

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2073 OF 2023

Sarjerao Baburao Sirsat
Since deceased through his L.Rs.
Rukminbai Sarjerao Sirsat and others .. Petitioners

Versus

The State of Maharashtra and another .. Respondents

Shri Suhas R. Shirsat, Advocate for the Petitioners.
Shri S. S. Dande, A.G.P. for the Respondent Nos. 1 and 2.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 21ST FEBRUARY, 2023.**

FINAL ORDER :

. By this petition, the challenge is to the judgment and award dated 28th September, 2022, whereby reference under Section 18 of the Land Acquisition Act came to be dismissed by the Reference Court.

2. Learned counsel appearing for the petitioners submits that reference filed under Section 18 of the Land Acquisition Act, 1894 cannot be dismissed for non prosecution. He would further urge that the reference Court has not decided the claim on merits and dismissed the reference on the ground that the claimants failed to lead evidence. Learned counsel would further submit that, during the pendency of reference original claimant No. 1 has expired and also due to Covid – 19 pandemic there were

restrictions on movement. Learned counsel further submits that, the petitioners are agreeable to waive the interest for the delayed period.

3. Per contra, learned Assistant Government Pleader for respondent Nos. 1 and 2 vehemently opposes the petition and would submits that, as the petitioners failed to lead evidence, the Reference Court has rightly decided the matter on the basis of material on record. Therefore, no interference is called for in the impugned order.

4. Learned counsel for the petitioners have placed reliance on the judgment of this Court **dated 17.01.2020 in Writ Petition No. 12795 of 2019** in the case of **Walmik S/o Trimbak Tupe Vs. The State of Maharashtra and another** with other connected writ petitions and judgment **dated 17.08.2022 passed in Writ Petition No. 2649 of 2021 in the case of Kundlik S/o Limbraj Gore Vs. The State of Maharashtra and others.**

5. Heard learned counsel for respective parties.

6. A detailed order has been passed by this Court on 17th January, 2020 in Writ Petition No. 12795 of 2019 with other connected writ petition. This Court has held that the order of Reference Court under the Land Acquisition Act has to comply with form of the award prescribed by Section 26 of the Land Acquisition Act (for short "L. A. Act"). Admittedly the reference

was filed U/Sec. 18 of the L. A. Act and the award dated 28th September, 2022 shows that the Reference has been dismissed for failure on part of petitioners to adduce evidence in support of their claim. By no stretch of imagination the judgment can be said to be a decision on merits. As held by this Court in the case of **Kundlik S/o Limbraj Gore Vs. The State of Maharashtra and others** and in the case of **Walmik S/o Trimbak Tupe Vs. The State of Maharashtra and another** reference has to be decided on merits.

7. Petitioners have stated the grounds in the petition that during the pendency of the reference original claimant No. 1 has expired on 10.11.2020 and legal heirs of deceased Sarjerao were required to approach the civil court for obtaining heirship certificate and also during the said period due to Covid – 19 pandemic, there were restrictions on movement.

8. The issue being covered by both the decisions cited above, the impugned award dated 28th September, 2022 is required to be quashed and set aside. Considering that the reference is of year 2017 and came to be dismissed in the year 2022, in my opinion, the petitioners/claimants will not be entitled to any interest from the date of judgment dismissing the reference i. e. 28.09.2022 till the final disposal of the reference.

9. Hence the following order.

ORDER

A. Award dated 28th September, 2022 passed in L.A.R. No. 148 of 2017 is hereby quashed and set aside.

B. L. A. R. No. 148 of 2017 is hereby restored to its original position.

C. The petitioners-claimants shall appear before the Reference Court on 20.03.2023.

D. The Reference Court shall permit the petitioners - claimants to lead oral and documentary evidence in support of their contention so also permit the respondent-State or the acquiring body, as the case may be, to lead oral and documentary evidence in support of their rival contentions.

E. The concerned Reference Court shall dispose of the Land Acquisition Reference as expeditiously as possible, preferably within a period of six months from 20th March, 2023.

G. The petitioners - claimants shall not be entitled to any interest on the enhanced amount of compensation, if awarded from the date of dismissal of LAR till the final disposal of the LAR by the Reference Court.

H. The writ petition is allowed in the aforesaid terms.

[SHARMILA U. DESHMUKH, J.]