

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5514 OF 2016

Vithoba Keshav Goyekar

.. Petitioner

V/s.

The State of Maharashtra & Ors.

.. Respondents

.....

Mr. Samart Shinde i/b. Mr. R.V. Kulkarni, Advocate for the
Petitioners.

Ms. Nisha Mehra, AGP for the Respondent-State.

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**CORAM : SHANTANU S. KEMKAR AND
PRAKASH D. NAIK, JJ.**

DATED : DECEMBER 2, 2016.

P.C. :

Heard the parties through their counsel.

2 Feeling aggrieved by order dated 11 March, 2014
(Exhibit-E) whereby the petitioner's application for
redetermination of the amount of compensation filed under
Section 28-A of the Land Acquisition Act, 1894 has been rejected,
the petitioner has filed this petition under Article 226 of the
Constitution of India. In the impugned order, the reason assigned
for rejection of the petitioner's aforesaid application under
Section 28-A of the Act is that the petitioner's earlier application
filed under Section 18 has been rejected.

3 Learned counsel for the petitioner has submitted that the petitioner's earlier application was rejected vide order dated 13th June, 2006 (Exhibit-B), not on merit but for non payment of Court fee. In the circumstance, according to learned counsel for the petitioner, in view of the law laid down by the Supreme Court in the case of ***Union of India and another Vs. Hansoli Chand Das and Others***¹, the impugned order is not sustainable.

4 Having considered the submission made by the learned counsel for the parties and having gone through the impugned order as also earlier rejection order, we find that the petitioner's application was earlier rejected on the ground of non payment of requisite Court fee, and was not that the application was entertained and decided on merits. In the circumstances, in view of the judgment of the Supreme Court in the case of ***Union of India and another Vs. Hansoli Chand Das and Others (supra)***, the rejection of the petitioner's application cannot be a ground which will come in the way of the petitioner and the authority for deciding the application filed under Section 28-A. The Supreme Court in paragraph 9 has observed that keeping in

1(2002) 7 SCC 273

mind that the amendment is beneficial in nature and it would cause great injustice if a literal interpretation given to the expression “had not made an application to the Collector under Section 18” in Section 28-A of the Act. The Supreme Court has observed that the expression “did not make an application”, would mean “did not make an effective application which had been entertained by making a reference”.

5 In these circumstances, we are of the view, the impugned order cannot be sustained and as such the same is quashed. As a result relief in terms of prayer Clause (b) is granted. The authority shall redetermine the amount of compensation in accordance with law as expeditiously as possible.

6 The Petition is disposed of.

(PRAKASH D. NAIK, J.)

(SHANTANU S. KEMKAR, J.)