

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5659 OF 2016

Dattu Keshav Khade (Deceased)

Through Legal Heirs

...Petitioners

vs.

The State of Maharashtra and Others

...Respondents

Mr. Samrat Shinde i/b. Mr. T.D. Deshmukh, for the Petitioner

Ms. R.M. Shinde, AGP for the Respondent

CORAM : SHANTANU S. KEMKAR &
PRAKASH D. NAIK, JJ.

DATE : **DECEMBER 09, 2016**

PC.:

- . Heard the parties through their counsel.
2. Feeling aggrieved by order dated 11 March, 2014 Exh. E whereby the petitioner's application for redetermination of the amount of compensation filed under section 28A of the Land Acquisition Act, 1894 has been rejected, the petitioner has filed this petition under section 227 of the Constitution of India. In the impugned order, the reason assigned for rejection of the petitioner's aforesaid application under section 28A 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 13 June, 2006 i.e. at Exh.B, not on merit but for none 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 Devi & Others (2002) 7 SCC 273”**, 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 Devi & Others** (supra), the rejection of the petitioner's application cannot be ground which will come in the way of the petitioner and the authority for deciding the application filed under section 28A. The Supreme court in paragraph 9 has observed that keeping in 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 28A 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 hereby quashed. As a result we are granting relief in terms of prayer clause (b). The authority shall redetermine the amount of compensation in accordance with law as expeditiously as possible.

(PRAKASH D. NAIK, J.)

(SHANTANU S. KEMKAR, J.)