

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

**CIVIL APPLICATION NO. 5873 OF 2018
IN FA/108/2014**

ASHOK HUKUMCHAND SHRISHRIMAL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Applicant : Mr. M.S. Kulkarni h/f Mr. A.N Skichi
AGP for Respondents : Mr. A. M. Phule.
...

WITH

**CIVIL APPLICATION NO. 5872 OF 2018
IN
FIRST APPEAL NO. 115 OF 2014**

**CORAM : K.K. SONAWANE, J.
DATED : 25th JUNE, 2018.**

Order :-

1. Not on board. Taken on board.
2. Heard learned counsel for the applicants and learned AGP for respondent-State of Maharashtra. The present applications are moved by the applicants with following prayers;

Prayer clauses in CA No. 5873 of 2018

[A] The Hon'ble High Court may be pleased to dismiss the First Appeal No. 108/2014 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 18-07-2014 in Civil Application No. 6729/2014 in First Appeal No. 108/2014 and thereby allow the applicants 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 Applicants and issue appropriate orders for the said purpose.

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

Prayer clauses in CA No. 5872 of 2018

[A] The Hon'ble High Court may be pleased to dismiss the First Appeal No. 115/2014 in view of the Award dated 27-04-2016 passed under Section 28A 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 18-07-2014 in Civil Application No. 6730/2014 in First Appeal No. 115/2014 and thereby allow the applicants 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 Applicants and issue appropriate orders for the said purpose.

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

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

3. The learned counsel for applicants submits that adjoining land owners of the applicants 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 applicants, 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 applicants is required to be upheld. Therefore, learned counsel prayed to dismiss the appeals 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 claimants also prayed in alternative to relax earlier condition imposed by this Court in civil application Nos. 6729 and 6730 of 2013, and applicants be allowed to withdraw rest of the 50% deposited in this Court unconditionally. In addition, the applicants also prayed that in view of age of the applicants being senior citizens, the present appeals be listed for final hearing on merit at the earliest.

3. Admittedly, the applicants 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 applicants 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 applicants. Hence, the rate assessed by SLAO under section 28-A of the Act of 1894 would be rate

payable to the claimants. Hence, appeals be dismissed on this count.

4. The contention of the learned counsel for the applicants for dismissal of the appeals 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 appeals. 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, appeals cannot be dismissed at the behest of applicants by accepting prayer clause "A". In such circumstances, no question arises for allowing the applicants to withdraw the amount deposited in this Court.

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

6. Accordingly, applications stand disposed of. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK.