

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

FIRST APPEAL NO. 1229 OF 2017

1. Vinayak Rajeshwarrao Deshpande
Age : 70 years, Occu. Agril.,
R/o. Shelgaon, Tq. Sonpeth,
Dist. Parbhani.
 2. Bhujangrao S/o. Rajeshwarrao Deshpande,
Since died through his L.R's.
 - 2/1 Chandrakant S/o. Bhujangrao Deshpande,
Age : 48 years, Occu. Agril.,
R/o. Shelgaon, Tq. Sonpeth,
Dist. Parbhani.
 - 2/2 Suryakant S/o. Bhujangrao Deshpande,
Age : 44 years, Occu. Agril.,
R/o. Shelgaon, Tq. Sonpeth,
Dist. Parbhani.
- ... Appellants

VERSUS

1. The State of Maharashtra,
Through the District Collector,
Parbhani.
 2. The Special Land Acquisition Officer,
UPP No. 2, Parbhani.
 3. The Executive Engineer,
Majalgaon Canal Division No. 7,
Gangakhed, Tq. Gangakhed,
Dist. Parbhani.
- ... Respondents

.....
Mr Mahesh P. Kale, Advocate for the appellants
Mr A. P. Basarkar, AGP for respondent/State
.....

CORAM : A. M. DHAVALA, J.
DATE : 08TH AUGUST, 2018.

ORAL JUDGMENT :-

1. Heard. Admit. With the consent of the parties, the appeal is taken up for final disposal at admission stage.
2. This is an appeal by the original claimants, whose reference bearing No. 241/1997 (Old LAR No. 338/1992) came to be dismissed on 01.02.2017, on the ground that it was not filed within six weeks from the date of Collector's award.
3. Heard Shri. Mahesh P. Kale, learned counsel for the appellants and Shri. A. P. Basarkar, learned Assistant Government Pleader for the State.
4. Mr Kale submits that, the award in this matter was delivered on 30.11.1990 and the reference was filed on 30.01.1991 i.e. within a period of two months. The claimants have preferred reference within the period of limitation. Learned advocate for the appellants submits that, the respondents had taken vague plea of limitation without specifying as to on which date the period of limitation started running.

5. Per contra, Mr Basarkar, learned Assistant Government Pleader submits that, there is no provision for condonation of delay. In the present case, the reference was not filed within six weeks from the date of Collector's award. In cross-examination, the appellants have admitted that, they had appointed an advocate to represent their case before the Land Acquisition Officer and the advocate used to represent them in the reference Court.

6. If the party was present at the time of Collector's award or was represented before the Collector when he made the award, the period of limitation will start from the date of passing the award and since the reference was not moved within limitation, it was rightly dismissed.

7. The points for my consideration with my findings thereon are as follows:

Sr. No.	Point	Finding
1.	Whether LAR No. 338/1992 (New LAR No. 241/1997) was barred by limitation?	...In the negative.
2.	What order?	...The Appeal is allowed.

REASONS

AS TO POINT NO. 1 :

8. The period of limitation for filing reference against the award is prescribed under proviso to Section 18 of the Land Acquisition Act, which reads as follows:

S.18. Reference to Court.-

2(a). The application shall be made before the Collector, if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award.

2(b). in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

9. In the present case, the award was passed on 30.11.1990 and the reference has been submitted on 30.01.1991. It is thus clear that, it is within six months from the date of award.

10. In reply to the reference, it is inter alia claimed that, it is vaguely plead that the objection against the acquisition was not taken within the time.

11. The above pleadings disclose that, there is no specific pleadings that;

- (i) At the time of award, the claimants or their advocate was present.
- (ii) There is no pleading that, notice u/s 12(2) was served to claimants on a particular date.
- (iii) The record shows that, the compensation was received under protest on 17.01.1991. O.C. of the notice u/s 12(2) shows that, it was dt. 01.12.1990. It is not on record when it was sent and when it was served.

12. Normally period for filing reference against the award is six months. This can be curtailed to six weeks if the appellant or his advocate was present at the time of judgment. It is not sufficient that the claimants were represented before the LAO. There should be record to show that the advocate of the claimants was present on the date of judgment. If the claimants or their advocate was not present on the date of award, notice u/s 12(2) can be issued by the Collector and in that case, after service, the period of limitation of six weeks starts running. The record shows that, there is no specific pleading what is the starting date of period of limitation. The pleading is vague. The contention that, the appellants have not made their objection against the acquisition within the time cannot mean that the appellants have not filed reference within the period of limitation from the date of award. Besides, in absence of pleading regarding

date of service of notice u/s 12(2) or pleading regarding presence of the claimants or their advocate at the time of judgment & award, the period of limitation will not start running against the claimants. In such case, the date of receiving compensation (17.1.91) can be taken as notice of award.

13. The ld. trial Judge has shown hyper-technical and casual approach. When any matter is to be dismissed on technicalities without considering the merits, the Judge should be very careful and cautious while considering the provisions of limitation. I find that, there is neither pleading nor evidence to show that the advocate for the claimants or the claimants were present at the time of declaration of the award by the SLAO or that the notice u/s 12(2) was served on the particular date and the claimants have not filed reference within six weeks from the date of award.

14. In the result, the impugned order or dismissal of the reference is not tenable. Hence, I pass the following order.

ORDER

(i) The Appeal is allowed.

(ii) The order dt. 01.02.2017 passed by the Civil Judge Senior Division, Gangakhed, Dist. Parbhani, in LAR No. No. 241/1997 (Old L.A.R. No. 338/1992) is hereby set aside.

(iii) It is directed that, the reference shall be treated to be filed within time and the same shall be decided on its own merits, in accordance with the provisions of law.

(iv) Considering the facts, the learned trial Judge shall expedite the hearing of the reference and shall dispose of it at the earliest.

(v) Record & proceedings shall be sent to the reference Court forthwith.

(vi) The Appeal stands disposed of accordingly. No order as to costs.

[A. M. DHAVAL]
JUDGE

Punde