

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

FIRST APPEAL NO.3747 OF 2016

1. Amir Hussain s/o Kasimsab Budre,
(Died Thr. LR's - App. No.2-A to 2-D)
2. Mehtabee w/o Amir Hussain Budre
(deceased Through her LR's)
- 2A. Aktar s/o Amir Hussain Budre
Age : 57 years, Occu : Agri & Service
R/o. Deoni, Tq. Deoni,
Dist. Latur
- 2B. Fakroddin s/o Amir Hussain Budre
Age : 53 years, Occu : Agri & Service
R/o Deoni, Tq. Deoni,
Dist. Latur
- 2C. Sabera w/o Jahur Ahmed Qureshi
Age : 65 years, Occu : Household,
R/o. Ahmedpur, Tq. Ahmedpur,
Dist. Latur
- 2D. Zakera w/o Dastgir Mangrule
Age : 60 years, Occu : Household,
R/o. Pandharpur, Tq. Deoni,
Dist. Latur

.. Appellants
(Orig. Claimants)

VERSUS

1. The State of Maharashtra,
Through Collector, Latur,
Dist. Latur
2. The Executive Engineer,
Latur Medium Project, Latur,
Dist. Latur

..Respondents

...

Advocate for Appellants : Shri V.D. Gunale;

AGP for Respondent No.1 – State : Ms. S.S. Raut;

Advocate for Respondent No.2 : Shri R.B. Deshpande.

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CORAM : P.R. BORA, J.

Dated: September 18, 2018

ORAL JUDGMENT :

1. Heard finally with consent of the learned Counsel for the parties. Perused the impugned Judgment and Award. It is apparently revealed that, the learned reference Court has rejected the reference application mainly on the ground of limitation. It is observed by the learned reference Court that, the appellants have failed in bringing on record any cogent and sufficient documentary evidence so as to justify or prove that, the reference application was filed by them within the period of limitation. The Award under Section 11 of the Land Acquisition Act (hereinafter referred to as the 'Act') was declared in the instant matter on 16.04.2001. It is the contention of the appellants that, they were served with the notice under Section 12 (2) of the Act and accordingly received the payment under protest on 09.09.2005 and thereafter filed an application under Section 18 of the Act to the District Collector, Latur on

05.10.2005, which was in turn forwarded by the Collector for adjudication to the District Court.

2. Shri Gunale the learned Counsel appearing for the appellants submitted that, the trial Court has misconstrued the provisions and has also failed in appreciating the evidence on record. The learned Counsel submitted that, the statement made on oath by the appellants that they received the notice under Section 12 (2) of the Act on 09.09.2005 is not denied or disputed by the respondents. In the circumstances, according to him, there was no reason for holding that, the reference Application was not filed by the applicants within the period of limitation.

3. The learned Counsel relying upon the Judgment of the Hon'ble Apex Court in the case of **Premji Nathu Vs. State of Gujarat and Anr, AIR 2012 SC 1624** submitted that, the reference Application filed by the appellants was well within the period of limitation. The learned Counsel submitted that, it is the duty cast on the Acquiring Body or the Government to make the person aware, whose land is acquired by the State as about

the Award passed and the copy of a detail Award requires to be furnished to him and only the said date can be said to be the date of his knowledge for taking any further action by him.

4. The learned Counsel also relied upon the Judgment of this Court in the case of **Khaja Ali Maqsood Ali Vs. The State of Maharashtra** delivered on 27.08.2015 (Coram: **Shri S.V. Gangapurwala, J.**) and submitted that, the appeal filed by the present appellants deserves to be allowed.

5. Shri R.B. Deshpande the learned Counsel appearing for the Acquiring Body supported the impugned Judgment and Award. The learned Counsel submitted that, it is the primary duty of the applicants - appellants to prove that, the reference Application was filed by them within the period of limitation. The learned Counsel submitted that, they can very well prove their aforesaid contention either by placing on record the copy of notice under section 12(2) of the Act or they may place a cogent evidence on record showing that, on which date the payment was received to them. The learned Counsel submitted that, had the appellants produced on record any tangible proof

showing that, payment was deposited in their Bank account on such and such date, the said date certainly could have been taken to be the date of their knowledge of the Award passed under Section 11 of the Act. However, in absence of any such proof, the appellants cannot be said to have discharged burden on them of proving that, they filed the reference application within the period of limitation. The learned Counsel submitted that, the reference Court has rightly rejected reference Application on the ground of limitation and no interference is required in the Judgment and Award so passed. The learned AGP Ms. Raut adopted the argument advanced by learned Counsel Shri Deshpande and she also prayed for dismissal of the appeal.

6. I have carefully considered the submissions made by the learned Counsel appearing for the appellants and the learned Counsel appearing for the Acquiring Body as well as the learned AGP appearing for the State. It is not in dispute that, Award was passed on 16.04.2001. Though the fact as has been averred by the appellants in their application under Section 18

of the Act that, they received the payment of compensation in terms of the Award passed under Section 11 of the Act on 09.09.2005, has been seriously disputed by the learned Counsel appearing for the Acquiring Body, on perusal of the evidence of the applicant before the reference Court, it is noticed that, the fact so deposed by the appellant in his examination-in-chief has not been denied or disputed in his cross-examination. The fact, which has not been denied or disputed, must be taken to have been proved by the appellants. Moreover, it appears to me that, when it is seriously contended by the Acquiring Body that, reference application was not filed within the period of limitation, all necessary documents which could have disproved the contention of the appellants could have been certainly filed on record by the Acquiring Body. It was not difficult for the Acquiring Body to bring on record that, Section 12 (2) notice was served upon the appellants much prior to the date as has been claimed by the appellants so as to falsify their said contention. Admittedly, neither any document has been filed by the Acquiring Body or by the State nor any witness was examined by the Acquiring Body or by the State Government.

7. In the above circumstances, I see no reason to disbelieve the statement of the appellants – applicants in their reference Application which was reiterated by them in their examination-in-chief before the Court on oath and which remained undisputed. It has to be further stated that, when the Collector, Latur has forwarded the said reference Application for adjudication to the District Court, impliedly it means that, same was filed within the period of limitation for the reason that, Collector does not have any power or authority to extend the period of limitation provided for making an application under Section 18 of the Act. In case of doubt in regard to limitation invariably the reference application is forwarded by the Collector with a note that, according to the Collector, the reference application was not made within the period of limitation so that the said aspect also can be adjudicated by the reference Court. In the present matter no such note is appended to the reference application, which was forwarded by the Collector, Latur for adjudication to the District Court. It impliedly means that, the Collector Latur was of the opinion that, the reference

Application was filed within the period of limitation.

8. As I noted herein above, in absence of any contrary evidence or any specific denial, it has to be accepted that, Section 12 (2) notice was served on appellants on 09.09.2005 and thereafter within the period of six weeks they were supposed to file an application under Section 18 of the Act. Admittedly, they filed the application on 05.10.2005, which was well within the period of limitation.

9. In view of the above, the order passed by the reference Court recording a finding that, the reference Application was not filed within the period of limitation cannot be sustained and deserves to be set aside and quashed.

10. The learned reference Court though had framed all relevant issues on the basis of the claim made by the applicants has not answered the said issues on merits, probably for the reason that the reference application itself was held to have been filed beyond the period of limitation. In the circumstances, the only option before me is to remand the matter back to the

reference Court for deciding all the issues on merits by giving due opportunity to the parties to the lis.

11. For the reasons stated above, the following order is passed.

ORDER

- (i) The appeal is allowed.
- (ii) The impugned Judgment and Award passed by the reference Court - Civil Judge, S.D., Udgir in L.A.R. New No.1347/2010 (Old Nos.54/2007 & 55/2007) decided on 23.11.2015, is quashed and set aside.
- (iii) The matter is remitted back to the reference Court with a direction to decide it afresh on all issues on their own merits by giving due opportunity to the parties to the lis.
- (iv) Record & Proceedings be forthwith sent back to the reference Court.

(P. R. BORA, J.)