

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**902 FIRST APPEAL NO. 420 OF 2016**

ASHOK SHANKAR MALI DIED THR ITS LRS DWARKABAI & ORS  
VERSUS  
THE STATE OF MAHARASHTRA AND ANR

WITH  
**FIRST APPEAL NO. 2568 OF 2016**

DIGAMBER RAMCHANDRA KULKARNI DIED THR  
LRS RAMABAI & ORS.  
VERSUS  
THE STATE OF MAHARASHTRA AND ANR

...  
Advocate for Appellants : Chavan P.S., Mukund S. Patil  
AGP for Respondents: S.P. Sonpawale  
Advocate for Respondents : Dande Shrirang S. for R.2  
...

**CORAM : V.K. JADHAV, J.**  
**DATE : 01-03-2017.**

**P.C. :**

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award passed by the Civil Judge Senior Division, Bhoom dated 07.10.2015 in L.A.R. No. 4 of 2014, the original claimants preferred first appeal no. 420 of 2016 and judgment and award dated 07.10.2015 by the same court in L.A.R. No. 3 of 2014, the original-claimants preferred first appeal no. 2568 of 2016. Both the appeals arise out of one and same award and the judgment and award passed by the Reference Court.

3. Brief facts giving rise to the present appeals are as follows.

4. The appellant-claimants land came to be acquired by the M.I.D.C. for industrial purpose and the S.L.A.O. has awarded the compensation @ Rs. 15,000/- per hectare. Notification under section 32(2) of M.I.D.C. 1961 was published on 21.11.1991. Being aggrieved by the inadequate compensation awarded by the S.L.A.O., the appellant-original claimants preferred the aforesaid land reference petitions. It has contended that in the said land reference petitions the S.L.A.O. has not considered the market price of the acquired land. The acquired land was having the non-agricultural potential and even though the lands owned and possessed by the appellant-claimants came to be acquired for the purpose of establishment of the industrial area, the S.L.A.O. has awarded the compensation by treating the acquired land as agricultural land.

5. The respondent-state and acquiring body has strongly resisted the said reference petitions by filing the written statement. It has specifically contended that the reference petitions are not filed within the period of limitation. It has also contended that the S.L.A.O. has considered the market price from the said area and awarded the just and reasonable compensation.

The appellant-claimants led their oral and documentary

evidence in support of their contentions raised in the reference petitions. The respondent state and acquiring body have not adduced any oral evidence, however, the acquiring body has produced the copy of the notice under Section 12(2) issued to the appellant-claimants and the same is marked at exhibit-39.

6. On the basis of the evidence adduced by the parties, the learned Civil Judge Senior Division, Bhoom by its impugned judgment and award dismissed both the reference petitions mainly on the ground that, the reference petitions were not filed within the period of limitation. Hence these two separate appeals.

7. The learned counsel for the appellants in both the appeals submits that, the S.L.A.O. has declared the award on 15.06.1994, however, the notice under Section 12(2) came to be issued to the concerned persons including the appellant-claimants on 18/24.04.1994. The learned counsel submits that, after a gap of near about one year the said notices came to be issued. The learned counsel submits that, even though the notice exhibit-39 and 49 respectively dated 29.04.1995 came to be issued and assuming that the same was served on the appellant-claimants on 29.04.1995 and a specific date is mentioned in the said notice about the withdrawal of the compensation i.e. 04.05.1995, the appellant-claimants have withdrawn the compensation under protest on 07.07.1995 and 03.08.1995 respectively. The learned

counsel submits that, thereafter, the appellant-claimants have filed the application for obtaining the certified copies of the award on 11.07.1995 and 02.08.1995 respectively and accordingly the copies of the award came to be received on 13.07.1995 and 03.08.1995. The learned counsel submits that, the reference petitions came to be filed on 16.08.1995 and 28.08.1995. The respondent-state and acquiring body have not explained as to why the compensation amount under the award was not paid to the appellant-claimants on 04.05.1995 i.e. the date mentioned in the notice exhibit-39 and 49 respectively. Thus, the only inference could be drawn that the appellant claimants could get the knowledge about the award only after receiving the certified copy of the award or at the most it can be said that they came to know about the contents of the award when the compensation amount as mentioned in the notice under Section 12(2) was received by them on 07.07.1995 and 03.08.1995. The learned counsel submits that, even from the date 07.07.1995 and the date on which the appellant-claimants received the certified copies of the award, the reference petitions are well within the limitation. The learned counsel submits that, the Reference Court has, however, not considered these material aspects. The respondent-state and acquiring body had failed to explain and satisfy the Reference Court as to how the reference petitions are beyond the period of limitation. The learned counsel submits that, it is well settled that the initial burden is on the

respondent-state/acquiring body to prove the same. The learned counsel submits that, the Reference Court has discussed elaborately the documentary evidence in the form of sale instances produced by the appellant-claimants in their respective reference petitions and though arrived at a conclusion that the appellant-claimants are entitled for the compensation at the enhanced rate of Rs.1,37,000/- per hectare, dismissed the reference petitions only on the ground that the reference petitions are not filed within limitation.

8. The learned counsel appearing for the respondent-state/acquiring body submits that, the respondent-acquiring body has produced on record the copy of the Section 12(2) notice and the same is marked at exhibit-39 and 49 respectively in both the reference petitions. The learned counsel submits that, the respondent-acquiring body has thus discharged the initial burden by producing the said notice on record. The said notice exhibit-39 and 49 respectively came to be issued on 29.04.1995. The Reference Court has therefore rightly come to the conclusion from the said date i.e. 29.04.1995 that the reference petitions were not filed within the period of 60 days and has rightly dismissed the claim petitions. No interference is required.

9. On careful perusal of the judgment and award passed by the Reference Court, it appears that, the Reference Court has not considered that, though, the award was passed by the S.L.A.O.

on 15.06.1995, the notice exhibit-39 and 49 respectively came to be issued on 29.04.1995, Furthermore, the Reference Court has also not considered that even though a specific date is given in the said notice under Section 12(2) on 29.04.1995 for withdrawal of the payment, on that day i.e. 04.05.1995, the compensation amount under the award was not paid to the appellant-claimants. Whether the appellant-claimants came to know about the contents of the award on the date i.e. 07.07.1995 and 03.08.1995 respectively when they have withdrawn the compensation amount under the award, the Reference court has not considered the same at all and dismissed the reference petitions.

10. In view of the above discussion this Court is left with no other alternative but to remand the matter to the Reference Court to decide the matter afresh by considering above aspects. Hence the following order:

#### **ORDER**

- i) First Appeal No. 420 of 2016 (*Ashok Shankar Mali Vs. The State of Maharashtra & Anr.*) and First Appeal No. 2568 of 2016 (*Digamber Ramchandra Kulkarni Vs. The State of Maharashtra & Anr.*) are hereby partly allowed.
- ii) The judgment and award passed by the Civil Judge Senior Division, Bhoom dated 07.10.2015 in L.A.R. Nos. 4 of 2014 and 3 of 2014 are hereby quashed and set aside.

- iii) Both the matters are remanded to the Reference Court with the following directions.
- iv) Re-admit the said L.A.R. petitions to its original numbers.
- v) The evidence led by the parties prior to the remand, would be the evidence after remand. The parties are not at liberty to adduce any fresh evidence.
- vi) The Reference Court shall decide both the reference petitions afresh after giving an opportunity of being heard to both the sides.
- vii) The parties shall appear before the Court on 03.04.2017.
- viii) The Reference Court shall dispose of the aforesaid reference petitions within a period of six months from the date of the appearance of the parties before it.
- ix) Record and proceedings be sent back forthwith.
- x) First Appeals are accordingly disposed of.

**(V.K. JADHAV)**  
**JUDGE**