

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 2354 OF 2014
IN
FIRST APPEAL (STAMP) NO. 15659 OF 2014
WITH
CIVIL APPLICATION NO. 3908 OF 2014
IN
FIRST APPEAL (STAMP) NO. 15659 OF 2014**

Armin Dossabhoy Kalyaniwalla
& Ors. ..Applicants / Appellants
In the matter between :
Armin Dossabhoy Kalyaniwalla
& Ors. ..Applicants / Appellants
vs.
State of Maharashtra & Anr. ..Respondents

**WITH
CIVIL APPLICATION NO. 2353 OF 2014
IN
FIRST APPEAL (STAMP) NO. 15672 OF 2014
WITH
CIVIL APPLICATION NO. 3912 OF 2014
IN
FIRST APPEAL (STAMP) NO. 15672 OF 2014**

Rekha Behram Shroff & Ors. ..Applicants/ Appellants
In the matter between :
Rekha Behram Shroff & Ors. ..Appellants
vs.
State of Maharashtra & Anr. ..Respondents

Mr. Milind Sathe – Senior Advocate with Ms Sanidha Vedpathak i/b.
Maneksha & Sethna for Applicants / Appellants.

Mr. Amit Palkar - AGP for State – Respondent No. 1.

Mr. Y. S. Bhate with Ms Jyotsna Pandhi for Respondent No. 2.

**CORAM : SHANTANU S. KEMKAR &
M. S. SONAK, JJ.
DATE : JULY 20, 2017**

COMMON ORDER :

Heard learned counsel for the parties. At their request and with their consent, the civil applications and the appeals are taken up for final disposal.

2] The facts in the two appeals are substantially similar and therefore, the two appeals can be disposed of by common order.

3] First appeal (stamp) no. 15659 of 2014 shall be treated as the lead appeal.

4] Certain lands in which interest was claimed by the predecessors of the appellants were acquired under the provisions of the Land Acquisition Act 1894 (said Act). Since, the predecessors of the appellants were dissatisfied with the issue of compensation, land acquisition reference no. 21 of 1995 (later on renumbered as 55 of 2011) was made to the reference court at Thane. During the pendency of such reference, the predecessors of the appellants (original claimants) expired. Details in this regard are as follows:

- (i) Dossabhoy Pestonji Kalyaniwalla (Claimant No. 1) died on 16th October 2007 and was survived by Armin and Kaiwan. Application to bring the legal representatives on record was made in November 2007 itself;
- (ii) Homi Pestonji Kalyaniwalla (Claimant No. 2) died on 13th August 2007 and was survived by Maneck and Zarir. Application to bring the legal representatives on record was made in 14th September 2007; and
- (iii) Minoo Pestonji Kalyaniwalla (Claimant No. 3) died on 21st January 2002 and was survived by Yasmin and Rashna. Application to bring the legal representatives on record was made in 13th July 2004

5] While the applications for bringing on record the legal representatives as aforesaid were pending, the respondent – Union of India applied for dismissal of the reference in view of the judgment and order dated 10th August 2007 in ***Union of India & Ors. vs. Mohammed Masud Mohammed & Ors.***¹ in which it was held that the reference court has no jurisdiction to decide the issue of title. By order dated 20th November 2012, the reference court, allowed the

1 2007 (6) Bom. C.R. 156

application taken out by Union of India and dismissed the land acquisition reference. In view of such dismissal, no orders were made on the applications seeking leave to bring on record the legal representatives of the deceased original claimants.

6] These civil applications and first appeals have been instituted by the legal representatives of the original claimants. They submit that on 8th April 2013, they had applied to the reference court to correct the order dated 20th November 2012, so as to reflect their names in the cause title. They stated that such application was also never disposed of by the reference court. Certified copy of the order dated 20th November 2012 though applied for within two days, was delivered only on 27th May 2014.

7] Accordingly, the applicants / appellants have taken out civil application no. 2354 of 2014 seeking leave to appeal and for condonation of delay, if any. Civil application no. 3908 of 2014 is taken out to amend the cause title in land acquisition reference no. 55 of 2011 by substituting the present applicants in place of the original claimants, since, the present applicants, claim to be the legal heirs of the original claimants.

8] On merits, Mr. Sathe submits that the only reason for rejection of the reference by order dated 20th November 2012 was the view taken by this court in *Union of India & Ors. vs. Mohammed Masud Mohammed & Ors.* that the reference court was not entitled to go into the issue of title in a reference under section 18 of the said Act. However, the Hon'ble Supreme Court by its judgment and order dated 14th January 2016 has set aside the judgment and order in *Union of India & Ors. vs. Mohammed Masud Mohammed & Ors.* and has remanded the matter to the High Court for decision on the issue of title.

9] Mr. Sathe further submits that in *Mohammed Masud Mohammed's* case, evidence had already been recorded by the reference court and therefore, the matter stands remanded to the High Court for consideration of such evidence and determination of the issue of title. Mr. Sathe however points out that in the present matters, the reference came to be dismissed without record of any evidence. He therefore submits that in the light of the decision of the Supreme Court dated 14th January 2016, the applications and appeals may be allowed and the matters remanded to the reference

court for disposal of reference on its own merits and in accordance with law.

10] The learned counsel for the respondents left the matter to the Court but submit that in case of remand, all rights and contentions of the respondents be expressly reserved.

11] We have considered the submissions made by the learned counsel for the parties and also perused the material on record.

12] In the facts and circumstances narrated earlier, we allow the civil application no. 2354 of 2014, thereby, condoning the delay, if any, in seeking leave to appeal. Civil application no. 2354 of 2014 stands disposed of accordingly. Since there is no challenge to the statement that certified copy of the reference court's order was delivered only on 27th May 2014, strictly speaking, there is no question of any delay in institution of the appeal. The applicants are legal representatives of the original claimants. These two reasons are sufficient to allow civil application no. 2354 of 2014.

13] We have perused the impugned order dated 20th November

2012. We find that the same is almost entirely based upon the view taken by this Court in the case of *Mohammed Masud Mohammed*. The reference was dismissed even without bringing on record the legal representatives of the deceased original claimants and without record of any evidence in the matter. Even the applications taken out by the legal representatives for being brought on record were pending.

14] The decision of this Court in *Mohammed Masud Mohammed* has been reversed by the Supreme Court by its judgment and order dated 14th January 2016, observing thus :

“We have given our anxious consideration to the submissions made at the Bar. The short question that falls for our determination is whether the High Court was right in holding that the reference court had no jurisdiction to examine the question of ownership of the Appellants / Claimants qua the lands acquired by the State. The High Court has accepted the line of reasoning advanced before us by Ms. Anand and held that since the ownership in the lands under acquisition was claimed by the State either by itself or Union of India, no such ownership was the subject matter of acquisition.

“The High Court was, in our opinion, in error in allowing the State to raise the question and in holding that the claim of

ownership made by the Claimants fell beyond the scope of the reference under Section 18 of the Land Acquisition Act, not only because the earlier orders passed by the High Court and that passed by this Court in Appeal, said to the contrary, but also because, the plea raised before the High Court was a belated afterthought.

“The High Court has in the order impugned more than clearly held that the question of ownership of the Claimants was beyond the scope of the proceedings under Section 18 of the Land Acquisition Act in the cases at hand. The High Court has after saying so referred to certain pieces of evidence adduced by the parties but stopped short of discussing the said evidence or recording a finding that ownership had indeed not been proved. What the High Court has emphasized repeatedly is that apart from setting up ownership in themselves the Appellants had claimed no other lesser right that would entitle them to compensation. Nor was any evidence led to prove any such right. There is no finding whatsoever to the effect that the evidence adduced by the Appellants did not establish their ownership. There was even otherwise no occasion for the High Court to go into the question of ownership of the Appellants/ Claimants after it had taken the view that the said question fell beyond the scope of reference. To the credit of learned Counsel for the Appellant who claim to be owners, we must mention that even they agreed that the rights claimed by the Appellants qua the land in question are only ownership rights and that it is only if that

question is gone into and held in their favour that they would be entitled to compensation. Independent of ownership, the appellants claim no right nor have they led any evidence to prove the same. In other words, in case the appellants /claimants fail to prove their ownership before the High Court, they will stand non-suited in toto. That submission is recorded. The appellants / claimants will be entitled to compensation only if they establish their ownership and not otherwise. To that extent, the scope of controversy is narrowed down, limited to making it unnecessary for the High Court to look for any right other than the right of ownership for the claimants do not assert any other right nor have they led evidence to prove the same.

In the result, we allow these appeals, set aside the judgments and orders passed by the High Court and remit the matters back to the High Court, with a request to the High Court to hear and dispose of the matters afresh in accordance with law keeping in view the observations made above."

15] Since, the impugned order dated 20th November 2012, was almost entirely premised upon the decision of this Court in *Mohammed Masud Mohammed* and since, the said decision has been reversed by the Supreme Court, it is only appropriate that the impugned order dated 20th November 2012 is set aside and the matter is remanded to the reference court for disposal on merits and

in accordance with law. Needless to add that all contentions of all parties can be left open for determination by the reference court.

16] Accordingly, we set aside the impugned order dated 20th November 2012 and restore reference no. 55 of 2011 to the file of the reference court. Taking note of the pending applications for bringing legal representatives on record, we allow civil application no. 3908 of 2014 and permit the present applicants to come on record as legal representatives of the original claimants in land acquisition reference no. 55 of 2011, which is now restored to the file of the reference court. The reference court is directed to now proceed to take up the reference for consideration and dispose of the same on its own merits and in accordance with law. We make it clear that we have not adverted to the merits of the matters and therefore all contentions of all parties are left open for determination by the reference court.

17] Civil application nos. 2354 of 2014, 3908 of 2014 and first appeal (stamp) no. 15659 of 2014 are accordingly disposed of in the aforesaid terms.

18] For the very same reasons, and upon the same terms, civil

application nos. 2353 of 2014 and 3912 of 2014 and first appeal (I) no. 15672 of 2014 also stand disposed of.

19] In the facts and circumstances of the present cases, there shall be no order as to costs.

(M. S. SONAK, J.)

(SHANTANU S. KEMKAR, J.)

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