

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

921 WRIT PETITION NO.6796 OF 2020

SHAIKH DAGADU HUSEN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
WRIT PETITION NO.6876 OF 2021

KARBHARI SHANKAR GUNJAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
WRIT PETITION NO.6877 OF 2021

PANDHARINATH SHANKAR GUNJAL
DIED THROUGH LRS
BHAUSAHEB PANDHARINATH GUNJAL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
WRIT PETITION NO.6878 OF 2021

RAMNATH HANUMANT GUNJAL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
WRIT PETITION NO.6879 OF 2021

PANDHARINATH SHANKAR GUNJAL
DIED THROUGH LRS
BHAUSAHEB PANDHARINATH GUNJAL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WRIT PETITION NO.6883 OF 2021

VASANT RAGHUNATH GUNJAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH

WRIT PETITION NO.6880 OF 2021
BALASAHEB SUBHASH MATKAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS
WITH
WRIT PETITION NO.6881 OF 2021
SHAIKH SALIM HUSEN DIED THROUGH LRS
KAMAL RUNISA SALIM SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. D.A. Bide, Advocate for the petitioners.
Mr. S.B. Pulkundwar, A.G.P. for respondent Nos. 1 to 3.

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CORAM : **RAVINDRA V. GHUGE &
AVINASH G. GHAROTE, JJ.**

DATE : 23-06-2021.

ORDER :

1. Writ Petition Nos. 6876 of 2021, 6877 of 2021, 6878 of 2021, 6879 of 2021, 6883 of 2021, 6880 of 2023 and 6881 of 2021 are said to be connected with Writ Petition No. 6796 of 2020. They are not on board. At the request of the learned Advocate for the petitioner, the same are taken on record.

2. The learned Advocate for the petitioners submits that respondent No. 4 is a formal party. Considering the fact that the applications filed by these petitioners under Section 28A of the Land Acquisition Act 1894, have been disposed off on the ground of limitation, without even issuing notice to the petitioners and without granting an opportunity of hearing to them, reliance is placed on the following judgments :

- a) Bir Wati Vs Union of India, 2017 AIR SC 4069
- b) Sukhdeo and others Vs State of UP, 1992 AIR (Allahabad)142
- c) Vilaswati Vs State of H.P., (2010) Sup HimLR 2219
- d) Santosh Singh Vs State of HP, 1995 (3) ILR (HP) 2140
- e) Union of India vs Narottambai, 2011 (1(GCD) 226
- f) K. Subbarayudu and others vs Special Deputy Collector (2017) 12 SCC 840
- g) Dhiraj Sing Vs Haryana State & others, 2014 DGLS (SC) 1091
- h) State of Nagaland vs Lipok AO & ors, (2005) 3 SCC 752.
- i) Imrat Lal and others Vs Land Acquisition Collector and others (2014) 14 SCC 133.
- j) Marry Venkaiah and others Vs Special Deputy Collector (Land Acquisition) and others, 1994 LAC 684 (AP)

3. The learned A.G.P. appearing on behalf of respondent Nos.1, 2 and 3 submits that there is no power for the Competent Authority to condone the delay, beyond the limitation period of 90 days, while entertaining an application under Section 28A of the Land Acquisition Act.

4. Section 28A of the Land Acquisition Act reads as under :

28A. Re-determination of the amount of compensation on the basis of the award of the Court.-

(1) where in an award under this part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the collector under section 11, the persons interested in all the other land covered

by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, required that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18".

5. It is apparent from the proviso below Section 28A (1) that, while computing the period of three months within which an application has to made to the Collector, the day on which the award was pronounced and the time actually required for obtaining copy of the award, has to be excluded. The learned Advocate for the petitioner submits that these petitioners were not party to the original judgment, delivered under Section 18 of the Land Acquisition Act, dated 17th March 2012. They had gathered knowledge about the deposition of the compensation amount in the Sangamner Court, on

13th August 2019. They immediately applied for certified copies which were received on 19th August 2019. They filed their applications under Section 28A on 26.09.2019.

6. We are informed by the learned Advocate for the petitioners that their applications under Section 28A of the Land Acquisition Act were disposed off by the impugned communication dated 29.11.2019 without hearing them. No notice was issued though an application for condonation of delay was filed.

7. We find from the judgments delivered by the Hon'ble Apex Court in **Bir Wati Vs Union of India** (supra) and by the Andhra Pradesh High Court in **Marry Venkaiah and others Vs Special Deputy Collector (Land Acquisition) and others** (supra) that the limitation would start from the date of the knowledge of the award and not from the date of the passing of the award.

8. In so far as these petitions in hands are concerned, we are only concerned with the fact that an opportunity of hearing has not been given to the petitioners and, therefore, we are entertaining these petitions only to this extent.

9. It is undisputed that there has been no hearing on the applications under Section 28A and as such the petitioners did not have the opportunity to address the Competent Authority in order to convince it as to how their applications can be said to be within 90 days from the date of the knowledge of the judgment / award. In **Marry Venkaiah and others Vs Special Deputy Collector (Land Acquisition) and others** (supra) it has been concluded that there is

no rule or provision under the Act requiring the Authorities to issue notice to all interested persons whose lands are covered by the same notification, including those who did not seek reference under Section 18 of the Act and in the absence of such provision, it is absurd to presume that they will have the knowledge of the award.

10. As such, these petitions are partly allowed. The impugned communications issued by respondent No. 3 are quashed and set aside. The applications of these petitioners under Section 28A of the Land Acquisition Act are restored to the file of respondent No. 3.

11. All the petitioners would appear before respondent No.3, either personally or through a legal representative, on 9th July 2021 at 12 noon. Respondent No. 3 would commence the hearing on their applications by giving them an opportunity of hearing to explain as regards the date of knowledge and computation of the limitation period of 90 days from the same. After the hearing is concluded, respondent No. 3 would pass a reasoned order and supply copies of the same to the petitioners expeditiously.

(AVINASH G. GHAROTE)

(RAVINDRA V. GHUGE, J.)

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