

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7608 OF 2018

Ghulam Rasool Abdul Wahid Khwaja & Ors. ... Petitioners
Vs.
State of Maharashtra & Ors. ... Respondents

Mr. N.R. Bubna, Advocate for the petitioners.
Mr. A.R. Metkari, AGP for the respondent no. 1/State.
Mr. R.N. Gite, Advocate for respondent nos. 2 to 23.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **20th July, 2018.**

P.C.:

Upon mentioning, taken on production board.

2. After hearing both the counsel, the learned counsel Mr. Bubna in the course of arguments voluntarily submitted that he does not want to press the prayers (b), (c), (d) and (e) in the Land Reference. He submitted that this Reference is squarely to be taken under section 30 of the Land Acquisition Act and the petitioners seek only apportionment. He submitted that the petitioners do not seek declaration of their title from this Court, therefore, they be exempted from paying Court fees. He submitted that the petitioners are praying their apportionment in the compensation. The learned counsel has given it in writing on the farad sheet, which is endorsed and signed

by the Associate.

3. Read the order dated 9th April, 2018 passed by the learned Joint Civil Judge Senior Division, Malegaon below Exhibit 38 in Land Reference No. 54 of 2015. The order is well reasoned. The learned Judge has considered the decision of **Gurudatta Housing Society vs. Maruti Bali Kokate, 1980 Mh. L.J. 619** and has rightly mentioned that if reference under section 30 of Land Acquisition Act is made, though it is declaratory apportionment and if no consequential relief is claimed, then no Court fees is required. However, the learned Judge has referred to other reliefs claimed by the petitioners and therefore, has directed the claimants to revalue the claim of their ownership and other reliefs as prayed.

4. It is made clear that if at all the petitioners have 50% ownership, then they are entitled to 50% of compensation and if the petitioners have 1% ownership, they are entitled to 1% of the compensation. However, without determining the ownership, it is not possible to decide apportionment of the compensation. In prayer clause (a) of this Reference, the way it is worded, it appears that petitioners are pre-supposing their ownership and therefore they are

claiming compensation. The issue of apportionment of compensation only can be decided unless such prayer is made subject to parties entitlement. The trial Court to proceed with the matter.

5. As the learned counsel for the petitioners has deleted all other prayers and only pressed for apportionment, the trial Court to verify whether it is payable to the petitioners and accordingly the order to be passed. As all reliefs are excluded, the Court fees is not required.

6. Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)

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