



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

969 WRIT PETITION NO. 1910 OF 2024

1. Dhondiba (Kondiba) s/o. Nivruti
Londhe (Died) Through its Lrs.

1a. Kalawati Kondiba Londhe
Age Major, Occu. Agri.,
R/o. Murta, Tq. Tuljapur,
Dist. Osmanabad.

1b. Rajendra Kondiba Londhe,
Age Major, Occu. Agri.,
R/o. As above.

1c. Gajendra Kondiba Londhe
Age Major, Occu. Agri.,
R/o. As above.

1d. Sangita Ashok Bansode,
Age Major, Occu. Agri.,
R/o. As above.

....Petitioners.

Versus

1. The State of Maharashtra
Through the Collector, Osmanabad.

2. The Special Land Acquisition Officer,
Krishna Khore Dev. Corporation,
Osmanabad.

3. The Executive Engineer,
Pagthbandare Majbutikaran Division
Omerga, Dist. Osmanabad.

....Respondents

...
Advocate for the Petitioner : Mr. Murge Estling S.
AGP for Respondents 1 & 2 : Mr. B.A. Shinde
...

CORAM : ARUN R. PEDNEKER, J.

Dated : March 14, 2024

JUDGMENT :-

1. Rule. Rule made returnable forthwith. By consent, heard finally.

2. Heard the learned Advocate appearing on behalf of the respective parties.

3. The learned Advocate for the petitioners submits that the Reference Court dismissed the reference on account of the fact that the petitioners failed to lead evidence before the Reference Court. The learned Advocate for the petitioners submits that the reference application was filed before the Collector and the matter was referred to the Reference Court. However, the petitioner failed to lead evidence before the Reference Court. He relies upon the Judgment of this Court in Writ Petition No.12795 of 2019 and other connected matters dated 17/01/2020, and submits that the Reference Court should decide the Reference Application on merits and not by taking into consideration the evidence available before the Special Land Acquisition Officer. He further submits that in identical fact situation, this Court has remanded matter for leading evidence before the Reference Court.

4. The learned AGP has not seriously disputed the legal proposition canvassed, however submits that there is a huge delay in filing the writ petition and that on account of delay the petition be dismissed or a conditional order be passed.

5. The learned AGP submits that Civil Revision Application (CRA) was filed by the dead person in the year 2018 against the order of Reference Court dated 19.6.2017 passed in L.A.R. No. 429/2013. Later on application was filed to bring the legal heirs on record. However, on perusal of the CRA,

it appears that CRA was filed through the legal heirs. Since , the legal heirs were not brought on record before the Reference Court, objection was raised that no separate application was filed for bring the legal heirs on record. Hence, Civil Application No. 10589/2018 was filed for bringing the legal heirs on record. The said application was allowed on 7.2.2020. In view of the Full Bench decision rendered on 17.10.2019 in CRA No. 63/2017 and other connected matters (Diwakar Prabhakar Chopade Vs. The Sub Divisional Officer and others), the CRA is not maintainable against the order of Reference Court. As such, the CRA is converted in to present writ petition on 29.1.2024.

6. The learned AGP submits that on account of the delay in moving petition or converting the CRA into Writ Petition, substantial interest and statutory benefits will have to be paid to the petitioners, if the reference is allowed. The learned AGP further submits that award of the reference court can be set aside only if the petitioners waive interest or statutory benefits from the date of filing of the CRA till the CRA is converted into writ petition.

7. In response to the submissions of the learned AGP, the learned counsel appearing for the petitioners submits that proper CRA was moved within time and in view of the Full Bench Judgment cited supra, the CRA is converted into writ petition. The learned counsel submits that he has made out the grounds against the order of Reference Court that as the original claimant had expired, the legal heirs were not aware of the award of the reference court. The learned counsel submits that now it is the settled law and as has been reflected from the various orders passed by this Court that

reference court has to decide the reference on merits. In view of the same, he submits that the award passed by the Reference Court be set aside and the matter be remitted back to the reference Court for deciding the same afresh.

8. Although the learned AGP has contended that since the petitioner has moved the matter after long period of time, delay is caused. However, since the matter is pending in this Court, petitioners cannot be solely blamed.

9. The learned counsel for the petitioners submits that connected references are decided on merits and the same evidence can be applied in the present case by the Reference Court and no further delay will be caused before the Reference Court.

10. In view of the submissions made, the award passed by the Reference Court is set aside and the matter is remitted back to the Reference Court for deciding the Reference on merits.

11. The learned Advocate for the petitioners submits that he would appear before the Reference Court on 28/03/2024 and that he would also tender his evidence before the Reference Court on the date given by the Reference Court and he will produce the order passed by the reference court in other connected matters as evidence in the case and as such, there would not be large delay on their part to lead the further evidence.

12. The Reference Court to decide the Reference expeditiously and in any

case within six months from the date of production of this order.

13. In view of the above, the writ petition is allowed.

Rule made absolute in above terms.

(ARUN R. PEDNEKER, J.)

ssc/