

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

**WRIT PETITION NO.14302 OF 2021**

1. Vijayabai Pralhad Rathod  
Age- 52 years, Occ- Agri.,
2. Sudam Shahu Rathod  
Age- 54 years, Occ- Agri.,  
Both R/o. Village Thapti Tanda,  
Taluka- Paithan, Dist. Aurangabad. ...Petitioners

Versus

1. The Competent Authority (Land Acquisition)  
National Highway No. 211, & Deputy Collector  
Krushna Khore Prkalp, Aurangabad, Collector  
Office, Aurangabad.
2. The Project Director,  
National Highway Authority of India,  
Project Implementation Unit, Aurangabad,  
B-23, Near Kamgar Chowk, N-4, Cidco,  
Aurangabad. ...Respondents

**ALONG WITH**  
**WRIT PETITION NO.14304 OF 2021**

1. Vijayabai Pralhad Rathod  
Age- 52 years, Occ- Agri.,
2. Kalabai Ganesh Rathod  
Age- 54 years, Occ- Agri.,  
Both R/o. Village Thapti Tanda,  
Taluka- Paithan, Dist. Aurangabad. ...Petitioners

Versus

1. The Competent Authority (Land Acquisition)  
National Highway No. 211, & Deputy Collector  
Krushna Khore Prkalp, Aurangabad, Collector  
Office, Aurangabad.

2. The Project Director,  
National Highway Authority of India,  
Project Implementation Unit, Aurangabad,  
B-23, Near Kamgar Chowk, N-4, Cidco,  
Aurangabad. ...Respondents

**ALONG WITH**  
**WRIT PETITION NO.14307 OF 2021**

1. Vijayabai Pralhad Rathod  
Age- 52 years, Occ- Agri.,
2. Kalabai Ganesh Rathod  
Age- 54 years, Occ- Agri.,  
Both R/o. Village Thapti Tanda,  
Taluka- Paithan, Dist. Aurangabad. ...Petitioners

Versus

1. The Competent Authority (Land Acquisition)  
National Highway No. 211, & Deputy Collector  
Krushna Khore Prkalp, Aurangabad, Collector  
Office, Aurangabad.
2. The Project Director,  
National Highway Authority of India,  
Project Implementation Unit, Aurangabad,  
B-23, Near Kamgar Chowk, N-4, Cidco,  
Aurangabad. ...Respondents

**ALONG WITH**  
**WRIT PETITION NO.14308 OF 2021**

1. Pralhad Shahu Rathod  
Age- 64 years, Occ- Agri.,
2. Ganesh Shahu Rathod  
Age- 57 years, Occ- Agri.,  
Both R/o. Village Thapti Tanda,  
Taluka- Paithan, Dist. Aurangabad. ...Petitioners

Versus

1. The Competent Authority (Land Acquisition)  
National Highway No. 211, & Deputy Collector

Krushna Khore Prkalp, Aurangabad, Collector  
Office, Aurangabad.

2. The Project Director,  
National Highway Authority of India,  
Project Implementation Unit, Aurangabad,  
B-23, Near Kamgar Chowk, N-4, Cidco,  
Aurangabad. ...Respondents

Mr. Ameya Sabnis a/w. Mr. M.R. Malpani, Advocate for the  
petitioners.

Mr. S.W. Munde, Advocate for respondent No. 1.

Mr. D.S. Manorkar, Advocate for respondent No. 2.

.....

**[CORAM : NITIN B. SURYAWANSHI, J.]**

**DATE : 5<sup>th</sup> JUNE, 2023**

**ORAL JUDGMENT:**

1. Rule. Rule made returnable forthwith. Heard finally  
with the consent of parties.

2. Since these petitions raise similar question of law  
and facts, they were heard together and are being decided by  
this common judgment.

3. Admitted facts are that lands of the petitioners were  
acquired and award was passed. The petitioners being  
dissatisfied with the inadequate quantum of compensation by the  
Competent Authority, filed applications seeking determination of  
compensation before National Highway Arbitrator under the  
provisions of National Highways Act, 1956. Said applications filed

by the petitioners were rejected by the Arbitrator vide order dated 23.07.2021. The petitioners challenged the said orders by filing applications under section 34 of the Arbitration and Conciliation Act, 1996, before the District Court. Registry of the District Court raised an objection that since the petitioners have claimed enhancement of compensation, arbitration applications should be accompanied with the Court fees, as per the amount claimed in the applications for enhancement and necessary Court fees has to be paid as per the said claim. By the orders impugned in the present petitions said objection is upheld by the learned District Judge and the petitioners are directed to pay necessary Court fees under Schedule-1 Article 3A of Bombay Court Fees Act within a period of one month from the date of the order. Hence, the present petitions.

4. Heard the learned advocate for the petitioners, learned advocate for respondent No. 1 and learned advocate for respondent No. 2. Perused the memo of writ petitions, annexures thereto, impugned orders, affidavit in reply filed by respondents No. 1 and 2 and the citation relied upon by the learned advocate for the petitioners.

5. The point raised in the present petitions is as to whether petitioners (original claimants) are liable to pay Court fees in terms of Schedule-1 Article 3A of Bombay Court Fees Act, as per the amount of enhanced compensation claimed by them.

6. This point is no more *res integra* and in similar facts, learned Single Judge of this Court in **Saraswat Co-operative Bank Ltd., vs. Fariruddin Quereshi N. and Others**, (2012) 1 Bom CR 902 held:

"29. ....

*Ad-valorem or fixed Court fees- 29 Now, the next issue is whether the Petitioner is bound to pay the Court Fees as per Schedule I, (Ad valorem Fees) Article 3A, as amended by 1<sup>st</sup> September, 2009.*

*3A. Application or petition (including memorandum of appeal) to set aside or modify arbitral award under Arbitration and Conciliation Act, 1996 (26 of 1996)*

*A fee of one half of the ad valorem fee on the amount or value of the award sought to be set aside or modified, according to the scale prescribed under Article 1. Or, Schedule II, (Fixed Fees) Article-1(f)(iii)-4 (Twenty rupees)*

*35. Therefore, on a plain and simple reading of this provision, whosoever wants to file Application or Petition and/or appeal to set aside the award or modify the Arbitral Award, need to pay one half of the ad-valorem fees on the amount or value of the amount of award sought to be set aside or modified. This, in my view, contemplates that there is a monetary award passed against the party, which the aggrieved party wants to challenge by such application or petition or by appeal to set aside or modify the said*

*award under the Arbitration Act, which is subject to ad valorem Court fees as prescribed in Article 3A of Schedule I and not otherwise.*

*36. In the present case, the situation is quite different. Here by the common order, the Arbitral Tribunal has dismissed all the claims of the disputant bank, therefore, there is no amount awarded by the award which needs to be set aside or modified by application under Section 34 of the Arbitration Act. The submission that the valuation or the amount so involved or referred in the claim Petition by the disputant bank, should be the basis for calculating the ad-valorem fees as per Article 3A, in my view is untenable.*

*37. Under the Arbitration Act, whosoever filed a claim Petition for whatsoever amount, against the Respondent/opponent need not pay any court fees for want of specific provisions under the BCF Act and/or under the Arbitration Act. Therefore, Article 3A which deals with Arbitration Act, cannot be invoked for charging the Court fees on the basis of such submission. The Court fees just cannot be charged unless it is specifically provided. There is no question of any interpretation and/or reading such clauses/articles, in favour of charging the court fees in such cases. In the present case, there is a total rejection of claims. The Petition under Section 34 as filed, to set aside or modify the award, no ad-valorem Court fees as contemplated under Article 3A, for want of any amount and/or valuation of the award, is payable. There is no clear charging provision. No Court fee is therefore, payable if there is challenge to the finding given in the award, unless it is subject to grant of monetary claim or adjustment of any amount.*

*38. Here another factor is that pursuance to the order passed by the Hon'ble High Court and as permitted the disputant bank refiled all the claim Petitions before the Arbitrator, who was appointed under the MSCS Act as contemplated under Section 84, and the matter proceeded accordingly. The statement is made by the learned Senior counsel appearing for the Petitioner that at the relevant time when they preferred the claim petitions before the Co-*

*operative Court, they paid the requisite Court fees. Under MSCS Act also there is no provision to pay Court fees on such claim petitions. There is no such express provisions for Court fees in such circumstances for the purpose of claim Petition under this MSCS Act is available even under the BCF Act. Therefore, if the Court fee is not payable by the claimant either under the Arbitration Act and/or MSCS Act at the time of filing of claim petition. Therefore, to say that they are liable to pay Court fees on the basis of valuation of the plaint or claim so raised, in my view, is also unacceptable.”*

7. The learned District Judge appears to have misread and misconstrued the above ratio and has wrongly held that facts of Saraswati Co-operative Bank Ltd., (supra) are totally different.

8. Since the point raised in the present petitions is squarely covered by ratio in Saraswati Co-operative Bank Ltd., (supra), the impugned orders are unsustainable in law and facts of the present case.

9. In the result, writ petitions are allowed.

10. The orders impugned in present petitions dated 25.11.2021, passed by District Judge-6, Aurangabad, thereby directing the petitioners to pay necessary court fees under Schedule-1 Article 3A of the Bombay Court Fees Act, within the period of one month from the date of order, are quashed and set aside.

Rule is made absolute in terms of prayer clause 'A' and 'B', with no order as to costs.

**[NITIN B. SURYAWANSHI, J.]**