

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

FIRST APPEAL NO.1030 OF 2014

- . Kesharbai w/o. Deorao Khole (Died) through L.R.s
- 1-A. Rushindhar s/o. Deorao Khole
Age: 57 years, Occu.: Agriculture
- 1-B. Baban s/o. Deorao Khole
Age: 52 years, Occu.: Agriculture
1-A to 1-B Both R/o. Dhangar Mohalla,
Ambad, Taluka Ambad, Dist.Jalna.
- 1-C. Parwatabai w/o. Hiranman Limbalkar
Age: 50 years, Ocu.: Household
- 1-D. Meenabai w/o Govindrao Sable
Age; 48 years, Occu.: Household,
1-C to 1-D Both R/o. New Mondha,
Ambad, Taluka Ambad, Dist. Jalna.
- 1-E. Baburao s/o. Deorao Khole
Age: 45 years, Occu.: Agril.,
R/o. Dhangar Mohalla,
Ambad, Taluka Ambad, Dist.Jalna.
- ..Appellants
(Ori. Claimants)

VERSUS

1. The State of Maharashtra
Through Collector, Jalna.
2. Sub-Divisional Officer, Partur
(Competent Authority under the
Maharashtra Industrial Development
Act, 1961]
3. The Regional Manager,
Maharashtra Industrial Development
Corporation, Station Road, Aurangabad.
- ..Respondents
[Ori. Respondents]

**WITH
FIRST APPEAL NO.1031/2014**

- . Baburao s/o. Deorao Khole
Age: 46 years, Occu.: Agriculture,
R/o. Dhangar Mohalla,
Ambad, Taluka Ambad, Dist.Jalna. ..Appellant
(Ori. Claimant)

VERSUS

1. The State of Maharashtra
Through Collector, Jalna.
2. Sub-Divisional Officer, Partur
(Competent Authority under the
Maharashtra Industrial Development
Act, 1961]
3. The Regional Manager,
Maharashtra Industrial Development
Corporation, Station Road, Aurangabad. ..Respondents
[Ori. Respondents]

**WITH
FIRST APPEAL NO.1032/2014**

- . Baban s/o. Deorao Khole
Age: 46 years, Occu.: Agriculture,
R/o. Dhangar Mohalla,
Ambad, Taluka Ambad, Dist.Jalna. ..Appellant
(Ori. Claimant)

VERSUS

1. The State of Maharashtra
Through Collector, Jalna.
2. Sub-Divisional Officer, Partur
(Competent Authority under the
Maharashtra Industrial Development
Act, 1961]
3. The Regional Manager,
Maharashtra Industrial Development
Corporation, Station Road, Aurangabad. ..Respondents
[Ori. Respondents]

**WITH
FIRST APPEAL NO.1033/2014**

. Sugandhabai Raghuji Kharat (died)
through L.Rs.

1-AA] Smt.Ramkor w/o Jagannath Kharat
Age: 49 years, Occu.: Household,
R/o. Holkarnagar, Ambad,
Tq.Ambad, Dist.Jalna.

1-AB] Aakash s/o Jagannath Kharat
Age: 28 years, Occu.: Agriculture,
R/o. Holkarnagar, Ambad,
Tq.Ambad, Dist.Jalna.

..Appellants
(Ori. Claimants)

VERSUS

1. The State of Maharashtra
Through Collector, Jalna.
2. Sub-Divisional Officer, Partur
(Competent Authority under the
Maharashtra Industrial Development
Act, 1961]
3. The Regional Manager,
Maharashtra Industrial Development
Corporation, Station Road, Aurangabad.

..Respondents
[Ori. Respondents]

**WITH
FIRST APPEAL NO.1034/2014**

. Kailas s/o. Raghuji Kharat
Age: 46 years, Occu.: Agriculture,
R/o. Dhangar Mohalla,
Ambad, Taluka Ambad, Dist.Jalna.

..Appellant
(Ori. Claimant)

VERSUS

1. The State of Maharashtra
Through Collector, Jalna.

2. Sub-Divisional Officer, Partur
(Competent Authority under the
Maharashtra Industrial Development
Act, 1961]
3. The Regional Manager,
Maharashtra Industrial Development
Corporation, Station Road, Aurangabad. ..Respondents
[Ori. Respondents]

Advocate for Appellants : Mr.Amit A. Mukhedkar
AGP for Respondents-State : Mr.S.N.Morampalle
Advocate for Respondent No.3 : Mr.S.S.Dande

CORAM : S. G. DIGE, J.

DATE : 17th October, 2022

ORAL JUDGMENT :-

1. Being aggrieved and dissatisfied by the common Judgment and order dated 25-07-2012 passed by the 2nd Joint Civil Judge, Senior Division, Jalna, the appellants - original claimants have preferred these appeals.

2. It is the contention of the learned counsel for the appellants that the Reference Court has rejected the claim petitions of the appellants on the ground that the said references were not in limitation. The Reference Court has considered other aspects and enhanced the compensation but rejected the claim petitions though, the claim petitions filed by the appellants were within limitation. The learned counsel for the appellants further

submits that the appellants had received the compensation amount on 10-11-1993, on the same day the appellants had filed the applications before respondent No.2 for enhancement of the compensation and the said amount was accepted under protest but it was not considered by the Reference Court and wrongly came to the conclusion that the claim petitions were not within the limitation. Hence, requested to allow the appeals.

3. Learned counsel for respondent No.3 submits that no evidence was produced on record by the appellants to prove that the claim petitions were filed before respondent No.2 authority to refer it for enhancement. Hence, the Judgment and order passed by the Reference Court is legal and valid.

4. I have heard all the learned counsel. Perused the Judgment and order passed by the Reference Court. The issue involved in these appeals is whether the claim petitions filed by the appellants before the Reference Court were within limitation or not. It is the contention of the learned counsel for the appellants that on 10-11-1993 all the appellants received the compensation from respondent-Acquiring Body and on the same day, the appellants filed applications before Respondent No.2 that they are accepting the said amount under protest and they are

entitled for the enhanced amount. As issue involved in these appeals is of limitation, Section 34 of the Maharashtra Industrial Development Act, 1961 (for short 'the MID Act') is referred. Section 34 of the MID Act reads as under :

“34. [(1) Any person aggrieved by the decision of the Collector determining the amount of compensation may, within sixty days from the date of such decision, so far as it affects him, by written application to the Collector require that the matter be referred by him for determination of the Court as defined in the Land Acquisition Act, 1894, in its application to the State of Maharashtra, and when any such application is made the provisions of Part III of the said Act shall mutatis mutandis apply to further proceedings in respect thereof.]

5. This Section states that after determination of amount of compensation by the Collector, within 60 days from the date of such decision, by way of written application to the Collector, the concerned person may request that the matter be referred by him for determination of the Court as defined in the Land Acquisition Act, 1894. The Reference Court in paragraph No.31 of the Judgment and order has observed that the appellants had given letters to respondent No.2 but those letters were not considered as the reference petitions, as provided under Section 34 of the MID Act. In my view, Section 34 of the MID Act states

about written application and the written applications were filed by the appellants before respondent No.2. So it proves that the appellants had accepted the said compensation amount under protest and they were seeking enhancement. Written applications for enhancement are sufficient to prove that appellants were seeking enhancement. Section 34 does not provide a form of petition, it states about written application. It is observed by the Reference Court that there is three days delay, it should be filed within 60 days. As observed earlier, there is no delay for filing the claim petitions. Hence, observation of the Reference Court regarding issue of limitation is set aside. In view of this, I hold that the reference petitions are within limitation.

6. The learned counsel for the appellants and learned counsel for the respondents submit that opportunity of fresh hearing be given to them. Thus, only opportunity of hearing can be given to both the parties as evidence is already on record. In view of above, I pass the following order :

ORDER

- (i) Appeals are partly allowed.

(ii) The matters are remanded back to the 2nd Joint Civil Judge, Senior Division, Jalna for fresh hearing by giving opportunity to both the parties.

(iii) It is made clear that on the basis of available record, the Court shall give fresh hearing only to both the parties on the issue that whether the rate determined by the Reference Court is proper or not.

(iv) Both the parties shall appear before the Reference Court on 21-11-2022.

(v) The Reference Court is requested to dispose of these matters as early as possible and preferably within three months from the date of receipt of this order.

(vi) Record and Proceedings be sent back.

(vii) Appeals are disposed of.

(S. G. DIGE)
JUDGE

SPT