

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

901 FIRST APPEAL NO. 3476 OF 2016

1. Sau. Sundarbai wrongly shown Sunderbai
W/o Digambar Koyale,
Age : 58 years, Occu. Agril.,
2. Rajashri W/o Sanju Koyale,
Age : 38 years, Occu. Agril.,

Both R/o. Borol, Tq. Deoni, Dist. Latur.

.. Appellants

VERSUS

1. The State of Maharashtra,
Through the Collector, Latur,
Tq. & Dist. Latur.
2. The Execution Engineer,
Minor Irrigation Division,
Old Ausa Road, Latur,
Tq. & Dist. Latur.

.. Respondents

...
Mr. S.S. Chillarge, Advocate for Appellants
Mr. S.P. Sonpawale, AGP for Respondent No.1
...

CORAM: P. R. BORA, J.
DATE : 22TH JUNE, 2017.

ORAL JUDGMENT :-

1. Heard finally with the consent of the learned counsel appearing on behalf of the respective parties.
2. The appellants have challenged the Judgment & Award passed by Civil Judge Senior Division, Udgir in Land Acquisition Reference No.1799 of 2010 decided on 24.02.2016.

3. The aforesaid reference application was preferred by the present appellants, seeking enhancement in the amount of compensation, invoking the provisions of Section 18 of the Land Acquisition Act. The reference Court has rejected the reference on the ground of limitation. Since the reference Court has recorded a finding that the reference application was not filed within a period of limitation, the reference Court has not decided the other issues framed in the matter as about the inadequacy of the compensation or as about the real market value of the acquired land and whether the appellants are entitled for any enhancement in the amount of compensation etc.

4. Shri. Chillarge, the learned Counsel appearing for the appellants, submitted that the reference Court has taken the date of presentation of the reference application by the Collector in the Court as a date of filing the reference application by the appellants/claimants and accordingly held that, the reference application was not filed by the appellants within the period of limitation. The learned Counsel, taking me through the record of the case, and more particularly the application as was preferred by the appellants to the Collector at Latur pointed out that the same was submitted by the appellants on 11.09.2006.

5. The learned counsel further pointed out that, while forwarding the reference to the Civil Court at Latur in the forwarding letter dt. 26.03.2008, the Special Land Acquisition Officer has categorically mentioned that the application u/s 18 of the Land Acquisition Act was filed by the appellants within the stipulated

period. The Learned counsel submitted that, since beginning it was the specific contention of the appellants that they come to know about the award passed u/s 11 of the Act on 11.08.2006 when Section 12 (2) notice was served upon them and amount of compensation was offered to them. The learned counsel submitted that, thereafter within one month the appellants preferred the application u/s 18 of the Act. Learned counsel submitted that the application submitted by the appellants was well within the period of limitation, however, the reference Court has erroneously held the same to have been filed beyond the period of limitation.

6. Learned counsel, therefore, prayed for setting aside the finding so recorded by the reference Court and consequently to set aside the dismissal of the application by the reference Court and direct the reference Court to decide the matter afresh.

7. Shri. Sonpawale, learned AGP appearing for the respondent/State, supported the impugned Judgment & Order. The learned AGP submitted that, the primary burden was on the appellant to bring on record cogent and sufficient evidence to show at which date the appellants came to know about passing of the award u/s 11 of the Act. The learned AGP submitted that the appellants have utterly failed in bringing on record any such evidence. The learned AGP further submitted that the appellants have not brought on record any evidence to prove their contention that they come to know about the award passed u/s 11 of the Act on 11.08.2006. He further submitted that in absence of any such evidence, the learned reference Court has rightly held that the appellants have failed to prove that

the application u/s 18 was filed by them within stipulated period of limitation. The learned AGP, therefore, prayed for dismissal of the appeal.

8. I have carefully perused the record of the case. The record reveals that, the Special Land Acquisition Officer had forwarded the reference, in question, to District Court at Latur for its adjudication along with its covering letter dt. 26.03.2008 having outward number 2003/LNQ/PTIT/CR 58 dt. 26.03.2008. In the covering letter the Special Land Acquisition Officer has clearly stated that the appellants have filed the reference proceeding u/s 18 of the Act for the enhancement of the amount of compensation within the stipulated period. The record further shows that the reference application was presented before the Civil Judge for first orders on 31.03.2008.

9. It appears that the reference Court has held the said date of 31.03.2008 to be the date of filing the reference application by the appellants. The reference Court has failed in appreciating that the appellants could not have presented the application u/s 18 of the Act directly to the Civil Court at their own. The application was to be submitted by the appellants with the Collector and the Collector was then to forward the said reference application for adjudication to the civil Court. From the record it is further clear that the application, which was forwarded by the District Court, Latur to civil Court bears the date of filing such application as 11.09.2006. I do not see any reason to disbelieve the said date as has been mentioned. Whether the Collector forwards it immediately or otherwise was not within the control of the appellants. The only obligation on part of the

appellants was to file the application to the Collector u/s 18 of the Act within the stipulated period of limitation i.e. either within six weeks from the date of award or within six weeks after receipt of the notice under Section 12 (2) of the Act.

10. In absence of any contrary evidence, there was no reason for reference Court to reject the contention of the appellants made on oath that they received the knowledge about the award passed u/s 11 of the Act on 11.08.2006 and, thereafter, they had preferred the application u/s 18 of the Act to Collector, Latur on 11.09.2006. The reference Court has thus recorded an erroneous finding on the point of limitation which needs to be quashed and set aside and accordingly it is quashed and set aside.

11. As mentioned earlier, since the finding on the point of limitation was recorded against the appellants, the reference Court did not make any endeavour to answer the other issues and recorded that the other issues do not survive in view of the fact that the application itself cannot be considered since the same was not filed within the period of limitation. In view of the fact that the application so filed is held by this Court to have been filed within the period of limitation, the matter needs to be remitted back to the reference Court for deciding it afresh on merits by giving due opportunity to the parties to adduce oral or documentary evidence in support of their respective contentions.

12. For the reasons stated above, the following order is passed.

ORDER

1. The impugned Judgment & Award passed by Civil Judge Senior Division, Udgir in LAR No.1799 of 2010 decided on 24.02.2016, is quashed & set aside.
2. It is held that the reference application filed by the appellants was filed within the period of limitation.
3. The reference Court is directed to decide the reference application as expeditiously as possible by giving due opportunities to the parties to the proceedings for adducing the necessary oral & documentary evidence in support of their respective contentions.
4. The parties to appear before the reference Court on 10.07.2017, so that no fresh notices may be required to be issued by the reference Court.
5. The appeal is allowed in the aforesaid terms. There shall be no order as to costs.
6. The record & proceedings be sent back to the reference Court forthwith.

[P. R. BORA, J.]

ggp