

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.2813 OF 2017

(Devidas Janardhan Tulse and another Vs. The State of Maharashtra
and another)

IN CIVIL REVISION APPLICATION STAMP NO.3985 OF 2017
WITH CIVIL REVISION APPLICATION STAMP NO.3985 OF 2017

WITH

CIVIL APPLICATION 4639 OF 2017

(Prabhakar Tatyaba Tulse and others Vs. The State of Maharashtra
and another)

IN CIVIL REVISION APPLICATION STAMP NO.3476 OF 2017
WITH CIVIL REVISION APPLICATION STAMP NO.3476 OF 2017

WITH

CIVIL APPLICATION NO.3011 OF 2017

(Daji Mahadu Nawade, died, through LR"s and others Vs.The State of
Maharashtra and another)

IN CIVIL REVISION APPLICATION STAMP NO.3987 OF 2017
WITH CIVIL REVISION APPLICATION STAMP NO.3987 OF 2017

Mr.M.P.Tripathi, Advocate for the applicants.

Mr.B.A.Shinde, AGP for respondent/State.

Mr.A.M.Gaikwad, Advocate for respondent No.2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 16/07/2018

PER COURT :

1. I have heard the learned Advocate for the applicants and the learned AGP on behalf of the State. By consent of the parties, I have considered the submissions of the learned Advocates on the civil applications for condonation of delay as well as on the civil revision

applications, which are on stamp numbers.

2. In so far as CA No.4642/2017 is concerned, the said application is allowed for the reasons set out therein and the LR's of the deceased applicants shall be brought on record forthwith. In so far as the delay of 1715 days and 6023 days is concerned, the said aspect is being dealt with while deciding the CRA.

3. In all these CRA's, the ground taken by the applicants is that since the District Collector does not have the authority to demand deposit of court fees, the impugned orders dated 20/02/2001, 22/02/2001 and 20/02/2001, respectively passed by the District Collector in all these matters, would be unsustainable. The applicants have relied upon the judgment of the Hon'ble Apex Court in the matter of Kashi Ram Namdeo Zambro Vs. State of Maharashtra [1996(1) SCC 289] and the judgment dated 12/09/2011 delivered by the Hon'ble Apex Court (3 Judges Bench) in Civil Appeal No.7784/2011 in Shri Ambya Kalya Mhatre (d), through legal heirs and others Vs. The State of Maharashtra.

4. In Kashi Ram (supra), the Hon'ble Apex Court has concluded in paragraph Nos. 1 and 2, which reads as under :-

“1. Notification under [Section 4\(1\)](#) of the Land Acquisition Act, 1894 [for short, ‘the Act’] was published in the State Gazette on January 16, 1975, acquiring certain extent of land part of which land belonged to the appellant for construction of ‘Panzar Talaw’. The Collector made his award under [Section 11](#) on November 15, 1977. Notice of award as required under [Section 12](#) was served on the appellant on November 17, 1977. On an objection raised, the appellant made good the deficit court-fee. Thereafter the Collector made the reference to the Civil Court. During the reference proceedings, the counsel appearing for the State raised a preliminary objection as to the maintainability of the reference which was upheld since requisite court-fee was not paid within the limitation of six weeks from the date of the receipt of the notice of the award, as required under clause (b) of proviso to Sub-section (2) of [Section 18](#). On appeal, the High Court upheld the contention by judgment dated 27th to 29th April, 1982 and accordingly dismissed the appeal. Thus this appeal by special leave against the decree of the Bombay High Court.

2. 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. In Shri Ambya Kalya (supra), it is concluded in paragraph Nos.23 and 24 as under :-

“23. In all other States, ad-valorem court fee is payable only when an appeal is filed against the award of the Reference Court, seeking higher compensation and not in regard to applications for reference under Section 18 of the LA Act. Only in Maharashtra and Gujarat, the land losers are required to pay half of the ad valorem court-fee while seeking reference to the civil court. Most of the land-losers are agriculturists. For many of them, the only source of livelihood is taken away by acquisition of their lands. Though, the Collector is expected to award compensation based on the market value, quite often, it is seen that in actual practice, the compensation offered by the

Collector is far less than the actual market value, thereby forcing the land-losers to seek references to civil court. In such cases, the amount awarded by the Collector being comparatively small, the requirement to pay ad-valorem court-fee on the application for reference causes irreparable hardship, forcing the land loser to seek a lesser increase than what is warranted. The State Government may therefore consider giving appropriate relief to the land losers by providing for a nominal fixed court-fee, on the application for reference, instead of ad valorem court fee.

24. We therefore allow this appeal, set aside the judgment dated 11.11.2008 of the High Court, and remand the matter to the High Court for consideration of the appeal on merits. As the matter relates to a 1970 acquisition and the appeal was of the year 1994, we request the High Court to dispose of the appeal expeditiously."

6. It is, therefore, crystallized that though the Maharashtra Court Fees Act requires deposit of 50% ad-valorem court fees, as the said provision is not found in the land Acquisition Act, the Collector cannot demand the deposit of such Court fees. Consequentially, the impugned orders would not stand in the light of the law laid down by the Hon'ble Apex Court.

7. The learned AGP has strenuously submitted that though the

order of the Collector may not be sustainable, the fact remains that several villagers who live in the same village as like these applicants, were also before the LAR Court seeking enhancement in compensation. All these persons are covered under the same acquisition proceedings. It is unbelievable that these applicants were not aware of the pendency and adjudication in the said proceedings concerning other villagers, for 16 years. As such, since these agriculturists may not be in a position to pay costs, this Court has passed series of orders depriving such agriculturists of the interest component in so far as the enhanced amount of compensation is concerned.

8. In view of the above, the applications for condonation of delay are allowed and the three CRA are also allowed in view of the law laid down by the Hon'ble Apex Court.

9. Considering the above submissions, as the impugned orders have been set aside by this order, the concerned Collector is directed to forthwith forward the claims of these applicants to the concerned LAR Court on or before 17/09/2018. Consequentially, all these applicants shall appear before the LAR Court on 06/10/2018 and formal notices need not be issued to these applicants. The LAR

Court would endeavour to decide the said proceedings as expeditiously as possible and preferably within a period of 18 months from 06/10/2018 keeping in view that these claims are pending since 1999.

10. Needless to state, if the applicants indicate or if the LAR court notices that identical claims for enhancement under the same acquisition with regard to the co-villagers have already been adjudicated upon, the same relief would then be available to these applicants and the LAR Court would then contemplate disposing of the said proceedings in terms thereof.

11. In so far as the delay is concerned, these applicants would be deprived of the interest component on the enhanced amount, if they are entitled to, from 21/02/2001 till the date of this order viz.16/07/2018. All the civil revision applications are, therefore, allowed in the above terms.

(Ravindra V.Ghuge, J.)