

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION (WP) NO.5106 Of 2022

Shriram s/o Kashinath Keshawar,
(Dead) through Legal Heirs,

1. Manohar s/o Shriram Keshawar,
Aged about 75 years, Occu. Agriculture,
2. Gajanan s/o Shriram Keshawar,
Aged about 57 years, Occu. Agriculture,
Both the Petitioners are R/o Ward No.8,
Near Vitthal Mandir, at Post Tal. Arni,
Dist. Yavatmal.

3. Shubhangi w/o Laxmikant Pimpalkar,
Aged about 65 years, Occu. Housewife,
R/o Munshiwada, Mahal, Nagpur.

.... Petitioners
(Org. Applicants On R.A.)

// VERSUS //

1. State of Maharashtra,
through the Collector Yavatmal,
Civil Lines Yavatmal.
2. Executive Engineer,
Arunawati Minor Division, Yavatmal,
Tal & Dist. Yavatmal.
3. Deputy Collector and Special Land
Acquisition Officer, Lower Pus Project, (Org. ... Respondent(s)
Pusad, Tal. Pusad, Dist. Yavatmal. Non-applicants On
R.A.)

Shri P.P. Deshmukh, Advocate for the Petitioners

Mrs. Jaipurkar, AGP for the Respondent Nos.1 to 3- State

CORAM : ANIL S. KILOR, J.
DATED : 01.02.2023

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. This writ petition is maintained against the rejection of a reference under Section 18 of the Land Acquisition Act (in short “the LAC Act”), by Reference Court Darwha, District Yavatmal, as held by the Division Bench of this Court in a reference made, holding that the order otherwise than merit passed in a proceeding under Section 18 of the LAC Act by the Civil Court, cannot be considered as an award and therefore, does not amount to a decree as defined in Section 2(2) of the Code of Civil Procedure by virtue of deeming provision under Section 26(2) of the LAC Act and therefore, an appeal against it, is not maintainable.

4. The learned counsel for the Petitioners points out that on 10.10.2018, the Petitioners and their lawyer were absent and therefore, the learned Reference Court passed an order, closing the evidence of the Petitioners and further passed an order, dismissing the reference of the Petitioners.

5. It is submitted that the finding recorded by the learned reference Court that the reference is pending since 15 years though correct, however, dates of events show that the reference was filed in the year 2003 and written statement to the same was filed on 16.06.2016 and on 13.07.2017 issues were framed and first time, the matter was listed for evidence on 12.09.2018 and only is a month period for default of their lawyer, the evidence was closed and the impugned order was passed. He therefore, submits that for a mistake of the lawyer, the clients should not be suffered. He therefore, prays for setting aside the impugned order and remanding the matter back for decision afresh.

6. On the other hand, the learned AGP supports the impugned order and prays for dismissal of the present writ petition.

7. After going through the writ petition along with the documents filed along with the petition and the impugned order, it is evident that

though the reference was filed in the year 2003, the reference was first time listed for evidence in the month of September 2018 and immediately, within one month for the default of the lawyer and the Petitioners were not present, the evidence of the Petitioners was closed. This shows that the sufficient opportunity was not given to the Petitioners to lead the evidence for establishing their claim for enhancement of the compensation.

8. In that view of the matter, I am of the opinion that the matter needs to be remanded back to the learned Reference Court to decide the reference afresh, after permitting the parties to lead evidence in the matter and after hearing. Accordingly, I pass the following order:

- (i) The writ petition is **allowed**.
- (ii) The judgment and order dated 11.12.2018 passed by Civil Judge Senior Division, Darwha in Land Acquisition Case No.1751 of 2004, is hereby quashed and set aside.
- (iii) The matter is remanded back to the learned Reference Court Darwha, District : Yavatmal, and it be restored to its original file.

(iv) The learned Reference Court, Darwha, District : Yavatmal, is directed to decide the reference afresh, after giving opportunity to the Petitioners to lead evidence.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]