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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION STAMP NO.29263 OF 2017

1. Mudund s/o Rajendra Taware
Age – Major, Occ – Agriculture
R/o Washi, Taluka – Washi,
District – Osmanabad
2. Shrikant s/o Rajendra Taware
Age – Major, Occ – Agriculture
R/o Washi, Taluka – Washi,
District – Osmanabad
3. Pravin s/o Rajendra Taware
Age – Major, Occ – Agriculture
R/o Washi, Taluka – Washi,
District – Osmanabad

VERSUS

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| <ol style="list-style-type: none">1. The State of Maharashtra
Through the Collector / Dy Collector
Land Acquisition Medium Project No. 2,
Collector Office, Osmanabad
Taluka and District - Osmanabad2. The Executive Engineer,
Irrigation Department at, Osmanabad
Taluka and District – Osmanabad3. Special Land Acquisition Officer No. 2
L. A. O. Office, Osmanabad
Taluka and District – Osmanabad | RESPONDENTS |
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Mr. Estling S. Murge, Advocate for the applicant
Mr. S. N. Kendre, AGP for respondent - State

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[CORAM : SUNIL P. DESHMUKH, J.]
DATE : 1st FEBRUARY, 2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the appearing parties.

2. Indisputably lands of the applicants have been acquired by the respondents for the purpose of construction of Pimalgaon (Lingi) Major Irrigation Project at Washi and notification under section 4 of Land Acquisition Act was published in Government Gazette on 3rd November, 2011 and under section 6 was published on 21st June, 2012 and final award came to be passed on 21st November, 2013. The applicants were neither made aware about acquisition proceedings nor about the award. When the applicants came to know about award, they have withdrawn the amount of compensation under protest. Since the special land acquisition officer had granted very meagre compensations, the applicants had filed reference, seeking enhancement in compensation. The applicants submitted reference petition under section 18 of the Land Acquisition Act within the prescribed period of limitation to respondent No. 1, however, at that time the applicants could not pay requisite court fees along with the reference application. Respondent No. 1 has rejected the same on the ground of non submission of copy of final decision and non payment of requisite court fees.

3. It is the contention of the applicants that the land acquisition officer has no power or authority to reject the reference and the reference filed by them ought to have been forwarded to reference court for adjudication, however, he had purportedly rejected the same under communication dated 12th May, 2016. As such, the applicants are before this court in present civil revision application.

4. Learned advocate for the applicants has submitted that respondent No. 1 could not have rejected reference application of the applicants and the same ought to have been forwarded to the reference court and action of respondent No. 1 in rejecting reference application of the applicants on the ground of non payment of requisite court fees and non submission of copy of final decision is without any authority in law.

5. Learned advocate for the applicants has referred to and relied on judgments of the Supreme Court, in the case of *“Kashi Ram Namdeo V/s State of Maharashtra”* [1996 (1) Mh.L.J.652 : 1997 (Supp) Bom. C. R 781 (SC)] and in the case of *“Sau. Pushpadevi Giridharlal Agrawal and Another V/s State of Maharashtra and others”* [2004 (supp) Bom.C.R. 934 (NB) : 2004 (1) LACC 326]. Referring to said judgments, learned advocate for the applicants has contended that section 18 (2) of the Land Acquisition Act requires making application to

Collector and in turn the Collector is required to forward the same to the reference Court. Learned advocate for the applicants has also referred to a judgment of division bench of this court in the case of *“Sambhaji Manaji Chate and Another V/s State of Maharashtra and Another”* [2003 (2) Mh.L.J. 661] submitting that in similar situation, division bench of this court had allowed objection filed by the claimants and had directed the authority to make reference and opportunity was granted to the claimants to pay requisite court fees.

6. Learned advocate for the applicants, on instructions, states that the applicants / claimants would not claim interest for the period of delay from 12th May, 2016 to the date of filing civil revision application i.e. 31st August, 2017, in case compensation is enhanced by the reference court.

7. On the other hand, learned AGP has submitted that it was necessary for the claimants to pay requisite court fees, since there is no exemption from payment of court fees. Learned AGP invited attention of the court to the judgment of the Supreme Court in the case of *“Kashi Ram”* (*supra*) to submit that the Supreme Court has clarified that the judgment shall not be construed to mean that it had overriding effect on Article 15 of

Schedule 1 to the Act. It is submitted that it was essential for the claimants to pay requisite court fees at the time of submitting application. As such, according to learned AGP, respondent No. 1 has rightly rejected the reference application submitted by the applicants.

8. From submissions advanced on behalf of the parties, it appears that special land acquisition officer has no authority in law to reject application filed by the claimants. Though, no court fees is paid by the claimants, yet once necessary conditions as contemplated under section 18 of the Land Act, 1894 are complied with, it is obligatory on the part of the concerned authorities to forward application to reference court. Division bench of this Court in the case of "*Sambhaji*" (*supra*) in paragraph No. 9 has observed, thus -

“ 9. On perusal of section 18 of the Land Acquisition Act, it is seen that section 18 (1) entrusts to the SLAO a statutory duty to make reference on the fulfillment of the conditions laid down therein. Hence once the necessary conditions under section 18 have been complied with by the applicant / petitioners, the S.L.A.O. ought to have forwarded the reference. A written application makes it incumbent on the Collector to make a reference provided that the necessary conditions are fulfilled. The four essential requisites for reference under section 18 are :

(a) The reference is to be asked for by the party aggrieved not accepting the award or has accepted the award under protest.

(b) It must be an application in writing with a request to make a reference.

(c) It should contain the grounds of objection in clear terms.

(d) The application was made within time.”

9. Aforesaid observations of division bench in paragraph No. 9 quoted above that once the claimants have complied with all essential requisites, the special land acquisition officer is bound to forward reference to civil court, by giving some time to claimants for removing deficiencies regarding payment of court fees, either before him or before the reference court. Division Bench in paragraph No. 10 of aforesaid judgment has considered "*Kashi Ram*" (*supra*) shows that the applicants are required to pay court fees, however, the same can be remitted/deposited even before reference court. In paragraph No. 11 of aforesaid judgment, the Division Bench has directed the authorities to make reference to civil court and in that case three months' time was granted to the applicants to pay amount of court fees.

10. In the facts and circumstances of the case, orders passed by Deputy Collector (Land Acquisition), Medium Project No. 2, Osmanabad rejecting reference applications of the applicants are quashed and set aside. Respondent No. 1 is directed to make reference to civil court within a period of four weeks from the

date of receipt of writ of this order. Court fees shall be paid by the applicants within a period of three months from the date of receipt of writ of this court to the reference court. It is made clear that unless such compliance is made, references shall not be registered.

11. Civil Revision Application, as such, stands allowed. Rule is made absolute in aforesaid terms. In case compensation is enhanced by the reference court, the statement made on behalf of the claimants with respect to waiver of interest for delayed period should be taken into account.

12. Applicants to file undertaking to the effect that they would not claim interest over the delayed period, in case compensation is enhanced, before the reference court, within a period of four weeks from the date of receipt of writ of this order to the reference court.

[SUNIL P. DESHMUKH]
JUDGE