



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

**WRIT PETITION NO. 2733/2024**

- (1) **Sau. Shobha W/o Ashok Joshi,**  
Aged about 65 years, Occ. Agriculture,
- (2) **Ashok S/o Balkrushna Joshi,**  
Aged about 70 years, Occ. Agriculture,

Both the Petitioners are R/o. Ward No. 2,  
at Post, Tal. Arni, District Yavatmal

.... **PETITIONER(S)**

**// VERSUS //**

- (1) **State of Maharashtra,**  
Through the Collector, Yavatmal,  
Civil Lines, Yavatmal
- (2) **The Collector,**  
Yavatmal, Civil Lines, Yavatmal
- (3) **Special Land Acquisition Officer,**  
Appar Painganga Project, Pusad,  
Tal. Pusad, District Yavatmal
- (4) **Executive Engineer,**  
Arunawati Project, Digras,  
District Yavatmal
- (5) **Sau. Anuradha W/o Vijay Joshi,**  
Aged about 70 years, Occ. Agriculture,  
R/o. Prabhag No. 26, Lohara,  
Tal & District Yavatmal (Maharashtra)

- (6) **Vijay S/o. Balkrushna Joshi,**  
Aged about 85 years, Occ. Agriculture,  
R/o. Prabhag No. 26, Lohara,  
Tal & District Yavatmal (Maharashtra)

**Amended as per RJ's order dated 09/08/2024**

- (7) **Pramod S/o Balkrushna Joshi,**  
(Dead) Through his legal heirs

- (7-A) Jyoti Wd/o Pramod Joshi,**  
Aged about 85 years, Occ. Agriculture,

- (7-B) Pravin S/o Pramod Joshi,**  
Aged about 40 years, Occ. Agriculture,

- (7-C) Prashant S/o Pramod Joshi,**  
Aged about 37 years, Occ. Private Service,

The Respondent Nos. 7-A to 7-C are  
R/o. Ward No. 2, at Post, Tal. Arni,  
District Yavatmal

- (7-D) Kalpana W/o Sujit Harsulkar,**  
Aged about 45 years, Occ. Housewife,  
R/o. Near State Bank Square, Pusad,  
Tal. Pusad, District Yavatmal

**.... RESPONDENT(S)**

[illegible]

**Shri P.P. Deshmukh, Advocate for the Petitioner(s)**

**Shri H.D. Dubey, AGP for the Respondent/State**

Shri A.B. Nakshane, Advocate for the LRs of Respondent No. 7

[illegible]

**CORAM : M.S. JAWALKAR, J.**

**APRIL 02, 2025**

**ORAL JUDGMENT :-**

. **RULE.** Rule made returnable forthwith. Heard finally by consent of learned Counsel for the respective parties.

(2) The present Writ Petition is filed by the Petitioners being aggrieved by the order dated 04/11/2017 passed by the learned Civil Judge Senior Division, Darwha in L.A.C. No. 729/2004 (Old Case No. 92/1996) below Exhibit 41.

(3) It appears that the Petitioners are the owners and possessors of the acquired land i.e. Field Survey No. 22/91, total ad-measuring 10.28 HR, out of which, 7.13 HR land was acquired for the construction of Arunavati Minor Canal of Arunavati Project at Digras. After the issuance of Notification under Sections 4 & 6 of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act of 1894”) , the Respondent No. 3 declared an Award under Section 11 of the Act of 1894 and thereby granted compensation @ Rs. 18,000/- per hectare for the acquired land. Being aggrieved by the said amount of compensation, which is meager one, the Petitioners had preferred the Reference Petition

under Section 18 of the Act of 1894 before the learned Civil Judge Senior Division, Darwha. The Respondents appeared in the said matter, filed their written statement and denied the claim of the Petitioners. Thereafter, the issues were framed by the learned Trial Court. The Respondent No. 6 was looking after the matter and holding the Special Power of Attorney. The matter was posted for evidence on 22/09/2017. As the Petitioners failed to lead evidence, the learned Reference Court passed the order below Exhibit 38 and closed the evidence of the Petitioners. Thereafter, the Respondents also filed their Pursis below Exhibits 39 and 40 thereby intimating that they do not wish to lead evidence. The learned Trial Court, by its order dated 04/11/2017 passed below Exhibit 41, rejected the Reference Application filed by the Petitioners with costs. Admittedly, notices issued to the Petitioners returned back unserved with remark “left address”, and therefore, the evidence was closed. As such, the order is passed without there being any evidence in support of the Reference by the Petitioners.

(4) Learned Counsel for the Petitioners relied on the order passed by this Court in **Writ Petition No. 8589/2022 (Wasudeo S/o Barku Lende vs. State of Maharashtra & others)** wherein reliance was placed on the judgment in the case of **Chandaba Gangaram Pauyed & others vs. State of Maharashtra & others, reported in 2023(1) Bom. C.R. 723**, wherein it is held that considering the form that the award has to take which is specified in Section 26 of the Act of 1894, the Award which has been passed by the reference Court in these writ petitions cannot be said to be an award within the meaning of Section 26 of the Act of 1894. The determination of the issues has to be on the basis of merits and by taking into consideration the factors which are set out in Section 23 of the Act of 1894. In the absence of any such exercise being carried out by the Reference Court dismissal of the reference on the ground of non-adducing of documentary or oral evidence by the Claimant cannot be said to be a decision on merits.

(5) Considering the above position, in my considered opinion, it would be appropriate to remand the matter back to the learned

Reference Court with a direction to decide the Reference afresh on merits, and for that, opportunity is required to be given to the Claimants to lead evidence in support of their claim for enhancement of compensation.

(6) It is also informed by the learned Counsel for the Petitioners that under the said Arunavati Project, there is enhancement of compensation by the learned Reference Court. On instructions, he submits that the Petitioners are ready to waive the interest from the date of dismissal of the Land Acquisition Reference i.e. 04/11/2017 till filing of the Petition i.e. 06/03/2024.

(7) Hence, I proceed to pass following order:-

### **ORDER**

(a) The Writ Petition is **partly allowed**.

(b) The order dated 04/11/2017 passed by the learned Civil Judge Senior Division, Darwha in L.A.C.

No. 729/2004 (Old Case No. 92/1996) below Exhibit 41 is hereby quashed and set aside.

(c) The matter is remanded back to the learned Civil Judge Senior Division, Darwha to decide the Reference afresh on merits after giving ample opportunity to both the parties to lead evidence.

(d) The Petitioners shall give an undertaking that they will not claim any interest from the date of dismissal of the Land Acquisition Reference i.e. 04/11/2017 till filing of the Petition i.e. 06/03/2024. The said undertaking shall be filed before the learned Reference Court by 30/04/2025.

(e) The parties shall appear before the learned Reference Court on 30/04/2025.

(f) The learned Reference Court is further directed to decide the Reference within a period of nine months from the date of appearance of the parties.

The Petition stands **disposed of** in the above terms.  
Pending Application(s), if any, stand(s) **disposed of**.

**(M.S. JAWALKAR, J.)**