



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.6773 OF 2024

Dhiraj Manohar Jaisingpure, aged
about : 35 years, Occ : Agriculturist,
R/o Pahur, Tq. Babhulgaon, Distt.
Yavatmal.

...PETITIONER

VERSUS

1. The State of Maharashtra, through
Secretary Ministry of Irrigation
Dept. Mantralaya, Mumbai.
2. State of Maharashtra, through
Collector, Yavatmal.
3. Special Land Acquisition Officer,
Minor Irrigation Works
No.II,Yavatmal for Bembla Project,
Yavatmal, Tq. & Distt. Yavatmal.
4. Executive Engineer, Bembla Project
Division, Yavatmal, Tq. & Dist.
Yavatmal.

...RESPONDENTS

Shri P.L. Rathi, Advocate for the petitioner.
Shri N. Joshi, Assistant Government Pleader for the respondent nos. 1 to
3/State.
Shri D.G. Paunikar, Advocate for respondent no.4.

CORAM : PRAVIN S. PATIL, J.
DATED : 27/02/2025.

ORAL JUDGMENT :

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

2. By way of present petition, the petitioner invoked the writ jurisdiction of this Court by challenging the judgment and order dated 06.07.2017 passed by the learned Civil Judge, Senior Division, Yavatmal in L.A.C. No.163/2010.

3. It is the submission of the petitioner that before the Trial Court no evidence was recorded of the parties, and therefore, the impugned judgment can not be said to be delivered on merits. Hence, by relying upon the judgment of the learned Single Judge of this Court in *Writ Petition No.8589 of 2022 (Wasudeo s/o Barku Lende vs. State of Maharashtra and ors.) dated 04.10.2023*, he makes a submission that present petition against the impugned judgment is tenable and can be decided on its own merits.

4. *Per contra*, learned Counsel appearing for respondent

no.4 states that the Civil Judge, Senior Division, Yavatmal has delivered the impugned judgment on 06.07.2017 by framing specific issues and by recording findings on every issue. As such, the proceedings of the Reference was decided by the Trial Court on merits. Hence, according to the learned Counsel for respondent no.4 the appropriate authority to decide the said issue is the Appellate Authority provided under the Land Acquisition Act, 1894 (for short hereinafter referred to as 'the Act').

5. After hearing both the parties and on perusal of the impugned judgment, it reveals that following issues were framed by the Reference Court :

No.	Issues	Findings
1.	Whether this reference is within limitation?	In the affirmative
2.	Whether the compensation awarded by SLAO is inadequate and insufficient?	In the negative
3.	What should be just and reasonable compensation ?	Does not survive.
4.	What order ?	As per final order.

and answer to each issue referred in the judgment.

6. Finding recorded by the Reference Court *prima facie* shows that he has touches the merits of the matter and after considering the entire documentary evidence available before him, passed the final order in the matter.

7. Learned Counsel for respondent no.4 has rightly pointed out that in the judgment of the Division Bench of this Court in the case of *Diwakar Prabhakar Chopade vs. Sub-Divisional Officer and ors. 2019(6) Mh.L.J. 591*, this Court after considering the entire legal position, in paragraph 31 recorded its finding as under :

“31. In the result, we hold as under :

(A) that a civil revision application under section 115 of Civil Procedure Code against, any order passed, otherwise than on merits, in an application under section 18 of the L.A. Act by the Civil Court, is not maintainable.

(B) We also hold that the judgments in the case of Kawadu Madhar Bansod, Appasaheb Mohanrao Chede, Kamlakar Laxman Suryawanshi and Irnappa @ Irappa Angire (supra), holding that a civil revision application is maintainable, are rendered per-incuriam to the statutory provisions

as contained in the proviso to sub-section (1) of section 115 of the Code of Civil Procedure and are also rendered per- incuriam in view of the judgment of the Hon'ble Apex Court in the case of Shiv Shakti (supra).

- (C) We also hold that an 'order otherwise than on merits', passed in 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.*
- (D) We hold that the judgment in Venkat's case (supra), holding that an appeal is maintainable, is on a different footing altogether considering that the judgment passed therein was on merits after considering the evidence and, therefore, was an award and consequently a decree under section 2(2) of Civil Procedure Code by application of section 26(2) of the L.A. Act.*
- (E) We further hold that a reference under section 18 of the L.A. Act, in the light of the mandate as laid down by the Hon'ble Apex Court in the case of Khazan Singh (supra), has to be decided by the Civil Court on the basis of the material before it, on merits.*
- (F) We further hold that an 'order passed otherwise than on merits in proceedings under section 18 of the L.A. Act by the Civil Court, in case it has been so passed, would be susceptible to a challenge under Article 227 of the Constitution of India before the High Court in its supervisory jurisdiction, or under Order IX, Rule 9 read with section 151, Civil Procedure Code by virtue of section 53 of the L.A. Act."*

8. Clause (F) of this finding specifically states that powers under Article 227 of the Constitution of India can be invoked by this Court if the proceeding under Section 18 of the Act, is not decided by the Civil Court on merits. Relying upon this judgment of the Division Bench, learned Single Judge on 04.10.2023 decided Writ Petition No.8589/2022 on which the petitioner has placed reliance.

9. In the present case, as observed above, L.A.C. No.163/2010 is decided by considering the merits of the matter. Therefore, the judgment of learned Single Judge relied by the petitioner is not helpful to him. Hence, I proceed to pass following order :

ORDER

- (i) Petition is disposed of as not tenable in view of availability of statutory remedy to petitioner to file Appeal under Section 54 of the Land Acquisition Act, 1894 against the impugned judgment and order dated 06.07.2017 passed in L.A.C. No.163/2010 by Civil

Judge, Senior Division, Yavatmal.

(ii) Liberty is granted to the petitioner to file statutory Appeal as permissible under the provisions of Land Acquisition Act, 1894.

10. No order as to costs.

(PRAVIN S. PATIL, J.)

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