

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3069 OF 2016

KASHINATH BHIMRAO DHOTRE AND ANOTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Suraj V Gundre
AGP for respondent : Mr. S.P. Sonpawale.
Advocate for respondent No.2 : Mr. P.R. Tandale.

**CORAM : S.V. GANGAPURWALA &
K.K. SONAWANE, JJ.**

DATE : 20th April, 2016.

PER COURT:

1] Heard Mr. Gundre, learned counsel for petitioner. Learned counsel for the petitioner submits that though an application under Section 28A of the Land Acquisition Act is filed beyond the prescribed period of limitation after award is passed by the Reference Court under Section 18, still, the same can be considered because the respondent State has filed an appeal against the award passed by the Reference court under Section 18 of the Land Acquisition Act and the said appeal is still pending. An appeal is a continuation or original proceedings and in view of the pendency of the the appeal the petitioner would get a right to file an application under Section 28A after the decision in appeal.

2] Mr. Tandale, learned counsel submits that the appeal is filed by the State and not by the Acquiring Body. The application is rightly rejected as it is beyond limitation. We have heard the learned AGP also.

3] The order impugned, as passed, certainly cannot be faulted as the application was filed beyond the prescribed period of limitation.

However, it is submitted that the said judgment and award passed by the Reference Court is assailed by the State in appeal and the said appeal is pending. In case, the petitioner gets a right to file fresh application under Section 28A of the Land Acquisition Act, after disposal of the appeal, the petitioner in that case, may file fresh application, which would be considered by the authority on its own merit. Writ petition is accordingly disposed of. No costs.

[K.K. SONAWANE,J.]

[S.V.GANGAPURWALA,J]

grt/-