

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 316 OF 2011**

Vishal Shripati More

..Applicant

Vs

The State of Maharashtra and
Ors

.. Respondents

Mr. Nilesh S. Patil, Advocate for Applicant.

Mr. Rajan Pawar, A.G.P for Respondents no.1 and 3.

CORAM : R.G.KETKAR,J.

DATE : 08/12/2015

PC:

1. Heard Mr Nilesh Patil, learned counsel for the applicant and Mr. Rajan Pawar, learned A.G.P for respondents no.1 and 3. Mr Patil orally seeks leave to delete respondents no.2, 4A to 4C and 5 as respondents no.1 and 3 are the only contesting respondents.

On the oral application made by Mr. Patil, leave to delete as prayed for is granted. Amendment shall be carried out forthwith.

2. Rule. Mr.Pawar waives service on behalf of respondents no.1 and 3. At the request and by consent of the parties, Rule is made returnable forthwith and Application is taken up for final hearing.

3 By this Application under Section 115 of the Code of Civil Procedure, 1908, (for short, 'C.P.C.'), Applicant has challenged order dated 24.2.2005 passed by Special Land Acquisition Officer-2, Solapur, (for short, 'S.L.A.O.') as also communication dated

16.11.2009. By order dated 24.2.2015, the S.L.A.O rejected Reference made by the applicant under section 18 of the Land Acquisition Act, 1894, (for short, 'Act') claiming enhanced compensation on the ground of non-payment of deficit court-fee stamps. By communication dated 16.11.2009, the S.L.A.O informed the applicant that as per the opinion dated 10.11.2009 given by the District Government Pleader, Solapur, the applicant cannot be allowed to deposit deficit court fee stamps.

4. Mr. Patil submitted that Reference under section 18 of the Act was made on 20.9.2004. There were as many as 106 References made to the Collector, Solapur. Along with the Reference, application was made seeking one month's time for depositing the deficit court-fee stamps by 19.10.2004. The order dated 24.2.2005 records these facts. It is further recorded that despite giving time for depositing deficit court-fee stamps, the applicant has not deposited the deficit court-fee stamps and, therefore reference is rejected. The applicant, thereafter, filed application dated 11.8.2009 for recalling the order dated 24.2.2005 and permitting the applicant to deposit the deficit court-fee stamps. That was also rejected on 16.11.2009.

5. Mr. Patil relied upon the decision of this Court in the case of Manjiri Ranganath Kulkarni Vs. State of Maharashtra, 2003(1) Mh.L.J.93 and in particular paragraph 13 thereof to contend that

in cases where there is deficit court fee is paid along with application, the Collector is not empowered to straightaway reject the application unless the fact of deficit court fee or non payment of court fee is brought to the notice of the applicant and the applicant is given reasonable time to make the payment of balance of court fees or required court fees for the application as the case may be. He submitted that in the present case, no such notice was given to the applicant and order was passed on 24.2.2005. He also relied upon the decision of the Division Bench of this Court in the case of Sambhaji Manaji Chate Vs. State of Maharashtra, 2003(2) Mh.L.J. 661 and in particular paragraph 10 thereof. In paragraph 10, the Division Bench considered the decision of the Apex Court in the case of Kashi Ram Namdeo Vs State of Maharashtra, 1996(1) Mh.L.J.652 wherein the Apex Court held that deficit amount of court fees can be remitted/deposited even before the Reference Court and, therefore, it was appropriate for the S.L.A.O to pass a conditional order on the application for Reference preferred by the claimants and to forward it to the Civil Court.

6. On the other hand, Mr. Pawar supported the impugned order. He submitted that the applicant himself while submitting Reference on 20.9.2004 assured that he will pay deficit court fee stamps on or before 19.10.2004. In view thereof, it was not

necessary on the part of the S.L.A.O or the Collector to issue notice to the applicant calling upon him to pay deficit court fees. In any case, the order was passed on 24.2.2005 and the application was made on 11.8.2009, i.e. after more than four years. Therefore also, no case is made out for invocation of powers under Section 115 of C.P.C.

7. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. In the present case, admittedly Reference is made by the applicant on 20.9.2004. It is no doubt true that along with this Reference, other 106 References were also submitted on 20.9.2004. Along with the References, application was made to the effect that deficit court fee stamps will be paid on or before 19.10.2004. It is not brought on record that either the Collector or the S.L.A.O had intimated deficit court fee to the applicant calling upon him to make good. In the case of Manjiri Ranganath (supra), the learned Single Judge of this Court observed in paragraph 13 as under:

“13. Considering the provisions of law contained in the Section 18 of the said Act and the Sections 5 and 40 of the said court fees Act as well as the decisions referred to above, it is evident that in cases where there is deficit court fee paid or no court fee paid along with the application, the collector is not empowered to straightaway reject the application unless the fact of deficit court fee or non payment of court fee is brought to the notice of the applicant and the applicant is given reasonable time to

make the payment of balance of court fees or required court fees for the application as the case may be. Undisputedly, in the cases at hand, the Collector had not intimated the applicants to pay of deficit court fees and without following the said procedure, had rejected the applications. Certainly such rejection of the applications under Section 18 of the said Act cannot be held to be in accordance with the provisions of law, nor justifiable and proper.”

8. In the case of Sambhaji Manaji (supra), the Division Bench of this Court considered the decision of Apex Court in the case of Kashi Ram Namdeo (supra) and observed in paragraph 10 as under:

“10. In view of the clarification given by the Apex Court, it is clear that the person preferring an application under section 18 of the Land Acquisition Act is required to pay the court fees. However, this amount could be remitted/deposited even before the Reference Court and, therefore, it is appropriate for the S.L.A.O to pass a conditional order on the application for Reference preferred by the petitioners and to forward it to the Civil Court.”

9. In the present case, there is no material on record to indicate that notice was issued either by the Collector/S.L.A.O calling upon the applicant to pay deficit court fee stamps or the S.L.A.O passing conditional order on the reference made by the applicant and forwarding the same to the Court. In view thereof, I do not find any merit in the submission of Mr. Pawar that since along with Reference itself, the applicant had sought one month's time it was not incumbent upon the S.L.A.O to issue notice. It is not possible to accept this submission. In view thereof, Application

succeeds. The impugned order dated 24.2.2005 and communication dated 16.11.2009 is quashed and set aside. Mr. Patil assures that within six weeks from today, he will deposit deficit court-fee stamps with the S.L.A.O. If such deposit is made, the S.L.A.O will now proceed in accordance with law by forwarding the Reference to Civil Court. Order accordingly.

(R.G.KETKAR, J.)