

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

901 FIRST APPEAL NO. 2272 OF 2014

1. Pandu S/o Soma Nukulwad
Age: Major, Occu.: Agri,
R/o. Marajwadi, Tq.Mukhed,
Dist.Nanded. ..Appellant

Versus

1. The State of Maharashtra,
Through District Collector,
Nanded.
2. The Special Land Acquisition Officer,
Krishna Khore Vikas Mandal, Nanded.
3. The Executive Engineer,
Vishnupuri Project, Division.
Jangamwadi, Nanded. ..Respondents

...
Advocate for Appellant : Shri G.N.Chincholkar
AGP for Respondent Nos.1 & 2 : Shri A.M.Phule
Advocate for Respondent No.3 : Smt.Ranjana D.Reddy
...

CORAM : P.R.BORA, J.

DATE: 21st August, 2018

ORAL JUDGMENT:-

1. With the consent of the learned Counsel appearing for the parties, the present Appeal is heard finally.
2. The house of the present appellant was acquired for the

purpose of submergence area for Lendi Project at Marajwadi, Tq. Mukhed. The Notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was published in the official Gazette on 11.06.1997. The Notification under Section 6 of the Act was published on 15.12.1998. The award under Section 11 of the Act came to be passed on 26.03.2002. The Special Land Acquisition Officer offered the compensation of Rs.59,916/-. Dissatisfied with the compensation so offered by the Special Land Acquisition Officer, the appellant preferred the Reference Application under Section 18 of the Act before the Collector, Nanded and in turn the said Reference Application was forwarded to the District Court for its adjudication under Section 18 of the Act.

3. The aforesaid Reference Application has been rejected by learned Civil Judge, Senior Division, Kandhar (hereinafter referred to as the 'Reference Court') vide his Judgment in Land Acquisition Reference No.70 of 2008 delivered on 09.01.2014 on the ground of limitation. Though the learned Reference Court had framed other two issues, the same have not been decided by it observing that the said issues do not survive since the Reference itself is not within limitation. Aggrieved by the said Judgment, the appellant has filed

the present Appeal.

4. Shri G.N.Chincholkar, learned Counsel appearing for the appellant submitted that notice under Section 12(2) was received to the present appellant on 28.09.2002 and thereafter, within the prescribed period of limitation, the Reference application was made by the present appellant on 07.11.2002. The learned Counsel submitted that in the application under Section 18 of the Act, the date of service of notice under Section 12(2) was inadvertently mentioned by the appellant as 28.09.2001, and holding the said date to be the date of knowledge of the award in question passed under Section 11 of the Act, the learned Reference Court has held the Reference Application to have been filed beyond the period of limitation and consequently has dismissed the same. The learned Counsel therefore, prayed for allowing the Appeal.

5. Smt.R.D.Reddy, learned Counsel appearing for the respondent No.3 i.e. Acquiring Body supported the impugned Judgment and award. Inviting my attention to the provision under Section 18(2) of the Act of 1894, the learned Counsel submitted that since the Reference Application under Section 18 was not filed within the

period of six months from the date of award, it was not within the period of limitation and as such no fault can be found with the impugned Judgment and order.

6. I have carefully perused the record of the case. It is not in dispute that the award under Section 11 of the Act was passed on 26.03.2002. The learned Reference Court in paragraph No.5 of the impugned Judgment has noted the said fact. It, however, appears that the learned Reference Court going by the averments made in the Reference Application held 28.09.2001 as the date of knowledge of the said award to the appellant, the date on which according to the averments in the application notice under Section 12(2) was served upon him. Infact, it could have been immediately realized by the Reference Court that when the award under Section 11 of the Act was passed on 26.03.2002, notice under Section 12(2) could not have been served upon the appellant prior to the said date i.e. on 28.09.2001.

7. The copy of the notice under Section 12(2) of the Act served upon the appellant is there in the record of the Trial Court. The same was issued on 16.09.2002. The notice issued on 16.09.2002, in

any case cannot be held to have been received to the appellant on the earlier date i.e. 28.09.2001. Thus, there seems no reason to disbelieve the contention of the appellant that the said notice was received to him on 28.09.2002 but in the application the said date was inadvertently mentioned as 28.09.2001. This was certainly an inadvertent mistake on the part of the appellant. The Reference Court also unfortunately held the said wrongly mentioned date to be the date of the knowledge of the award to the applicant and dismissed the Reference application on the ground of limitation.

8. The learned Counsel Smt.Reddy referred to and relied upon proviso '(b)' to the Sub-Section 2 of Section 18 of the Act, which reads thus:-

“18. Reference to Court:-

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,

(a) 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;

(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. According to Smt.Reddy even if it is accepted that the present appellant was not present when the award under Section 11 was declared, in view of the proviso mentioned as above, it was mandatory for him to prefer the application under Section 18 of the Act within six month from the date of the Collector's award. The learned Counsel submitted that the award under Section 11 was passed on 26.03.2002 and the Reference Application was filed by the applicant on 07.11.2002 i.e. beyond the period of six months and as such, the Reference Court has rightly rejected the Reference Application on the ground of limitation.

10. The argument so made by learned Counsel Smt.Reddy is liable to be rejected in view of the law laid down by the Hon'ble Apex Court in the case of ***Bhagwan Das and Others Vs. State of Uttar Pradesh***

and Others, (2010) 3 Supreme Court Cases, 545 relied upon by Shri Chincholkar, learned Counsel appearing for the appellant. In the aforesaid Judgment, the Hon'ble Apex Court has interpreted the proviso to clause (b) of Sub-Section (2) of Section 18 of the Act and has clearly held that "within six months" from the date of the Collector's award has to be read to mean six months from the date of actual or constructive knowledge of essential contents of the award. The Hon'ble Apex Court has further held that the expression is not to be interpreted literally because such an interpretation leads to absurd results inasmuch as person not having knowledge of award would be deprived of opportunity to seek reference to Court.

11. In the instant matter, there has remained no doubt that the appellant got the knowledge of the award passed under Section 11 of the Act as well as the contents of the said award only on 28.09.2002 when notice under Section 12(2) of the Act was served upon him. As such, the Reference Application filed by the appellant on 07.11.2002 to the Collector, Nanded was perfectly within the period of limitation. I, therefore, hold that the Reference Application under Section 18 of the Act was filed by the appellant well within the period of limitation. The finding recorded that the same was not

filed within the period of limitation is therefore, quashed and set aside. Since the Reference Court has not decided other issues on merits, the only option available for me while allowing the present Appeal, is to remand the matter to the Reference Court for its adjudication on other issues involved in the matter on its own merits. Hence, the following order:-

ORDER

- I) The Judgment and order dated 09.01.2014 passed in Land Acquisition Reference No.70 of 2008 is quashed and set aside.
- II) It is held that the Reference Application under Section 18 of the Act was filed by the appellant well within the period of limitation.
- III) The Reference Court is directed to adjudicate the Reference Application on its own merits by giving due opportunity to the appellant as well as the respondents.
- IV) In view of the fact that the land was acquired in the year 1997, the Reference Court is directed to hear and decide the Land Acquisition Reference No.70 of 2008 as expeditiously as possible and preferably within a period of six months from the date of this order.
- V) Appeal thus stands allowed in the aforesaid terms.

VI) Record and Proceeding be sent back forthwith to the concerned Reference Court.

VII) The parties are directed to appear before the concerned Reference Court on 10.09.2018, so that no fresh notices be required for their appearance before the Reference Court.

(P.R.BORA)
JUDGE

SPT