

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION No.11162 OF 2023

Shankar Karbasappa Patil
Dead Through Lrs.

1. Gunvant s/o Shankar Patil
Age: 73 Years Occu: Agri
2. Shashikala w/o Sahdev Bhure,
Age: 62 Years, Occu: Agriculture
3. Minakshi W/o Bharat Patil
Age: 59 Years, Occu: Agriculture
4. Ramesh S/o Shankar Patil
Age: 57 Years, Occu: Agriculture

All R/o Gunjoti Tq: Omerga
Dist: Osmanabad.

..Petitioners

VERSUS

1. The State of Maharashtra
Through Collector, Osmanabad
2. The Executive Engineer,
Irrigation Project Majbutikaran Division
Omerga, Tq: Omerga Dist: Osmanabad
3. The Special Land Acquisition Officer,
Krushna Khore Vikas Mahamandal,
Osmanabad.

..Respondents

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Advocate for the Petitioners : Mr. Ajay Shinde
AGP for Respondent/State : Mr. K.S. Patil

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : JULY 22, 2025

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with consent of parties.
2. Present petition takes exception to order dated 03.05.2013 passed in L.A.R. No.87 of 2011 as well as order dated 10.04.2018 passed in M.A. (NRJI) No.02 of 2013 passed by learned Joint Civil Judge Senior Division, Omerga, District Osmanabad.
3. It is the case of petitioners that they are owner of land gat nos.86 and 87 situated at Village Gunjoti, Taluka Omerga, District Osmanabad. The portion of aforesaid land including structure has been acquired for purpose of Chincholi-Palasmaon Storage Tank. Notification under Section 4 and 6 of Land Acquisition Act ('The Act' for short) was issued on 07.01.2000 and 16.08.2001 respectively. On 21.07.2006, the Land Acquisition Officer passed an award under Section 11 of Land Acquisition Act. The petitioner on 23.08.2006 was served with notice under Section 12 (2) of Land Acquisition Act. Aggrieved by assessment of compensation under award passed by Land Acquisition Officer, the petitioner filed reference under Section 18 and raised the claim for compensation @ Rs.1,00,000/- per acre along with statutory benefits. The learned Reference Court i.e. Joint Civil Judge Senior Division, Omerga dismissed L.A.R. No.89 of 2011 observing that petitioner failed to lead evidence and further observed that there is no record to indicate that land block no.86 admeasuring

90 R is owned by petitioner as same is standing in the name of one Sidram.

4. The petitioner filed Review Petition No.02 of 2013 contending that there was typographical error in petition while describing the land. However, same has been rejected vide order dated 10.04.2018.

5. The petitioner impugns original order in L.A.R. No. 87 of 2011 dated 03.05.2013 as well as order dated 10.04.2018 passed in M.A. (NRJI) No.02 of 2013 in present writ petition.

6. Mr. Ajay Shinde, learned advocate appearing for petitioners submits that impugned order has been passed without granting opportunity to lead evidence. He would invite attention of this Court to the observations in Para 8 of judgment wherein Reference Court observed that block no.86 admeasuring 90 R for which enhanced compensation is claimed stands in the name of one Sidram. Learned advocate submits that due to insufficient material on record, aforesaid observations were made. The petitioner had thereafter filed an application for review along with copy of e-statement to bring on record exact description of acquired land. However, the learned Reference Court without considering refused to entertain review petition. In support of his contentions, Mr. Ajay Shinde relies upon judgment of this Court dated 17.01.2020 in the case of Walmik s/o Trimbak Tupe Vs. The State of Maharashtra and

Another in Writ Petition No.12795 of 2019 with companion matters

and submits that if there is no decision on merit by Reference Court, the order needs to be quashed and set aside and matter can be relegated back to Reference Court for decision on merit after granting opportunity to the petitioners.

7. Mr. K.S. Patil, learned AGP appearing for respondent/State however supports the impugned order. He would submit that original award is passed by Reference Court on 03.05.2013. Thereafter, Review Application No.02 of 2013 was filed and same has been rejected on 10.04.2018. Whereas, present writ petition is filed in the year 2023. Mr. Patil would further submit that the learned Reference Court observed that the petitioners were not owners of land which was subject matter of acquisition. He would therefore urge to reject writ petition.

8. Having considered submissions advanced, it can be observed that Shankar Karbasappa Patil was original owner of land from survey nos.85 and 86. As per award dated 21.07.2016 passed by Special Land Acquisition Officer, 10 R land from survey no.85 and 1 H 90 R land from survey no.86 has been acquired and vide additional award dated 16.06.2007, 80 R land is acquired from survey no.86. Therefore, the land acquisition reference was filed before Land Acquisition Officer and same was referred to Civil Judge Senior Division, Omerga. Accordingly, L.A.R. No.87 of 2011 was registered

under Section 18 of the Act. Learned Reference Court rejected same by order dated 03.05.2013. Perusal of judgment of Reference Court do not show that original claimant Shankar entered in witness box or has recorded any evidence or decision taken by Reference Court was on merit of matter. Although, there is observation in para 8 of judgment depict that block no.86 to the extent of 90 R, stands in the name of one Sidram, such observations are not on the basis of evidence led by claimant. The conclusion drawn by the Reference Court on the basis of copy of award of e-statement that was tendered along with reference. The decision of Reference Court dated 03.05.2013 was subjected to review in Miscellaneous Application No.02 of 2013 and it was specifically brought on record that due to typing error, land out of gat no.86 was stated to be acquired to the extent of 90 R. However, in fact it was acquired to the extent of 1 H 90 R and 10 R was acquired from gat no.85. The e-statement indicating aforesaid position was not filed on record due to oversight. Later on, review was sought, however, same is also rejected vide order dated 10.04.2018.

9. The Hon'ble Division Bench of this Court in Civil Revision Application No.63 of 2017 observed that an order otherwise than on merits passed in proceedings under Section 18 of the Land Acquisition Act cannot be considered as an award and does not amount to a decree, as defined in Section 2 (2) of Civil Procedure Code by virtue

of deeming provision under Section 26(2) of Land Acquisition Act. Therefore, the appeal against such award would not be maintainable. The Division Bench further observed that in light of decision of Hon'ble Supreme Court in case of ***Khazan Singh Vs. Union of India, reported in 2002 (2) SCC 242***, reference under Section 18 of Land Acquisition Act has to be decided on merits and any order passed other than on merit, would be susceptible to challenge under Article 227 of Constitution of India in its supervisory jurisdiction.

10. In case of Walmik Trimbak Tupe (supra), the Single Judge of this Court in similar situation as can be gathered from the facts of case observed as under :

“11. In view of the same, even though there was an attempt on the part of Reference Courts to decide the reference on merits, however, in the given set of facts and in terms of the ratio laid down by the Supreme Court in the cases, as referred above, I conclude that the Land Acquisition Reference petitions, which are subject matter of these writ petitions, are not decided on merits and as such, the impugned judgment and orders passed by the respective Reference Courts in Land Acquisition References, as mentioned in the chart in para 3 of this judgment, are not sustainable in the eyes of law and thus required to be quashed and set aside. “

11. In light of aforesaid exposition of law, the decision rendered by the Reference Court can neither be termed as an award nor same can be sustained in law. Therefore, this Court is inclined to allow writ petition; however, with a rider that petitioners shall not be entitled for interest on compensation amount from 03.05.2013 i.e. date of dismissal of reference petition till date of this order, as

petitioners were not diligent in prosecuting reference before the Reference Court and even belatedly approached this Court in this writ petition. There is hardly any explanation for lethargic conduct and delay and laches on part of petitioners.

12. In that view of matter, writ petition is allowed in terms of prayer clause (B).

13. Petitioners to appear before the Reference Court on 02.09.2025.

14. Learned Reference Court shall endeavour to decide the reference expeditiously and in any case within a period of one year from the date of this order.

15. Rule is made absolute in above terms.

(S.G. CHAPALGAONKAR, J.)