

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

FIRST APPEAL NO. 871 OF 2005

- 1] Nivrathi s/o Ramji Kamble
age 55 years, occ. Agril. Worker
R/o Hiwarkheda, Tq.Hingoli,
District Hingoli,
 - 2] Ramji s/o Panduji Kamble,
age 75 years, occ. Agril.,
R/o as above
- ... Appellants

VERSUS

- 1] The State of Maharashtra,
 - 2] The Special Land Acquisition
Officer, P.T. & M.I. Ward
Uppar Penganga Project,
Parbhani
- ... Respondents

WITH

FIRST APPEAL NO. 872 OF 2005

- Shankar s/o Kondaji Wakale
(died) through his L.Rs.
Yeshodabai w/o Kautika Wakale,
age 45 years, occ. Agril. Worker,
R/o Hiwarkheda, Tq. &
Dist. Hingoli
- ... Appellant

VERSUS

- 1] The State of Maharashtra,
 - 2] The Special Land Acquisition
Officer, P.T. & M.I. Ward
Uppar Penganga Project,
Parbhani
- ... Respondents

AND

FIRST APPEAL NO. 873 OF 2005

Shankar s/o Maneji Wakale,
age 56 years, occ. Agril.worker,
R/o Khadki, Tq. Jintoor,
Dist. Parbhani ... Appellant

VERSUS

1] The State of Maharashtra,
2] The Special Land Acquisition
Officer, P.T. & M.I. Ward
Uppar Penganga Project,
Parbhani ... Respondents

.....

Mr. P.S.Agrawal, advocate for the appellants
Mr. A.M.Phule, A.G.P for respondents

.....

CORAM : K.L.WADANE, J.

DATED : 7th AUGUST, 2017

ORAL JUDGMENT :

Heard learned counsel for the appellants
and learned A.G.P. for respondents/State.

2. All these three appeals arise out of
common judgment and order, passed by the learned
Civil Judge, Senior Division, Hingoli in Land
Acquisition Reference Nos. 4 of 1990, 6 of 1990
and 8 of 1990, by which the said Land References
of the claimants were rejected on the ground that

the claimants failed to adduce the evidence and also on the ground that the References were not within limitation.

3. On perusal of the record, it appears that the Special Land Acquisition, Parbhani mentioned in its award that none of the interested persons were present on the date when the award was passed. Therefore, notices under Section 12(2) of the Land Acquisition Act, 1894 (for short, 'the Act') were issued to them. From the copy of the notices under Section 12 (2) of the Act, it reveals that the notices were issued on 18.9.1987 and the References were submitted on 7.10.1987.

4. After hearing both the sides, the issue for consideration of this Court is whether the References filed by the appellants are within specified time as provided under Section 18(2)(a) and (b) of the Act.

5. Section 18(2)(a) and (b) reads as follows :

"18. Reference to Court. —

(1)

(2) The application shall state the grounds on which objection to the

award is taken:

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, subsection (2); or within six months from the date of the Collector's award, whichever period shall first expire."

On perusal of Section 18(2(a) and (b) of the Act, it is clear that if the interested person is present or represented before the Collector, then the period of limitation is six weeks from the date of the Collector's award, and in other cases, within six weeks of the receipt of notice from the Collector under Section 12(2) of the Act or within six months from the date of Collector's award, whichever shall first expire.

6. From the record, it appears that the Special Land Acquisition Officer issued notices to the appellants on 18.9.1987 and the References were filed on 7.10.1987. Therefore, even it is not clear from the record that on which date the claimants have received notices under Section

12(2) of the Act, however, taking the date of issuance of notification under Section 12(2) of the Act, the References were filed well within limitation.

7. From the reasons recorded by learned Civil Judge, Senior Division, it appears that the Court has decided the Reference in very casual manner and without mentioning the date of issuance of notice under Section 12 (2) of the Act, when the References were submitted before the concerned Land Acquisition Officer, and the References of the appellants have been dismissed.

8. I have gone through the reasons recorded by the Trial Court. The Trial Court on wrong assumption has dismissed the References. The Land References of the appellants/claimants were well within limitation.

9. Hence, the following order.

- (i) All the First Appeals are allowed.
- (ii) The common judgment and order, passed by the Civil Judge, Senior Division, Hingoli, dated 28.7.2004, is

hereby set aside.

(iii) The matters are remanded back to the learned Civil Judge Senior Division, Hingoli for disposal in accordance with law.

(iv) The parties are directed to remain present before the Trial Court on 4.9.2017.

(v) The Trial Court is directed to dispose of the References, as early as possible, preferably within six months from today.

(vi) All the contentions of the parties are kept open.

(vii) All the First Appeals are disposed of.

(viii) Record and proceedings be sent forthwith to the Trial Court.

(K.L.WADANE, J.)

dbm