

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.182 OF 2019

Bhausahab Kashiram Gowardhane & Anr.	..	Appellants
Vs.		
The State of Maharashtra & Anr.	..	Respondents

Mr.Sachin Gite for the appellants.
Mr.Yogesh Dabke, AGP for the respondent no.1.
Ms.Chaitrali A. Deshmukh for the respondent no.2.

CORAM : R.D.DHANUKA, J.
DATE : 2nd December 2019

P.C.:

. By this first appeal, the appellants have impugned the judgment and award dated 20th June 2018 passed by the Civil Judge, Senior Division, Nashik in Land Reference No.345 of 2017 thereby dismissing the said reference on the ground that the same was not filed within the period of limitation of 42 days from the date of service of notice under Section 12(2) of the Land Acquisition Act, 1894 (for short “the said Act”).

2. By consent of the parties, the first appeal is heard finally at the stage of admission.

3. It is the case of the appellants that the award was made under Section 11 of the said Act on 25th November 2009. Notice under Section

12(2) of the said Act was issued by the authority on 7th December 2009 and the said notice was received by the appellants only on 23rd December 2009. Reference was filed on 29th January 2010.

4. Mr.Gite, learned counsel for the appellants invited my attention to the averments made by his clients in the Reference Application No.345 of 2017 dated 29th January 2010 and more particularly in paragraph 8 of the said application. He also invited my attention to the affidavit in lieu of examination-in-chief filed by his clients before the Civil Judge, Senior Division, Nashik deposing that notice under Section 12(2) of the said Act was served upon the appellants on 23rd December 2009. He also invited my attention to the cross-examination of the witness examined by the appellants and would submit that there was no cross-examination on this part of the deposition of the appellants.

5. Learned counsel for the appellants invited my attention to various findings rendered by the Civil Judge, Senior Division, Nashik and would submit that there was no cross-examination of the witness examined by the appellants that the notice under Section 12(2) of the said Act was served upon the appellants only on 23rd December 2009. and thus the reference made on 29th January 2010 was within the period

of limitation of 42 days. Learned Civil Judge, Senior Division, Nashik dismissed the said reference on the ground of period of limitation.

6. Mr.Dabke, learned AGP for acquiring body, on the other hand, submits that the acquiring body in the written statement had raised a specific plea and more particularly in paragraph 3 that the claim petition was not filed within the period of limitation from the date of service of notice under Section 12(2) of the said Act and thus the reference was rightly to be dismissed on that ground.

7. A perusal of the averments made in the reference clearly indicates that it was a specific case of the appellants that notice under Section 12(2) of the said Act was served upon the appellants on 23rd December 2009. The reference filed on 29th January 2010 was thus within the time prescribed. Though in the written statement, a specific plea was raised that the claim petition was not filed within the period of limitation, no date is mentioned in the written statement on which according to the respondent no.1 the said notice was served upon the appellants under Section 12(2) of the said Act. Issue of limitation raised in the written statement was vague.

8. Be that as it may, in the affidavit in lieu of examination-in-chief filed by the witness examined by the appellants, there was a

specific deposition on the issue of limitation that the notice under Section 12(2) of the said Act was served upon the appellants on 23rd December 2009 and thus the reference made on 29th January 2010 was within the period of limitation.

9. A perusal of the cross-examination of the witness examined by the appellants clearly indicates that the deposition in respect of the limitation made by the appellants' witness was not shattered in the cross-examination. There was no cross-examination in fact on the issue of limitation.

10. Learned Civil Judge, Senior Division, Nashik however, totally overlooked the averments made in the reference application and the depositions made in the affidavit in lieu of examination-in-chief and rendered an erroneous finding that that the reference was beyond the period of limitation.

11. After considering the averments made in the reference application, evidence led by the witness examined by the appellants and in view of the fact that the written statement filed by the acquiring body was vague and without furnishing any other date of service of notice under Section 12(2) of the said Act, according to the acquiring

body and in view of the fact that there was no cross-examination of the appellants' witness, in my view, the appellants had proved before the learned Civil Judge, Senior Division, Nashik that notice under Section 12(2) of the said Act was served upon the appellants only on 23rd December 2009. The reference filed on 29th January 2010 was thus within the period of limitation of 42 days prescribed under Section 18 of the said Act. In my view, the findings rendered by the learned Civil Judge, Senior Division, Nashik on the issue of limitation is perverse and thus deserves to be set aside.

12. I therefore pass the following order :-

- (i) The impugned judgment and award dated 20th June 2018 passed by the learned Civil Judge, Senior Division, Nashik in Land Reference No.345 of 2017 is set aside and the said reference application is restored before the learned Civil Judge, Senior Division, Nashik.
- (ii) Learned Civil Judge, Senior Division, Nashik shall hear the said reference application on merit.
- (iii) Hearing of Reference Application is expedited.
- (iv) Parties are directed to appear before the learned Civil Judge, Senior Division, Nashik on 16th December 2019 to enable the learned Civil Judge, Senior Division, Nashik to fix the further date of hearing.

13. First appeal is allowed on aforesaid terms. No order as to costs. Parties as well as the learned Civil Judge, Senior Division, Nashik to act on the authenticated copy of this order.

R.D.DHANUKA, J.