane,
Age: 53 years, Occ: Agriculture
- (iii) Mahadeo S/o Janak Wadane
Age: 51 years, Occ: Agriculture
- (iv) Hanmant S/o Janak Wadane
Age: 55 years, Occ- Agriculture
- (v) Mauli S/o Janak Wadane
Age: 18 years, Occ- Agriculture
- (vi) Geeta Janak Wadane
Age: 18 years, Occ- Agriculture

All above are R/o Malumbra Tq.
Osmanabad, Dist. Osmanabad

...PETITIONERS
[Orig. Claimants]

VERSUS

- 1. The State of Maharashtra
Through The Collector,
Osmanabad.
- 2. The Executive Engineer Minor
Irrigation Osmanabad Division,
Osmanabad.

...RESPONDENTS
[Ori. Respondents]

Mr. G.V. Patil, Advocate for the petitioners.
Mr. R.B. Bagul, AGP for respondent No. 1.
Mr. G.B. Rajale, Advocate h/f. Mr. J.R. Patil, Advocate for
respondent No. 2.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 23rd MARCH, 2023

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition filed under Article 226 and 227 of the Constitution of India, impugns the order dated 30.11.2010 passed by 2nd Joint Civil Judge, Senior Division, Osmanabad in Land Acquisition Reference No. 154 of 2003, thereby rejecting the land acquisition reference as the petitioners failed to adduce evidence.

3. 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.

4. In view of such state-of-affairs, with a rider that the petitioners are not allowed to reap the benefit of their own wrong and making them to forgo their claim for the interest for the intervening period, the writ petition can be allowed.

5. Admittedly, in the present case also the reference is not decided on merits and the same is rejected solely on the ground that the petitioners failed to adduce evidence. The present case is therefore squarely covered by the above-referred decision. Hence, the following order:-

ORDER

- (I) The writ petition is allowed.
- (II) The impugned order dated 30.11.2010 passed by learned 2nd Joint Civil Judge, Senior Division, Osmanabad, in Land Acquisition Reference No. 154 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 petitioners shall not be entitled to claim any interest for the period from the date of dismissal of the proceeding i.e. 30.11.2010 till today.

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

[NITIN B. SURYAWANSHI, J.]