

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

**CIVIL APPLICATION NO. 3078 OF 2018  
IN FA/1190/2013**

BHIKCHAND UTTAMCHAND DUGAD  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Applicant : Mr. M.S. Kulkarni h/f Mr. Pramod C. Mayure.  
AGP for Respondents : Mr. A. M. Phule.

**CORAM : K.K. SONAWANE, J.  
DATED : 25<sup>th</sup> JUNE, 2018.**

**Order :-**

1. Heard learned counsel for the applicant and learned AGP for respondent-State of Maharashtra. The present application is moved by the applicant with following prayers;

*[A] The Hon'ble High Court may be pleased to dismiss the First Appeal No. 1190/2013 in view of the Award dated 27-04-2016 passed under Section 28 A and its satisfaction by the State Government and issue appropriate orders for the said purpose.*

*IN THE ALTERNATIVE.*

*[B] The Hon'ble High Court may be pleased to relax the condition imposed by the order dated 06-12-2013 in Civil Application No. 14919/2013 in First Appeal No. 1190/2013 and thereby allow the applicant to withdraw the remaining 50% of the amount unconditionally.*

*IN THE ALTERNATIVE.*

*[C] The Hon'ble High Court may be pleased to fix the present first appeal peremptorily considering the old age of the Applicant and issue appropriate orders for the said purpose.*

*[D] Any other just and equitable relief to which the applicant may be found entitled may kindly be granted.*

2. It has been submitted that the respondents – State authorities have preferred present appeal against impugned judgment and award passed by the learned Reference Court granting enhanced compensation in favour of applicant. Pending the appeal respondent - Acquiring Body deposited the entire decretal amount in this Court, however, the applicant / claimant is permitted to withdraw 50% of the amount deposited in this Court on certain terms and conditions.

3. The learned counsel for applicant submits that adjoining land owners of the applicant taking recourse of the remedy under section 28-A of the Land Acquisition Act, 1894 (for short "Act of 1894") moved the applications for reassessment of compensation amount awarded to them. They prayed for the rate which has been granted by the learned Reference Court in LAR Nos. 68 of 2004 and 639 of 2014. According to applicant, when respondent -State has directed to pay market value @ Rs. 54,500/- per R to other adjoining land owners affected from the same project, in view of rule of parity, the rate granted by the Reference Court in favour of applicant is required to be upheld. Therefore, learned counsel prayed to dismiss the appeal in the light of award passed by the SLAO under section 28-A of the Act, 1894 in favour of adjoining land owners of the vicinity. The claimant also prayed in alternative to relax earlier condition imposed by this Court in civil application No. 14919 of 2013, and applicant be allowed to withdraw rest of the 50% deposited in this Court unconditionally. In addition, the applicant also prayed that in view of age of the applicant being senior citizen, the present appeal be listed for final hearing on merit at the earliest.

3. Admittedly, the applicant produced documents of award passed by the concerned SLAO under section 28-A of the Act of 1894 after reassessment of the market value awarded earlier in favour of adjoining land owners. Learned counsel for the applicant submits that

quantum of market value was assessed by SLAO @ Rs. 54,500/- per R under section 28-A of the Act of 1894 and the same rate was granted by the Reference Court in favour of applicant. Hence, the rate assessed by SLAO under section 28-A of the Act of 1894 would be rate payable to the claimant. Hence, appeal be dismissed on this count.

4. The contention of the learned counsel for the applicant for dismissal of the appeal on summary basis pursuant to award passed by SLAO under section 28-A of the Act of 1894 cannot be acceptable and considerable one. The respondent-State has put in controversy the validity, propriety and correctness of the award passed by the learned Reference Court in the present appeal. It is essential to verify all ramifications of the proceedings for ascertaining the correctness of the market value determined by the Reference Court. Therefore, it cannot be held superficially that the market rate granted by the SLAO in the award passed under section 28-A of the Act of 1894 would be the proper and reasonable market rate for the lands in question. Obviously, all these factual aspects required to be considered in detail hearing. The grievances of the appellant-State are essential to be tested on the anvil of merit. In such circumstances, by adopting superficial approach, appeal cannot be dismissed at the behest of applicant by accepting prayer clause "A". In such circumstances, no question arises for allowing the applicant to withdraw the amount deposited in this Court.

5. However, in view of age of the applicant, it is incumbent to give top propriety to the present proceeding for its adjudication on merit at the earliest. Therefore, there would not be any impediment to list the present appeal for final hearing on merit at the earliest after due compliance of the procedural formalities. Hence, the application deserves to be disposed of.

6. Accordingly, application stands disposed of. No order as to costs.

Sd/-

**[ K. K. SONAWANE ]**  
**JUDGE**

MTK.