



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

959 WRIT PETITION NO. 9164 OF 2023

**DADABHAU DHONDIBA KHARAT DIED THROUGH
L.RS.NARAYAN DADABHAU KHARAT & OTHERS**

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the petitioners : Adv.A.A.Khande h/f.

Adv.D.M.Pingale

AGP for Respondent-State : Adv.K.B.Jadhavar

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CORAM : ARUN R. PEDNEKER, J.

DATE : 04.04.2024

P.C. :

1. Heard.

2. Mr. A.A.Khande holding for Mr. D. M. Pingale, the learned counsel for the petitioners submits that the LAR No.2087/2010 (decided on 23/07/2014), LAR No.73/2012 (decided on 05/12/2018), LAR No.396/2012 (decided on 06/12/2018), LAR No.2105/2010 (decided on 30/10/2012) and LAR No.752/1997 (decided on 12/08/2013) were dismissed, on account of non leading of evidence. He relies upon the Judgment of this court in Writ Petition Nos.2973/2023, 12795/2019, 8823/2021 and 3992/2021, dated 15/03/2023, 17/01/2020, 27/06/2022 and 03/03/2021 respectively, and submits that wherever evidence is not led by the parties this court has remitted the

matter back with liberty to lead evidence holding that the reference court has to decide the reference on merits and not to dismiss the same on account of non leading of evidence of the claimants.

3. The learned AGP does not dispute the proposition of law that where the evidence is not led by the parties this court has remitted the matter back as mentioned in the above in Writ Petition Nos.2973/2023, 12795/2019, 8823/2021 and 3992/2021, 15/03/2023, 17/01/2020, 27/06/2022 and 03/03/2021 respectively. However, submits that there is a huge delay in approaching this court and the order dated 29.04.2011 is challenged in the present writ petition.

4. In response to the submissions of the learned AGP, the learned counsel for the petitioners submits that the petitioners would not claim any interest or statutory benefit for the delayed period from the date of the dismissal of the reference i.e. 29.04.2011 in LAR No.1305/2010 till the filing of the present writ petition on 01.02.2023.

5. In view of the submission made, the award of the reference court is set aside and the matter is remitted back to the reference court to decide it in accordance with law. The learned counsel for the petitioners submits that the petitioners would remain present before the reference court,

on 03/05/2024 and will lead evidence as per the date given by the reference court. The reference court to decide the reference as expeditiously as possible and in any event within one (01) year from the date of production of this order. In the event, the reference court answers the reference in favour of the claimants, the claimants would not be entitled for the interest and statutory benefits from the date of the impugned order in LAR till filing of the present writ petition, as mentioned above.

6. The writ petition is accordingly disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC