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

WRIT PETITION NO. 2745 OF 2016

Mr. Kundalik Sopan Kale. ... Petitioner.

V/s.

The State of Maharashtra & Ors. ... Respondents.

***with
WRIT PETITION NO. 2845 OF 2016***

Mr. Shankar Bapu Shinde. ... Petitioner.

V/s.

The State of Maharashtra & Ors. ... Respondents.

Mr. Ritesh Kulkarni for the Petitioners.

Mr. P.G. Sawant, Asstt. Govt. Pleader for the Respondent – State.

***CORAM : DR. MANJULA CHELLUR, C.J. &
N.M. JAMDAR, J.***

DATE : JULY 12, 2017.

P.C. :-

Both these Petitions involve common questions of law and fact and by consent of parties they are disposed of by this common order.

2. The Petitioners in both these Petitions are aggrieved by rejection of their application filed under Section 28-A of the Land Acquisition Act, 1894.

3. The lands in both the Petitions are situated at Village Mirgavan, Taluka – Karmala, District – Solapur. The lands were acquired for the purpose of Sina-Kolegaon Project. After issuing necessary notifications, the Award was declared on 1 February 2002. The notices under Section 12(2) were issued to the Petitioners and the compensation was accordingly paid. The Petitioners thereafter filed a reference under Section 18 of the Act of 1894 before the Civil Judge, Senior Division, Barshi. The reference was rejected as the Petitioners did not pay the Court fees.

4. A Civil Suit bearing No. 34 of 2006 was filed by one land owner whose land was also acquired under the same notification issued under Section 4 of the Act of 1894. This Suit was disposed of on 4 March 2013 in Lok Adalat and a settlement agreement was signed. The Petitioners thereafter filed applications on 29 July 2013 under Section 28-A of the Act of 1894 seeking benefit of the said provision on the ground that the amount of compensation is enhanced in respect of other lands covered by the same notification under Section 4. The applications filed by the

Petitioners were rejected by the Respondents – authorities on 11 March 2014 on the ground that the reference filed by the Petitioners under Section 18 of the Act of 1894 having been rejected, the Petitioners are not entitled to benefit under Section 28-A of the Act of 1894.

5. Heard Mr. Kulkarni, learned Counsel for the Petitioners and Mr. Sawant, Asstt. Govt. Pleader for the Respondents.

6. Section 28-A of the Act of 1894, which was incorporated in the Land Acquisition Act by the amendment Act of 68 of 1984, gives an opportunity to the applicant who has not made a reference to seek benefit of enhancement of compensation, if the compensation in respect of other lands covered by the same notification under Section 4, is enhanced. Section 28-A reads thus :-

“28-A. Re-determination of the amount of compensation on the basis of the award of the Court -

(1) Wherein an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section

18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18.”

7. In the present case the Petitioners had made a reference under Section 18 of the Act of 1894 and the same was rejected. It is the contention of the Respondent – State that since the reference under Section 18 was made and rejected, the Petitioners cannot get any benefit under Section 28-A. It is the contention of the

Petitioner that the reference under Section 18 was not rejected on merits but for non-payment of Court fees.

8. The question therefore arises for consideration is whether the rejection of a reference under Section 18 of the Act of 1894 for non-payment of Court fees would dis-entitle an applicant from seeking benefit of Section 28-A. This question is no longer *res integra*. A Division Bench of this Court in *Dada Daji Walhekar & Ors. V/s. The State of Maharashtra & Ors.*¹ has held that the rejection of the reference for non-payment of Court fees cannot be considered as an effective adjudication of the reference. It was held that if the Court fees are not paid, the application made under Section 18 cannot be considered as effective. The Division Bench placed reliance on the decision of the Apex Court in the case of *Union of India & Anr. V/s. Hansoli Devi & Ors.*² It is therefore clear that since the references made by the Petitioners were rejected for payment of Court fees, there was no effective application. Rejection of their references on the ground of non-payment of Court fees will not dis-entitle the Petitioners from pursuing their applications under Section 28A of the Act of 1894.

9. In the result, the orders passed by the Respondent – Land Acquisition Officer dated 11 March 2014 are required to be set

¹ Writ Petition No. 147 of 2016 dated 1 February 2017

² 2002(7) SCC 273

aside and are accordingly quashed and set aside. The applications filed by the Petitioners under Section 28-A will have to be entertained. The Respondent – Land Acquisition Officer will decide the applications filed by the Petitioners under Section 28-A on their own merits. It is made clear that we have set aside the impugned orders holding that the Petitioners cannot be debarred from making applications under Section 28-A on the ground of rejection of the reference, but we have not commented on any other aspect of the matter and therefore, the applications filed by the Petitioners under Section 28-A will have to be decided and disposed of on their own merits. Since three years have gone by since the impugned orders were passed, the Respondent – authorities will decide the applications as early as possible, preferably within period of six months from today. The Writ Petitions are accordingly disposed of in above terms. No costs.

(N.M. JAMDAR, J.)

CHIEF JUSTICE