

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO.3538 OF 2019
WITH
CIVIL APPLICATION NO.13472 OF 2019**

Kalabai w/o. Sheshrao Hivrle

..Appellant

Vs.

1. The State of Maharashtra
Through Sub Divisional Officer
and Land Acquisition Officer,
Aurangabad
2. Vishnu s/o. Rangnath Kulkarni,
3. Raju s/o. Savliram Bachkar,
4. Sarjerao s/o. Shripat Kulkarni,
5. Baburao s/o. Kahuji Kulkarni,
6. Ankush s/o. Kanhuji Kulkarni,
7. Kashinath s/o. Kanhuji Kulkarni,
8. Eknath s/o. Kanhuji Kulkarni,
9. Laxman s/o. Kanhuji Kulkarni,
10. Draupadabai w/o. Pundlik Bankar,
11. Dashrath s/o. Gangaram Kulkarni,
12. Gautam s/o. Gangaram Kulkarni,
13. Gayabai Kachru Kulkarni

..Respondents

Mr.Ujwal S. Patil, Advocate for appellant
Mr.S.S.Dande, AGP for respondent no.1
Mr.A.P.Gunge, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
RESERVED ON : AUGUST 31, 2021
PRONOUNCED ON : DECEMBER 04, 2021**

ORDER :-

The challenge in this appeal is to the judgment and order dated 23.09.2019 passed by 10th Joint Civil Judge, Senior Division, Aurangabad, in Land Acquisition Reference No.259 of 2013. By the impugned judgment and order, the dispute raised by the appellant as to apportionment of amount of compensation, came to be turned down.

2. The facts, necessary to decide present appeal, are as follows :-

The land admeasuring 46 R in gut no.54, situated at village Karmad, Tq. and Dist. Aurangabad, came to be acquired under Maharashtra Industrial Development Act, 1961 ("M.I.D. Act", for short). The Special Land Acquisition Officer (S.L.A.O.) (respondent no.1) passed award on 30.05.2013 in the name of respondent no.2. The appellant herein and respondent nos.3 to 13 claimed to have preferred an objection before the S.L.A.O. for apportionment of compensation. The S.L.A.O., in turn, preferred dispute under Section 35 of the M.I.D. Act for the decision of the Court.

3. Learned Judge turned down the claim of the appellant herein with the following reasons:-

“14. In reference to objection of Kalabai, she was added by Order below Exh.46. She had objected before SLAO by filing an application on 21.10.2013 and final award in the name of Vishnu Kulkarni was passed by SLAO on 30.05.13. While passing order below Exh.46 it was misconceived that Kalabai is real sister of respondent nos.2 to 7, therefore, she was added party to the reference. As Kalabai failed to raise objection before preparation of award i.e. 30.05.2013 by SLAO, she is not proper party to the reference. As she has not raised objection before SLAO within limitation her claim in present reference is barred limitation.

15. Vishnu Kulkarni himself has given submission before SLAO that suit property is having share of his brothers. In cross examination of Kalabai by learned advocate of Raju Bachkar she has admitted that she was having knowledge of present reference since 7-8 years. Moreover, Kalabai minutely knows the key facts of the case still she appeared before this Court when matter was on final arguments. Despite of knowledge Kalabai neither appeared before SLAO on proper time nor has appeared before this Court when she firstly gets knowledge of the reference before this Court. Furthermore, as present reference is forwarded only to decide objections which were raised before SLAO, as Kalabai had not raised objection within time before SLAO, therefore, I conclude that claim of Kalabai is barred by limitation and she is not having any share in property, therefore, I answer issue no.2 in negative.”

4. Mr.A.P.Gunge, learned counsel for respondent no.2, would support the impugned judgment and order.

5. The record and the observations in paragraph 14 would, undoubtedly, indicate that the appellant herein had preferred objection to the S.L.A.O. on 21.10.2013. She claimed to have interest in the land acquired and therefore, entitled for apportionment of the amount of compensation. Section 35 of the M.I.D. Act reads as under :-

35. When the amount of compensation has been settled under Section 33, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute for the decision of the Court.”

6. Section 35 of the M.I.D. Act comes into play post settlement of the amount of compensation after passing of the award. Admittedly, the appellant herein claimed to be sister of respondent no.2 in whose favour the award has been passed. It appears that under the M.I.D. Act, 1961, no period of limitation has been prescribed for raising a dispute as to apportionment. Here, objection as to apportionment was raised within five months of passing of the award. The Reference Court, therefore, ought to have considered the claim of the appellant herein on merit. Whether the appellant is real sister of respondent no.2 and/or she has any

interest in the land acquired and therefore, entitled to have a share in the amount of compensation, shall be decided by the Reference Court on its own merit.

7. The mere fact that the appeal is being allowed and the matter is remanded back to the reference Court for deciding the dispute as to apportionment, shall not be taken to have made any observation about merit of the claim raised by the appellant herein.

8. In the result, the appeal succeeds in terms of the following order:-

- (i) Clause 3 of the impugned operative order is hereby set aside so far as regards the appellant - Kalabai is concerned.
- (ii) The matter is remanded back to the reference Court to decide the appellant's claim on its own merit, within a period of eight months from the date of receipt of copy of this order.
- (iii) The amount of compensation shall not be disbursed for a period of next three months. If any claim is made for disbursement of amount of compensation, the Reference Court shall deal with it on its own merit.

- (iv) In the proceedings before the reference Court, the appellant, the respondent in whose favour the award stands and public authorities shall only be the necessary parties.
- (iv) The appeal stands disposed of accordingly.
- (v) The Civil Application also stands disposed of.

[R.G. AVACHAT, J.]

KBP