

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2971 OF 2023

Gangadhar Bhaurao Dahihande,
Age : 80 Yeares, Occu.-Agril.,
R/o. Chikalthana,
Tq. & Dist. Aurangabad.

.... Petitioner

Versus

1. The State of Maharashtra
Through Collector, Aurangabad
Tq. & Dist. Aurangabad.

2. The Executive Engineer,
Public Works Department,
Aurangabad,
Tq. & Dist. Aurangabad.

.... Respondents

.....
Mr. Durgesh M. Pingale, Advocate for the Petitioner
Mr. R.B. Bagul, AGP for Respondents – State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th MARCH, 2023

ORAL JUDGMENT :

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

2. By this petition, the petitioner is challenging the order passed by learned Civil Judge Senior Division, Aurangabad in L.A.R. No. 779 of 1997, thereby dismissing the claim petition filed by the petitioner for non-adducing the evidence by the claimant.

3. The claimant contends that due to communication gap between the advocate and him, he was unable to lead the evidence. He has placed reliance on the decisions of learned Single Judge of this Court in Writ Petition No.12795 of 2019 with connected writ petitions, Writ Petition No. 3992 of 2021 and Writ Petition No. 8823 of 2021, wherein this Court has consistently taken a view that reference has to be decided on merits.

4. Learned Assistant Government Pleader submits that taking into consideration the delay in not adducing the evidence, and approaching this Court, the petitioner is not entitled to get interest on the enhanced amount.

5. This point can be agitated before the Reference Court.

6. This Court has taken a consistent view that the reference has to be decided on merits. Admittedly, in the present case, the reference is rejected due to failure on the part of the petitioner to lead evidence. The case of the petitioner is, therefore, squarely covered by the decisions of this Court in Writ Petition No.12795 of 2019 and connected matters. Hence, the writ petition deserves to be allowed. In the result, following order:-

ORDER

- (I) The writ petition is allowed.
- (II) The impugned order dated 26/07/2013 passed by the learned Civil Judge, Senior Division, Aurangabad, in Land Acquisition Reference No. 779 of 1997 is hereby quashed and set aside.
- (III) Land Acquisition Reference No. 779 of 1997 is restored on the file of Civil Judge, Senior Division, Aurangabad, which shall decide it on its own merits, after giving an opportunity to the parties to lead evidence.
- (IV) The reference Court shall expedite the hearing of the reference, and in any case shall decide the reference within a period of six months from the date of receipt of this order.
- (V) Rule is made absolute in the above terms. No costs.

**[NITIN B. SURYAWANSHI]
JUDGE**

S.P. Rane