

1. Janardhan S/o. Hanumantrao .. PETITIONERS
Patil @ Salunke
Age-60 years, Occu-Agril,
2. Gunwant S/o. Shidram Chunge,
Age-60 years, Occu-Agril,
3. Pavitra W/o. Satyawar Surwase,
Age-46 years, Occu-Agril & Household,
4. Surekha W/o. Baliram Surwase,
Age-49 years, Occu-Agril & Household,
5. Baliram S/o. Nagnath Surwase,
Age-54 years, Occu-Agril,
6. Satyawar S/o. Nagnath Surwase,
Age-51 years, Occu-Agril,
7. Bhima S/o. Ambaji Jadhav (died)
Through his Legal heirs
- 7-A) Smt.Girjabai W/o. Baliram Jadhav,
Age-69 years, Occu-Agril,
- 7-B) Sandipan S/o. Bhima Jadhav,
Age-50 years, Occu-Agril,
- 7-C) Arun S/o. Bhima Jadhav (died)
through his Legal Heirs
- 7-C-i) Prashant Arun Jadhav
Age-24 years, Occu-Agril,

- 7-C-ii) Pravin Arun Jadhav
Age-24 years, Occu-Agril,
- 7-D) Kumar S/o. Bhima Jadhav,
Age-46 years, Occu-Agril,
- 7-E) Damayanti W/o. Ganesh Landge,
Age-43 years, Occu-Agril,
8. Kerba S/o. Ambaji Jadhav (died)
through his Legal Heirs
- 8-A) Smt. Lochanabai W/o. Kerba Jadhav,
Age-70 years, Occu-Agril,
- 8-B) Subhash S/o. Kerba Jadhav,
Age-52 years, Occu-Agril,
- 8-C) Ganpati S/o. Kerba Jadhav,
Age-50 years, Occu-Agril,
- 8-D) Tejabai W/o. Ankush Babale,
Age-46 years, Occu-Agril,
9. Hanmant Buva @ Somparvat Guru,
Shivparvat Buva (died) through
His Legal representatives
- 9-A) Suresh S/o. Ganpatrao Thote,
Age-58 years, Occu-Agril,
- 9-B) Prakash S/o. Ganpatrao Thote,
Age-55 years, Occu-Agril,
- 9-C) Ravindra S/o. Ganpatrao Thote,
Age-51 years, Occu-Agril,
- All R/o. Murta (Manmodi), Tq. Tuljapur,

Dist. Osmanabad

VERSUS

1. The State of Maharashtra, **...RESPONDENTS**
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32
2. The Additional Collector (Land Acquisition)
Manjara Project, Osmanabad,
Collector Office, Osmanabad,
Tq. & Dist. Osmanabad
3. The Special Land Acquisition Officer,
Krishna Khore Vikas Mahamandal,
Anand Nagar, Osmanabad,
Tq. & Dist. Osmanabad
4. The Executive Engineer,
Irrigation Project, Strengthening
Division, Omerga, Tq. Omerga,
District Osmanabad.
Presently Osmanabad Medium
Project (OMP) Krishna Valley
Development Corporation,
Anand Nagar, Osmanabad

Mr.P.S.Chavan, Advocate for the petitioners
Mr.S.S.Dande, AGP for respondent Nos. 1 to 3
Mr.S.G.Karlekar, Advocate for respondent No.4

**CORAM : S.S. SHINDE &
S.M. GAVHANE, JJ.**

RESERVED ON : 24.01.2018

PRONOUNCED ON : 21.03.2018

J U D G M E N T [PER: S.M. GAVHANE, J.]

. Rule. Rule made returnable forthwith. With the consent of the parties the matter is taken up for final hearing.

2. By this petition under Article 226 of the Constitution of India the petitioners have prayed to quash and set aside orders dated 10.11.2015 (Exh.K Collectively) passed by respondent No.2 the Additional Collector (Land Acquisition) Manjra Project, Osmanabad disposing of their Land Acquisition References under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Land Acquisition Act') to enhance the compensation, as per the provision under Section 18 (3) of the Land Acquisition Act and further sought directions to respondent No.2 to refer their applications (Land Acquisition References) to the competent Civil Court at Osmanabad for determination/decision.

3. Case of the petitioners is that the lands Block Nos. 152 adm. 0-Hector 20-R, 139 adm.0-Hector 60-R, 146/1 adm. 1-Hector 41-R, 146 adm. 1-Hector 60-R, 146/2 adm. 0-Hector 80-R, 276 adm. 1-Hector 14-R, 281 adm. 0-Hector 22-R, 141 & 284 adm. 0-Hector 5-R and 0-Hector 22-R and

293 adm. 4-Hector 7-R, all situated at village Murta (Manmodi), Tq. Tuljapur, Dist. Osmanabad are respectively owned by petitioner Nos. 1 to 9 (hereinafter the said lands are referred to as the 'said lands'). The said lands have been acquired for construction of storage tank of village Murta as per the proposal submitted by respondent No.4 the Executive Engineer to respondent No.3 the Special Land Acquisition Officer. Respondent No.3 published notification under Section 4 of the Land Acquisition Act in the Government Gazette on 22.01.1998. Thereafter, by notification dated 22.02.1999 the respondents after satisfying that the said lands are required for public purpose, made declaration to that effect under Section 6 of the Land Acquisition Act. Thereafter, respondent No.3 after completing the joint measurement has issued notice under Section 9 of the Land Acquisition Act to the land holders. Though the notice under Section 9 was not served on the petitioners, still they submitted their oral and written objections thereby claiming the compensation at the rate of Rs.1,25,000/- per acre. Thereafter, the Land Acquisition Officer without considering their claims and market value of the said lands/acquired lands has passed the award in absence of the petitioners on 19.06.2006 in file No.1997/LNQ/KK/KAVI/CR-13 and thereby awarded inadequate

compensation. After receipt of notice under Section 12(2) of the Land Acquisition Act on 26.08.2006 the claimants/petitioners have withdrawn the compensation under protest and within limitation filed applications before respondent No.2 the Additional Collector (Land Acquisition) on 03.10.2006 for reference under Section 18 of the Land Acquisition Act. According to the petitioners, because of the financial constraints alongwith their reference applications they had filed separate applications seeking time to pay required court fees.

4. The petitioners have further contended that after they have filed reference applications as above under Section 18 of the Land Acquisition Act, after waiting for considerable period in the month of March, 2017 they inquired about reference applications to their Advocate at Osmanabad. In the last week of March, 2017 they approached respondent No.2 the Additional Collector (Land Acquisition) to verify their reference applications. After scrutiny of the file it was informed that their applications for reference have been disposed of by respondent No.2 by orders dated 10.11.2015 observing that in spite of various written communications to deposit the Court fees the claimants/petitioners have

failed to deposit the same and therefore as per the provision of Section 18 (3) of the Land Acquisition Act their reference applications have been disposed of.

5. It is the above said orders dated 10.11.2015 (Exh.K Collectively 9-orders) have been challenged by filing present writ petition on several grounds mentioned in the writ petition and mainly on the ground that the Land Acquisition Act is self contained code. It does not speak about payment of any Court fees. It requires only that the applications under Section 18 of the Land Acquisition Act should be made within limitation prescribed thereunder and therefore it is clear that payment of deficit Court fees is not a condition precedent to refer the applications/land reference applications to the competent Civil Court.

6. The respondents have not filed reply.

7. We have heard the learned Advocate appearing for the petitioners, learned AGP appearing for respondent Nos. 1 to 3 and the learned Advocate appearing for respondent No.4. With their assistance we have perused the pleadings in the petition, documents and impugned orders (Exh.K Collectively) produced by the petitioners.

8. As the respondents have not filed reply to the petition and controverted the contentions of the petitioners it is clear that the said lands owned by the petitioners as observed earlier have been acquired by respondent No.3 the Special Land Acquisition Officer for construction of Murta storage tank on the proposal submitted by respondent No.4 the Executive Engineer by award dated 19.06.2006 and after withdrawing the compensation under protest of acquisition of the said lands the petitioners had filed land reference applications under Section 18 of the Land Acquisition Act on 03.10.2006 before the respondent No.2 said fact is also clear from the copies of land reference applications produced by the petitioners.

9. It is also not in dispute that by impugned orders dated 10.11.2015 (Exh.K Collectively) respondent No.2 the Additional Collector (Land Acquisition) disposed of the land reference applications referred to above filed by the petitioners. On perusal of the impugned orders it is seen that the petitioners had filed land reference applications under Section 18 of the Land Acquisition Act on 03.10.2006. The petitioners were informed in writing to pay the Court fees as land

reference applications were filed without Court fees, but the petitioners failed to make compliance within stipulated time. So also, they have not filed written explanation or paid the court fees. Therefore, their land reference applications were disposed of as per section 18(3) of the Land Acquisition Act by respondent No.2 the Additional Collector (Land Acquisition) Manjra Project, Osmanabad.

10. Referring the impugned orders the learned Advocate appearing for the petitioners relying upon the ratio laid down by this Court [**Coram : Marlapalle B.H. & Tahilramani V.K. JJ.**] in the case of Sambhaji Manaji Chate & another Vs State of Maharashtra and another reported in 2003(2)MH.L.J.661 submitted that the petitioners are required to pay Court fees on application under Section 18 of the Land Acquisition Act but the amount of Court fees could be remitted / deposited even before the Reference Court and therefore, respondent No.2 should have passed a conditional order on the applications/references preferred by the petitioners and should have forwarded the reference applications of the petitioners to the Civil Court. In the case of Sambhaji Chate (supra) referring the decision in the case of Kashi Ram Namdeo Zambro Vs State of Maharashtra reported

in 1996(1)SCC 289 in paragraph Nos. 10,11 and 12 it was observed as under:-

“10. In view of the clarification given by the Apex Court, it is clear that the person preferring an application under Section 18 of the Land Acquisition Act is required to pay the Court fees. However, this amount could be remitted/deposited even before the Reference Court and, therefore, it is appropriate for the S.L.A.O. to pass a conditional order on the application for reference preferred by the petitioners and to forward it to the Civil Court.

11. We, therefore, direct the reference to be made within a period of four weeks from the date of receipt of this order. The Court fee shall be paid by the petitioners within a period of three months before the Reference Court and unless such compliance is made, the reference shall not be registered.

12. Rule is made absolute in above terms with no order as to costs. Order accordingly.”

11. In the present case respondent No.2 had disposed of the land reference applications of the petitioners on failure of the petitioners to pay the Court fees and he

did not pass a conditional order in the light of observation of this Court in the case of *Sambhaji Chate (supra)*. Therefore, when the petitioners can pay the Court fees even before the Reference Court the impugned orders disposing of the reference applications of the petitioners by the respondent No.2 the Additional Collector (Land Acquisition) are not sustainable and they are liable to be quashed and set aside and directions are required to be given to the petitioners to pay the Court fees within stipulated time before the Reference Court by allowing the writ petition. Therefore, we pass following order.

O R D E R

A. The writ petition is allowed.

B. The impugned order/orders dated 10.11.2015 (Exh.K Collectively) passed on the land reference applications under Section 18 of the Land Acquisition Act of the petitioners by respondent No.2 are set aside.

C. We direct respondent No.2 to refer the land reference applications of the petitioners within a period of four weeks from the date of receipt of this order to the competent Civil Court/Reference Court, Osmanabad. Thereafter, the petitioners shall pay the Court Fees

payable on their respective applications within a period of three months before the Reference Court and unless such compliance is made by the petitioners, the references (LAR) shall not be registered.

12. Rule is made absolute in above terms with no order as to cost.

[S.M.GAVHANE, J.]

[S.S.SHINDE, J.]