

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.775 OF 2013

Namdeo Ragho Gangurde (decd) through LRs
Bhaskar N. Gangurde and others ... Applicants
Vs.
State of Maharashtra and another ... Respondents

Mr. Shashank Choudhary i/b. Mr. Sachin V. Masurkar and Mr. V. S. Wagh for Applicants.
Mr. Ameet Palkar, AGP for Respondents-State.

CORAM : R. G. KETKAR, J.
DATE : MAY 05, 2017

P.C. :

Heard Mr. Choudhary, learned Counsel for applicants and Mr. Palkar, learned AGP for respondents-State at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants have challenged the communication dated 10.07.2012 issued by the Divisional Commissioner, Nashik disposing of the reference made by the applicants' predecessor in title under Section 18 of the Land Acquisition Act, 1894 (for short 'Act') on the ground that applicants have not paid requisite Court fees in the reference.

3. Rule. Mr. Palkar waives service for respondents. Having regard to the narrow controversy raised in this Application as also at the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

4. In support of this Application, Mr. Choudhary relied upon the decision of the Apex Court in *Kashi Ram Namdeo Zambro Vs. State of*

Maharashtra, 1996 SCC (1) 289. In that case, the Apex Court held thus,

“The only question that arises for consideration is whether the claimant is required to pay court-fee on an application seeking reference under Section 18. We are at a loss to understand that a claimant is required to pay ad valorem court fee on an amount awarded by the Collector under Section 11 for seeking reference under Section 18. What is required is to make a written application with particulars envisaged under Section 18(2) of the Act, to the Collector requiring the matter to be referred to civil Court to decide his objection regarding measurement of the land or the amount of compensation or the person to whom it is payable or the apportionment of the compensation awarded to the persons interested. The Act is a self-contained Code and it does not speak of payment of any court-fee. It requires only that the application should be made within the limitation prescribed either in clause (a) or (b) of Sub-section (2) of the Act. It is, therefore, clear that non-payment of the deficit court-fee, though wrongly made by the appellant, is not a necessary. The owner or person interested is not enjoined under law to pay any court-fee on the application made under Section 18(1) seeking reference for determination of the compensation by the civil court etc. The civil court and the High Court, therefore, have committed grave error of law in rejecting the claim of the appellant for determination of the compensation.”

5. He, therefore, submitted that basically, claimant is not required to pay any Court-fee on an application seeking reference under Section 18 of the Act.

6. On the other hand, Mr. Palkar invited my attention to the affidavit-in-reply filed on behalf of respondents by Devdatta Vishwambhar Kekan, Deputy Collector (Land Acquisition), Irrigation No.1, Nashik as also the decision of this Court in **Sambhaji Manaji Vs. State of Maharashtra, 2003 (2) Mh.L.J. 661**. The Division Bench considered decision of the Apex Court in **Kashi Ram Namdeo** (*supra*) and clarification given by the Apex Court on 10.11.1997. He, therefore, submitted that person preferring an application under Section 18 of the

Act is required to pay the Court fees.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is no doubt true that the Apex Court in **Kashi Ram Namdeo** (*supra*) has held that the Act is a self-contained Code and it does not speak of payment of any court-fee. The said order was clarified on 10.11.1997. The said order reads thus,

“The abovesaid judgment in Civil Appeal No.3604 of 1982 shall not be construed to mean that it overrides the effect of Article 15 of Schedule I of the Bombay Court Fees Act, 1959 in cases where that provision applies.

7. Article 15 of Schedule I of the Bombay Court Fees Act, 1959 states thus:

15 Application to the Collector for a reference to the Court under section 18 of the Land Acquisition Act, 1894, in its application to the (Bombay area) or the Vidharbha region (of the State of Maharashtra) or section 14 of the Land Acquisition in its application to the Hyderabad area of that State, as the case may be.	One half of ad valorem fee on the different, if any, between the amount awarded by the Collector and the amount claimed by the applicant, according to the scale prescribed under Article 1 of Schedule I, subject to a minimum fee of (fifty rupees).
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8. The Division Bench considered decision in **Kashi Ram Namdeo** (*supra*) as also clarification dated 10.11.1997 and in paragraph 8, it was observed that in view of the clarification given by the Apex Court, it is clear that the person preferring an application under Section 18 of the Act is required to pay the court fees. In paragraph 10, it was observed thus,

“10. In view of the clarification given by the Apex Court, it is clear that the person preferring an application under Section 18 of the Land Acquisition Act is required to pay the court fees. However, this amount could be remitted / deposited even before the Reference Court and, therefore, it is appropriate for the S.L.A.O. to pass a conditional order on

the application for Reference preferred by the petitioners and to forward it to the Civil Court.”

9. In view thereof, Application is disposed of in the following terms:
 - a. Impugned communication dated 10.07.2012 is set aside;
 - b. Reference shall be made within a period of four weeks from the date of receipt of authenticated copy of this order;
 - c. Court-fee shall be paid by the applicants within a period of 3 months before the Reference Court and unless such compliance is made, reference shall not be registered;
 - d. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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