

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 662 OF 2002

KHAJA ALI MAQUSOOD ALI

VERSUS

THE STATE OF MAHARASHTRA

WITH

FIRST APPEAL NO. 663 OF 2002

IBRAHIM ALI NIZAM ALI

VERSUS

THE STATE OF MAHARASHTRA

WITH

FIRST APPEAL NO. 664 OF 2002

WAMAN RAMRAO THETE

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Appellant : Mr. V D Gunale
 AGP for Respondents State: Mr. S. G.Sangle

...

CORAM : S. V. GANGAPURWALA, J.**DATE : 27th August, 2015****PER COURT :**

1. Mr. Gunale, the learned counsel for appellants submits that the Reference court has come to conclusion that the appellants are entitled to the enhanced compensation, however, dismissed the references only on the ground of limitation. The learned counsel submits that references were filed on 24.08.1994. Along-with notices under Section 12(2) of the Land Acquisition Act, copy of Award was never served. Application to get certified copy of the award was filed on 06.08.1994. The said copy was ready for delivery on 18.08.1994, it was delivered on 18.08.1994 itself and immediately, thereafter, Reference was filed on 24.08.1994.

2. Learned counsel submits that copy of award was not accompanied with notice under Section 12(2) of the Land Acquisition Act. The appellants had to apply for certified copy and thereafter get knowledge about contents of the award. As such, it cannot be said that claim petition is barred by limitation. Learned counsel relies on the judgment of Apex Court in a case of **Premji Nathu Vs. State of Gujrat and another, reported in AIR 2012 SC 1624.**

3. Mr. Sangle, learned AGP submits that admittedly the reference is filed beyond six weeks of the date of service of notice under section 12(2) as such, the reference was ex facie barred by limitation. The reference court has rightly considered the said aspect of the matter.

4. With the assistance of learned counsel I have gone through the judgment. The Apex Court in a case of **Pramji Nathu** referred supra observed as under: (Para 15).

"15. In the light of the above, it is to be seen whether the conclusion recorded by the Reference Court, which has been approved by the High Court that the application filed by the appellant was barred by time is legally sustainable. A careful reading of the averments contained in paragraph 2 of the application filed by the appellant under Section 18(1) shows that the notice issued by the Collector under Section 12(2) was served upon him on 22.2.1985. Thereafter, his advocate obtained certified copy of the award and filed application dated 8.4.1985 for making a reference to the Court. This implies that

copy of the award had not been sent to the appellant along with the notice and without that he could not have effectively made an application for seeking reference. On behalf of the State Government, no evidence was produced before the Reference Court to show that copy of the award was sent to the appellant along with the notice. Unfortunately, while deciding issue No.3, this aspect has been totally ignored by the Reference Court which mechanically concluded that the application filed on 8.4.1985 was beyond the time specified in Section 18(2)(b). The learned Single Judge of the High Court also committed serious error by approving the view taken by the Reference Court, albeit without considering the fact that the notice issued by the Collector under Section 12(2) was not accompanied by a copy of the award which was essential for effective exercise of right vested in the appellant to seek reference under Section 18(1)."

5. The Reference Court will be required to consider the aspects with regard to the date of award, date of application when the copies applied, the date when it is supplied, so also the date of service of notice under section 12(2), withdrawal of the amount and the date of filing of reference. All these aspects will have to be taken conjointly by the reference Court. The parties may adduce evidence in this regard also. The reference Court shall thereafter will be required to decide the issue of limitation in the touchstone of the judgment of the Apex Court referred supra .

6. In the result, the impugned judgment and awards are quashed and set aside. The parties are relegated to the Reference Court. The parties shall appear before the Reference Court on 22nd September, 2015.

Within 15 days, the parties may file whatever additional documents they chose to rely on the issue of limitation and thereafter shall adduce evidence, if they so choses, immediately..

7. Considering the fact that the matter is remitted to the Reference Court, the Reference Court shall decide the references expeditiously, preferably within 6 months from the date of appearance.

8. The First Appeals are accordingly disposed of. No costs.

(S. V. GANGAPURWALA, J.)

JPC