

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 8173 OF 2018**

Namdeo S/o Raibhan Ingle (Since dead)
through his legal heir: Narayan S/o
Namdeo Ingle, Aged about 44 years,
Occupation : Cultivator, R/o. Tivri, Tah.
Digras, District-Yavatmal

...Petitioner

// VERSUS //

1. State of Maharashtra, through the Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32
2. The Collector, Yavatmal,
District.- Yavatmal
3. The Special Land Acquisition Officer,
Benefitted Zone, Arunawati Project, Digras,
Tq. Digras, District-Yavatmal
4. Vidarbha Irrigation Development
Corporation, through its Executive
Engineer, Arunawati Project Division,
Yavatmal, Dist. Yavatmal.

... Respondents

Shri S.S.Nemade, Advocate h/f Shri S.U. Nemade, Advocate for the
petitioner.

Shri H.D.Dubey, AGP for the respondent nos. 1 to 3.

CORAM : ANIL S. KILOR, J.

DATED : 7th JULY, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith. Heard finally
by consent of the parties.

2. In this writ petition, the judgment and order dated 17th
September, 1999 passed by the Joint Civil Judge (Senior Division), Pusad
in Land Acquisition Case No. 398 of 1990, dismissing the reference
under Section 18 of the Land Acquisition Act (in short hereinafter

referred as “L.A.Act”) and the order dated 17th September, 1999 to proceed without evidence of the petitioner, are under challenge.

3. The Division Bench of this Court in the case of *Diwakar Prabhakar Chopade Vs. Sub Divisional Officer (Land Acquisition Officer), Aurangabad and others*¹ has held that order otherwise than on merits, passed in a proceedings under section 18 of the L.A. 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 Civil Procedure Code by virtue of the deeming provision under section 26(2) of the L.A. Act and, therefore, an appeal against it also would not be maintainable.

4. In the circumstances, the petitioner can maintain against the impugned judgment and order. However, there is a delay in approaching to this Court which the petitioner has explained in paragraphs 13 to 16 of the petition. The Hon’ble Supreme Court in the case of *Imrat Lal and others Vs. Land Acquisition Collector and others*² while dealing with issue as regards delay in land acquisition matters, has observed thus:

“13. We can take judicial notice of the fact that villagers in our country are by and large illiterate and are not conversant with the intricacies of law. They are usually guided by their co-villagers, who are familiar with the proceedings in the Courts or the advocates with whom they get in touch for redressal of their grievance. Affidavits filed in support of the applications for condonation of delay are usually drafted by the advocates on the basis of half baked information made available by the affected persons. Therefore, in the acquisition matters involving claim for

1 2019(6) Mh.L.J. 591

2 2014(9) SCALE 446

award of just compensation, the Court should adopt a liberal approach and either grant time to the party to file better affidavit to explain delay or suo motu take cognizance of the fact that large number of other similarly situated persons who were affected by the determination of compensation by the Land Acquisition Officer or Reference Court have been granted relief.”

5. In the teeth of above referred observations and having considered the reasons given by the petitioner in paragraphs 13 to 16 of the present petition, I am of the opinion that sufficient reasons have given by the petitioner for explaining the delay.

6. As far as the merit is concerned, in a same land acquisition proceeding in which the land the petitioner was acquired, this Court has enhanced the compensation and granted Rs.43,000/- per Hecter in a case of Chintaman S/o Raibhan Ingle Vs. The State of Maharashtra, through Secretary, Revenue Department, Mantralaya, Mumbai-32 and others in LAC No. 9 of 2004. The petitioner is a similarly situated and if the petitioner is denied an opportunity to pursue his reference under Section 18 of the L.A.Act, the petitioner would get Rs.12,000 per hector.

7. Hence, I am of the opinion that the petitioner shall get one more opportunity to claim fair compensation for which he is entitled. Accordingly, I pass the following order.

i. Writ petition is **allowed**.

ii. The judgment and order dated 17th September, 1999 passed by the Joint Civil Judge (Senior Division), Pusad in Land Acquisition

Case No. 398 of 1990 and the order dated 17th September, 1999 are hereby quashed and set aside.

iii. The matter is remanded back to the reference Court to decide the same afresh.

iv. Petitioner undertakes to co-operate the reference Court to decide the reference at the earliest.

v. The petitioner shall appear before the Reference Court on **28th July, 2023** at 11 am.

[ANIL S. KILOR, J.]