

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

CIVIL REVISION APPLICATION NO. 128 OF 2017

1. Ramchandra s/o Ganpati Phulari,
died, through legal representative:

1/1. Madhav s/o Ramchandra Phulari,
Age : 33 years, occup. Agril.,
R/o Kawalgaon, Tq. Purna,
Dist. Parbhani

2. Keshav s/o Ganpati Phulari,
Age : 50 years, occup. Agril.,
R/o Kawalgaon, Tq. Purna,
Dist. Parbhani

.... APPLICANTS

VERSUS

1. The State of Maharashtra,
Through the Collector, Parbhani
Tq. & Dist. Parbhani

2. The Special Land Acquisition Officer,
Upper Pain Ganga Project No. 2,
Parbhani

.... RESPONDENTS

Mr. P. N. Kalani, Advocate for applicants;

Mr. K. S. Hoke Patil, Assistant Govt. Pleader for respondents

CORAM : N. W. SAMBRE, J.

DATE : 4th July, 2017

ORAL JUDGMENT

Agricultural land of the applicants being block No. 633 (old Survey No. 32), situated at village Kawalgaon, Tq., Basmat, came to

be acquired to the extent of 1 Hectare 46 R for construction of market yard by the State Government.

2. The Land Acquisition Officer awarded compensation of Rs.10,000/- per Hectare pursuant to the notification issued by State Government under Section 4 of the Land Acquisition Act (for short “the Act”) on 10th May, 1984, with separate compensation for standing trees.

3. Feeling aggrieved and being dissatisfied by the quantum of compensation, applicants preferred a reference bearing Land Acquisition Reference No.294 of 1991 under Section 18 of the the Act after having received notice under sub-section (2) of Section 12 on 13th November, 1986.

4. The Land Acquisition Reference by applicants for enhancement of compensation preferred under Section 18 of the Act came to be answered in favour of the present applicants vide judgment and award dated 30th July, 2001 passed by the 3rd Additional District Judge, Parbhani, thereby enhancing compensation to Rs. 54,734/- with statutory interest and additional market price.

5. The present applicants filed execution petition being Regular Darkhast (LAR) No. 5 of 2017 on 8th February, 2017 before the Executing Court (Court of Civil Judge, Senior Division, Parbhani), seeking execution of judgment and award passed by the Reference

Court under Section 18 of the Act. However, the executing court vide order passed below Exhibit 1 on 30th March, 2017 rejected the same on the count that the execution proceedings are barred by limitation, as the same were filed after expiry of statutory period of twelve years from the date of the award.

6. While questioning the aforesaid order of rejection, Mr. Kalani, learned Counsel appearing on behalf of the applicants – decree holders would urge that the applicants, laymen, are agriculturist and were ignorant of their lawful right and as such delay caused cannot be considered to be deliberate or intentional and thus cannot be held to their detriment. His next limb of submission is, the award passed under the Act though is executable, there is no express limitation provided under the Act.

7. So as to substantiate his contentions, Mr. Kalani would invite attention of this Court to the Schedule attached to the Limitation Act, particularly in regard to the limitation prescribed for execution of a money decree or execution of a decree in relation to compensation for an immovable property. He would then urge that in a similar situation, this Court in the matter of **Dattu Apparao Machale & others vs. Digambar Govindrao Shendge**, reported in **AIR 1968 Bombay 361** has held that the Limitation Act or the provisions of Article 182 thereunder would not apply to an award of a debt court created by Hyderabad Agricultural Debtors Relief Act (16 of 1956). According to

him, since the provisions thereunder are *pari materia*, the said judgment squarely covers the issue sought to be canvassed in present matter.

8. Learned Assistant Government Pleader appearing on behalf of the Respondents, while opposing the claim, would urge that the provisions of the Act is a Code in itself and thus provisions of the Code of Civil Procedure (for short “CPC”) are applicable. According to him, in view of applicability of the provisions of CPC, the Limitation Act which prescribes time limit of twelve years for execution of a decree has been rightly invoked and relied upon by the executing court while rejecting the execution proceedings. He would then urge that the judgment in the matter of ***Dattu (supra)*** cited by the learned Counsel appearing on behalf of the applicants has no applicability to the facts of the present case.

9. I have given anxious consideration to rival submissions of respective parties. It is required to be noted that the judgment and award under Section 18 of the Act came to be passed on 30th July, 2001, for execution of which the proceedings had been filed by the applicants – decree holders only on 8th February, 2017 i.e. almost after a period of sixteen years with absolutely no plausible explanation for such a huge delay.

10. In the aforesaid background, if we consider the provisions of the Act, Section 18 provides for determination of issue as regards entitlement for enhanced compensation upon appreciation of evidence as is brought by a party in support of his claim. While dealing with such proceedings, the statement of the Collector is required to be considered as provided under section 19 of the Act, whereas Section 20 provides for service of notice on a party including on a objector, if any. Section 21 of the Act puts restrictions on the scope of the proceedings to the extent of consideration of the interests of the persons affected by the objection if any and Section 23 provides for matters to be considered in determining the compensation.

11. Section 26 of the Act provides, every award passed on a Reference preferred under Section 18 of the Act shall be in writing signed by the Judge and shall also specify the amount awarded under clause (i) of sub-section (1) of Section 23 of the Act. Sub-section (2) of Section 26 further provides that such an award passed upon a reference preferred under section 18 of the Act shall be deemed to be a decree.

12. It is then to be noted that the 'decree' is not defined under the provisions of Section 26 or under any other provisions of the Act, however, the same is clearly defined under sub-section (2) of Section 2 of the CPC. It is also required to be noted that sub-section (9) of Section 2 of CPC defines a "judgment".

13. Giving cumulative effect to the aforesaid provisions, particularly to provisions of Sections 18 and 26 (2) of the Act read conjointly with sub-sections (2) and (9) of Section 2 of CPC which defines "judgment", it has to be inferred that the award being in the form of a decree is executable under the provisions of Part II and Order XXI of the CPC.

14. It may also be noted that the Limitation Act governing the field in regard to providing limitation for the purpose of execution of a money decree, Article 136 of the Limitation Act provides for limitation of 12 years for execution of any decree other than a decree granting a mandatory injunction. The limitation is to be computed from the date when decree becomes enforceable.

15. In the backdrop as aforesaid, the fact remains that the decree in the form of award which is in question is enforceable within limitation as prescribed under Article 136 of the Limitation Act which period apparently is twelve years. Admittedly, the execution proceedings against the award made under Section 18 of the Act had been filed after lapse of period of about sixteen years for which no convincing explanation is coming forth.

16. Apart from above, though a submission is advanced by Mr Kalani, relying upon the judgment of this Court in the matter of **Dattu**

(*supra*) particularly with reference to and in the background of the provisions of Hyderabad Agricultural Debtors Relief Act (16 of 1956), yet the learned Counsel has not been in a position to demonstrate before this Court that the said Act contains a provision which can be said to be *pari materia* to the provisions of Section 18 and sub-section (2) of Section 26 of the Act. In the aforesaid background, the submission as has been advanced by learned Counsel appearing on behalf of the applicants that the provisions of the Limitation Act cannot be made applicable for execution of an award declared pursuant to a Reference under section 18 of the Act is liable to be rejected being without any basis or legal foundation.

17. In the aforesaid background, I hardly notice any failure on the part of the executing court to exercise jurisdiction while rejecting execution petition warranting exercise of revisional jurisdiction.

18. In that view of the matter, Civil Revision Application stands rejected.

N. W. SAMBRE, J.

amj