



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION No.819 OF 2024

Dhuribai Kalu Jadhav (dead),
Through her legal heir,
Charan s/o. Kalu Jadhav,
Aged about 65 years,
Occupation : Labour,
R/o. Ghamapur/Kurli,
Tah. Umarkhed, District Yavatmal. : PETITIONER

...VERSUS...

1. The State of Maharashtra,
through Collector,
Amravati.
2. Executive Engineer,
Minor Irrigation Project Division,
Pusad, Tah. Pusad, District Yavatmal.
3. Special Land Acquisition Officer,
Lower Pus Project, Pusad,
Distt. Yavatmal. : RESPONDENTS

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Mr. R.J. Shinde, Advocate for Petitioner.
Ms. D.I. Charlewar, AGP for Respondent No.1.
Mr. U.A. Gosavi, Advocate for Respondent No.2.
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CORAM : **R.M. JOSHI, J.**
DATE : **2nd JULY, 2025.**

JUDGMENT :

1. This petition takes exception to the order passed by the

Reference Court dated 17.4.2015 in Land Acquisition Case No.217/2011, whereby the reference came to be dismissed for want of any evidence on the part of the applicants/claimants.

2. At the outset, learned counsel for the respondent has raised objections to the maintainability of the petition on the ground that since the impugned order is not for dismissal of the reference for want of prosecution but as the same has been passed on merit and the decree has been drawn, the appeal would lie against the same. It is his submission that since efficacious alternate remedy is available, the petition would not be maintainable. To support his submission, he placed reliance on the judgment of the Division Bench of this Court in the case of **Diwakar Prabhakar Chopade Vs. Sub-Divisional Officer, (Land Acquisition Officer), Aurangabad and others** reported in 2019(6) Mh.L.J. 591. Learned counsel for the petitioner responded to the said submissions by pointing out that though it is not stated in so many words that the reference has been dismissed for want of prosecution, practically the order impugned is passed for non-leading of evidence by the claimant and hence, this order cannot be treated as an order on merit of the reference. It is his submission that it was not open for the reference Court to dismiss the reference

only after considering the evidence which was there before the Special Land Acquisition Officer. Learned counsel for the respondent has also relied upon the order of this Co-ordinate Bench of this Court in Writ Petition No.2087/2023. It is his submission that by placing reliance on the judgment of this Co-ordinate Bench of this Court in Writ Petition No.2377/2024 the petition is very well maintainable.

3. There cannot be any dispute made with regard to the proposition laid down by the Division Bench of this Court in the case of *Diwakar Prabhakar Chopde* (supra). In the said judgment it is held that the order otherwise than order on merit would not be subjected to the challenge in an appeal. In order to consider as to whether the appeal would lie against the impugned order or not, it would be relevant to take note of the order impugned itself. Perusal of the impugned order clearly shows that the decision has not been made on merit. Even though in the operative part it is not specifically stated by the Reference Court that the order of dismissal has been passed for the reason of claimant not leading evidence, practically the order indicates so. Thus, it cannot be said that this order has been passed on merit.

4. Once it is held that the order is otherwise than on merit, an appeal would not lie against such order. Consequently, there is

no impediment in holding that the present petition is maintainable against the impugned order.

5. During the course of hearing learned counsel for the petitioner, on instructions, has made a statement that the petitioner would not claim any interest on the enhanced amount, if granted, from the date of framing of the issues by the Reference Court till the date of restoration of the reference. This undertaking takes care of the interest of the respondent. In any case, it would be unjust for petitioner to be paid any interest on the amount enhanced if any by the Reference Court for the reason that he cannot be permitted to get unmeritted enrichment. Needless to say that the statutory interest at the rate of 15% is paid from the public exchequer. Hence, when it is found that the petitioner is at fault, he would not be entitled to receive any interest for the period from the date of framing of the issues till the restoration of the reference.

6. In view of above, petition stands allowed.

7. Impugned order dated 17.4.2015, passed by the Civil Judge, Senior Division, Pusa in Land Acquisition Case No.217/2011 is set aside.

8. Reference LAC No.217/2011 stands restored.

9. The parties are directed to appear before the Reference Court on 29th July, 2025.

10. Since the Reference is of the year 2011, the Court is directed to decide the said Reference expeditiously and in any case within a period of six months.

11. In case, the petitioner succeeds in getting enhanced amount of compensation, he would not be entitled to get any interest on such amount from the date of framing of the issues till 29th July, 2025.

(R.M. JOSHI, J.)