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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.111 OF 2021

1. Smt. Yashodabai W/o. Narayan Sirsat (Dead)
Applicant no.2 to 6 are the legal heirs of the
applicant no.1 and already applicant before
the reference court.
2. Shri Devanand S/o Narayan Sirsat,
Age – 55 years, Occu- Private,
R/o Block No. 101, Room No.202,
Flat No. G-1, Kalamata Chouk,
Kurla Camp, Ulhasnatar -4.
3. Shri. Devrao S/o Narayan Sirsat,
Age – 53, Occu – Service,
R/o, Block No.101, Room No.202,
Flat No. G-1, Kalamata Chouk,
Kurla Camp, Ulhasnagar -4.
4. Shri. Sevanand S/o Narayan Sirsat,
Age – 57, Occu – Private,
R/o At – Yevata, Tah – Dist- Akola.
5. Sau. Usha W/o. Manik Surwade,
Age – 61, Occu – Household,
R/o. At Gudadhi, Tah – Dist – Akola.
6. Sau. Asha W/o Prakash Kharat,
Age – 59, Occ – Private,
R/o. At – Tiwasa, Tah – Barshitakali,
Dist – Akola.

APPELLANTS

// VERSUS //

1. The State of Maharashtra,
Through, Sub-Divisional Officer
and Land Acquisition Officer, Akola,
Tah – Akola, District – Akola.
2. Maharashtra Industrial Development
Corporation, Through its CEO, MIDC,
Amravati, Tah – Amrawati, Dist – Amrawati.

RESPONDENTS

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Mr. Nihalsingh Rathod, Advocate h/f Mr. Sandeep Nandeshwar,
Advocate for appellants.

Mr. M. A. Kadu, AGP for respondent No.1.

Mr. Ashish Chaware, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

RESERVED ON : 30/01/2023

PRONOUNCED ON : 18/04/2023

JUDGMENT

1. This appeal is filed under Section 54 of the Land Acquisition Act against the Judgment and Award passed by 3rd Joint Civil Judge Senior Division, Akola, in Land Acquisition Case No.1/2013 dated 25.06.2019.

2. Parties hereinafter referred to as per their original nomenclature.

3. Brief facts which are necessary are as under:

The original claimant Narayan Mari Sirsat was the original owner of the Gat No.144 having original Survey No.78/2. The said land was granted to the original applicant Narayan vide certificate No.27/60-A(3)65-66 of Yeota dated 18.08.1966. The said land was acquired for the purposes of M.I.D.C., Akola. The compensation for the said six

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acres of land was determined at the rate of Rs.97,002/- by the Land Acquisition Officer, Akola by award No.LAQ/47/2/Yeota/91-92. However, Mr. Namdeo Dhonduji More and Tukaram Pandurang Dhagekar claimed title in above said property on the basis of sale deed allegedly executed by the original claimant. The original claimant Narayan contended that the sale deeds are void under law being in contravention of the conditions of grant under Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short "the Ceiling Act"). It is further contended by the original claimant that the said sale deed was bogus document and possession was never delivered to Mr. Namdeo Dhonduji More and Tukaram Pandurang Dhagekar. Mr. Namdao Dhonduji More had also filed Regular Civil Suit No.773/1985 for declaration which was dismissed on 18.01.1995. The Consolidation Officer has also declared the applicant Narayan as owner by its order dated 18.05.1991.

4. The original claimant had applied to the Land Acquisition Officer for the payment of compensation amount. However, due to dispute raised between Narayan and Namdeo Dhonduji and Tukaram Pandurang, the amount was not paid to him. Therefore, he constrained to file application under Section 30 of the Land Acquisition Act bearing Land Acquisition Case No.49/2000, wherein Namdeo Dhonduji and

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Tukaram Pandurang were respondent Nos. 2 and 3.

5. Though respondent Nos.2 and 3 are served, but failed to file written statement, therefore reference proceeded without their written statement. During pendency of the reference under Section 30, the original claimant died and his legal representatives (i.e. present appellants) brought on record. In the said reference, claimants i.e. appellant No.1 Yashodabai Narayan Sirsat adduced her evidence and produced various documents such as letter given by Head-copiest, Collectorate, Akola Exh.32, true copy of record of rights Exh.35, notice issued by Seva Sahakari Society Exh.36, 7/12 extract of Gat No.144 Exhs.37, 38, 40 and 47, 7/12 extract of Survey No.78/2 Exh.39, certificate issued by Consolidation Officer Exh.41, certified copy of plaint in Regular Civil Suit No.773/1985 Exh. 42, certified copy of written statement of Regular Civil Suit No.773/1985, certified copy of issues in Regular Civil Suit No. 773/1985 Exh.44, notice under Section 33 of Maharashtra Industrial Development Act, 1961 Exh.45 and notice under Section 33 Exh. 46.

6. Respondent Nos. 2 and 3 failed to adduce evidence. After considering the evidence on record 2nd Joint Civil Judge Senior Division, Akola allowed the reference and declared that claimants (present

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appellants) are entitled to get compensation amount of Rs.97,002/- determined by the Land Acquisition Officer in Case No. LAQ/47/2/Yeota/91-92 in respect of 2 hectare 43 R land of Gat No.144, situated at village Yeota. In view of the order, respondent No.1 Land Acquisition Officer deposited the amount on 20.08.2011.

7. Being aggrieved with the amount of compensation claimant filed reference under Section 34 of the Maharashtra Industrial Development Act, 1961 read with Section 18 of the Land Acquisition Act, 1894. As per contention of the claimants, Land Acquisition Officer without considering the market value potential, fertility and non-agriculture potential inadequate compensation is awarded. It is further contention of the claimants that the claimants were not known about the legal provisions, they were landless, therefore claimant No.2 went at Mumbai for his job work. Namdeo Dhonduji More and Tukaram Pandurang Dhagekar have taken advantage of the absence of the claimants and have tried to take possession of the said land. The original claimant Narayan Sirsat was died on 21.04.2005. He had also faced the Court litigation in the Court i.e. Regular Civil Suit No.773/1985 which was decided on 18.05.1991. He had also filed a reference application under Section 30 of the Land Acquisition Act, 1894 (for short 'the Act'). It is contention of the claimants that after getting knowledge about the

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Land Acquisition Case No.LAQ/47/Shioni, Shivapur, Yeota. The claimants applied for certified copies of the above case, and thereafter filed this reference petition. As the present reference petition is filed after claimant got knowledge on 25.08.2011, hence the application is filed within a period of limitation as provided under Section 34 of the Maharashtra Industrial Development Act, 1961 (for short 'M.I.D. Act').

8. The State has contested the said reference on the ground of limitation and it is contended that the reference is neither within a period of limitation nor supported with the evidence. It is also not properly valued and liable to be dismissed. The respondent No.2 – M.I.D.C. also contested the reference by filing written statement vide Exh.24 and raised the ground that reference is not within limitation. After considering the rival pleadings, the Reference Court has framed necessary issues including the issue of limitation.

9. To substantiate the contention that, the reference is filed after knowledge, claimant No.2 Devanand Narayan Sirsat filed affidavit of examination-in-chief and reiterated the contentions as narrated by him in the reference petition. He stated that, he was not having knowledge about the award till 20.08.2011. The respondent has deposited the amount, on order passed in Land Acquisition Case

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No.49/2000, thereafter he got the knowledge, and thereafter he filed the reference petition. Therefore, reference petition is within the limitation. He was cross-examined at length, during his cross-examination, he admitted that he is aware about the entire facts of the present matter. Rest of the cross-examination is in respect of the situation of the land and quality of the land etc. During cross-examination, he specifically admitted that in the year 1997 when notice was received by him, he came to know about the said award. He had also admitted that the reference regarding the entitlement was decided by the Court on 28.08.2011. The respondents have not adduced the evidence before the Court. After hearing both the sides and after perusal of the material on record, the reference Court come to the conclusion that the reference is not filed within the limitation.

10. Being aggrieved and dissatisfied with the judgment of the Reference Court, present appeal is preferred by the claimants on the ground that learned Reference Court had not considered that claimants were not aware about the award passed by the Land Acquisition Officer. The State of Maharashtra for the purpose of establishment of Industrial Growth Center acquired 661.43 hectares land from village Shivani, Shivapur, Yeota and Kumbhari of District Akola. The respondent No.1 has initiated proceeding for acquisition of the land bearing Land

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Acquisition Case No.LAQ/47/Shivani/Shivapur, Yeota and Kumbhari/2/1991-1992. For the said project, the respondent had acquired 2.43 hectares land of the appellants i.e. claimants. The Reference Court failed to consider the land of the present claimants was already converted into non-agricultural residential use.

11. On 12.08.2010, the learned 2nd Joint Civil Judge Senior Division, Akola has allowed the reference case No.49/2000 and declared the claimants are entitled to get the compensation amount and directed the respondents to give the compensation. As per order dated 12.08.2010, the present respondents had given compensation amount on 20.08.2011. The appellants have received the said compensation amount under protest. The claimants have filed reference application under Section 34 of the M.I.D. Act read with Section 18 of the Land Acquisition Act. Thus, the claim of the claimant is within the limitation. Therefore, the Judgment and Award passed by the learned trial Court deserves to be set aside.

12. Heard learned Advocate Mr. Nihalsingh Rathod for the appellants. He submitted that initially issue of apportionment was involved. The appellants are the legal heirs of Narayan Sirsat. The said Narayan Sirsat was the original owner. The land was acquired by the

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Government vide award No.LAO/47/2/Yeota/91-92. The title of the original owner Narayan Sirsat was objected by Namdeo Dhonduji More and Tukaram Pandurang Bhagekar on the basis of sale deed. The said sale deed was bogus and forged one. Therefore, Narayan Sirsat filed application under Section 30 of the Act claiming his entitlement for compensation. Mr. Namdeo Dhonduji had also filed Regular Civil Suit No.773/1985 for declaration which was already dismissed. The Consolidation Officer has also declared Narayan as owner. By considering the entire evidence on record, the Reference Court allowed the application filed by Narayan Sirsat under Section 30 of the Act.

13. During pendency of the said reference under Section 30 of the Act, Narayan died. After his death, the present appellants are brought on record in the said reference. The claimants are declared to be legal heirs of Narayan Sirsat and also declared to be entitled for the compensation. The claimants were not aware about the award. The reference for enhancement of compensation was presented on 09.09.2011. The claimants got the knowledge about the amount of compensation when said amount of compensation was disbursed to them on 20.08.2011. Thereafter, they applied for certified copies and filed the reference on **09.09.2011**. Thus, reference is within limitation.

Date is
corrected as
per Court's
order dated
16.02.2024

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14. Learned AGP Mr. M. A. Kadu for respondent No.1 submitted that the claimants were aware about the award passed in Land Acquisition Case No.49/2000. They have received the compensation amount on 20.08.2011. They ought to have file the reference for enhancement of the compensation within six weeks, in view of the provisions of Section 18 of the Act. In view of Section 34 of the M.I.D. Act, the person aggrieved by the decision of the Collector has to apply within 60 days from the date of such decision. Thus, the reference is not within limitation and rightly dismissed by the Court.

15. After hearing both the sides, following point arise for my consideration.

- (i) Whether the reference petition filed by the claimant is within the limitation in view of the provisions of Section 34 of Maharashtra Industrial Development Act, 1961 and in view of Section 18 of the Land Acquisition Act?

16. It is not disputed that Narayan Sirsat was the original owner of Gat No.144 having original Survey No.78/2. The said land was granted to him vide certificate No.27/60-A(3) 65-66 of Yeota dated 18.08.1966. It is also undisputed that the said land was acquired for the purpose of M.I.D.C., Akola. Notification under Section 32(2) under the M.I.D., Act was published on 13.08.1992. The Award was passed on

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28.03.1997. After receipt of the notice, claimant Narayan Sirset claimed the compensation amount, however Mr. Namdeo Dhonduji More and Tukaram Dhagekar claimed title in the above said properties on the basis of sale deed allegedly executed by Narayan. As per contention of the Narayan, the sale deed were executed in contravention of the conditions of the grant under Ceiling Act. It was further claimed by him that sale deed was bogus document. Mr. Namdeo Dhonduji had also filed Regular Civil Suit No.773/1985 which was already dismissed on 18.05.1991. The Consolidation Officer has also declared Narayan as owner by its order dated 18.05.1991. Considering all these aspects, the Reference Court declared the legal heirs of the Narayan Sirsat as owner of the property and the person interested. It is held by the Reference Court that original owner Narayan Sirsat is entitled for the said compensation amount. As Narayan died during the pendency of the reference, his legal heirs were brought on record. Thus, they are held entitled to get the said compensation. The said compensation was granted to them on 28.08.2011. Being aggrieved with the compensation determined by the Land Acquisition Officer they have preferred the reference on 22.11.2011.

17. Learned Advocate Mr. Rathod in support of his contention placed reliance on **Harish Chandra Raj Singh Vs. The Deputy Land**

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Acquisition Officer and Ors. reported in **MANU/SC/0386/1961** wherein Hon'ble Apex Court has held that it is relevant to bear in mind the legal character of the award made by the Collector under Section 12. It is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer section 18 gives him the statutory right of having the question determined by Court, and it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance. In the said judgment Hon'ble Apex Court further held that if the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such decision,

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either actual or constructive, is an essential element which must be satisfied before the decision can be brought into course. Thus, considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it, it can be said to be made when pronounced. It is further held that the knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression “the date of the award” used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words “from the date of the Collector’s award” used in the proviso to Section 18 in a literal or in a mechanical way.

18. Learned Advocate for the appellants further placed reliance on **Madan and another Vs. State of Maharashtra** reported in (2014) 2 SCC 720 wherein it is held that limitation period to run from date of knowledge of award. Appellants had no knowledge of award till reference under Section 30 was decided. Appellants filed reference

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under Section 18 within six weeks of order passed in reference under Section 30. It is held by the Hon'ble Apex Court that a cursory glance at the provisions of Sections 18 and 30 of the Act extracted above, may suggest that there is some overlapping between the provisions inasmuch as both contemplate reference of the issue of apportionment of compensation to the court. But, the closure scrutiny would indicate that the two sections of the Act operate in entirely different circumstances. While Section 18 applies to situations where the apportionment made in the award is objected to by or beneficiary thereunder. Section 30 applies when no apportionment whatsoever is made by the Collector on account of conflicting claims. In such a situation one of the options open to the Collector is to make a reference of the question of apportionment to the court under Section 30 of the Act. The other is to relegate the parties to the remedy of a suit. In either situation, the right to receive compensation under the award would crystallise after apportionment is made in favour of the claimant. It is only thereafter that a reference under Section 18 for enhanced compensation can be legitimately sought by the claimant in whose favour the order of apportionment is passed either by the court in the reference under Section 30 or in the Civil Suit, as may be. Lastly, he relied upon **Union of India (UOI) and Ors. vs. Pradeep Kumari and Ors.** reported in **MANU/SC/0450/1995** which dealt with the provisions of Section 28A of the Land Acquisition Act.

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19. Before entering into the merits of the case, it is necessary to reproduce Section 18, Section 30 of the Land Acquisition Act and Section 34 of the M.I.D., Act.

Section 18 –

*“18. **Reference to Court** – (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.*

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector’s award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector’s award, whichever period shall first expire.

Section 30

*“30. **Dispute as to apportionment** – When the amount of compensation has been settled under section 11, 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 to the decision of the Court.”*

Section – 34 of the Maharashtra Industrial Development

Act.

“34. Appeal to [Authority]:

[(1) Any person aggrieved by the decision of the Collector determining the amount of the 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 Authority and when any such application is made, the provisions of Chapter VIII of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (30 of 2013) shall mutatis mutandis apply to further proceedings in respect thereof.]

2) The decision of the [Authority] [on such reference] and subject only to such decision, the decision of the Collector determining the amount of the compensation, shall be final.”

20. From the order dated 12 August 2010 passed in Land Acquisition Case No.49/2000, it is clear that there was a dispute amongst Narayan Sirsat and Namdeo Dhonduji More and Tukaram Pandurang Dhagekar in respect of their title in the acquired property. Mr. Narayan Sirsat had filed an application under Section 30 of the Act to the Court. The said reference was referred by the Collector to the Court for adjudication. The Land acquisition Case No.49/2000 was decided by the reference Court after giving opportunity to both the sides. On the basis of evidence adduced by the legal heirs of Narayan Sirsat, who are added as party in the said acquisition case, the Reference Court

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held that on the basis of documents and the certificate issued under Section 24 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act 1947 which is at Exh.41 shows that the certificate of transfer has been issued to the claimant on 13.05.1991 in respect of Gat No.144 admeasuring 2 hectare 43 R. land. Thus, considering all the documentary and oral evidence on record, it is crystal clear that sale deed got executed by respondent Nos. 2 and 3 are in contravention of Section 29 of the Ceiling Act, and therefore they are *void-ab-initio*. The claimant was in possession of the suit land before the acquisition, the certificate of transfer of Gat No.144 has been given to the claimant on 30.05.1991. The respondent Nos.2 and 3 did not adduced any evidence, and therefore considering the entire evidence on record Court come to the conclusion that after the demise of Narayan Sirsat, the claimants are entitled to get compensation. Thus, by order dated 12.08.2010, the claimants are declared to be interested person to get the compensation. Thus, it is crystal clear that initially, Narayan Sirsat had filed application under Section 30 of the Act on 25.01.2000. Narayan died during the pendency. After his death, his legal heirs are brought on record and they contested the application. The claimant No.1 Yashodabai adduced her evidence before the Reference Court in her reference which was filed under Section 30 of the Act. Thus, the claimants were having knowledge about the award. The claimant No.2

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Devanand admitted that he was aware about the award passed in 1997. Thus, the claimants came to know that they are entitled to compensation on 12.10.2010. The claimants were represented by their counsel. A cursory glance of the provisions of Sections 18 and 30 of the Act extracted above, shows that there is some overlapping situation between the provisions inasmuch as both contemplate reference of the issue of apportionment of compensation to the court. The scrutiny of both the Sections would indicate two Sections of the Act operate entirely in different situations. Section 18 of the Act applies to situation where the apportionment is made in the award is objected by a beneficiary thereunder. Whereas Section 30 applies when no apportionment whatsoever is made by the Collector on account of conflicting claims. In such a situation the Collector has to make reference of the question of apportionment to the Court under Section 30 of the Act. In either situation the right to receive compensation under the award would be crystallised after apportionment is made in favour of the claimants. It is only thereafter that a reference under Section 18 for enhancement compensation can be legitimately sought by the claimant in whose favour the order of apportionment is passed either by the court in reference under Section 30 or in Civil Suit.

21. Here in the present case, the right of the claimants was

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crystallised by the reference Court on 12.08.2010. In view of Section 18, if the claimants are dissatisfied and aggrieved by the compensation amount determined by the Land Acquisition Officer. The Sub-section (2) (a) of Section 18 states that if the person making was present on represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award; and Sub-section (2)(b) states that in other cases, within six weeks of the receipt of notice from the Collector under Section 12, Sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire. Sub-section (1) of Section 18 states any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the person interested. Thus, within six weeks the claimants ought to have file the application for compensation from the date of order passed in Land Acquisition Case No.49/2000 which was filed under Section 30 of the Act. Thus, the claimants are entitled to receive the compensation was declared on 12.08.2010. Thus, from 12.08.2010, the limitation period for the claimants to claim the compensation starts and they have to file the reference within six weeks from the date of 12.08.2010.

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22. Present application i.e. Land Acquisition Case No.1/2013 filed by the claimants under Section 18 for compensation was filed on 22.11.2011 i.e. after the period of limitation. In view of Section 34 of the M.I.D. Act, the person aggrieved by the decision of the Collector determining the amount of compensation may within 60 days from the date of such decision file an application for enhancement of the compensation. Thus, the application is not filed within limitation, in view of the provisions of Section 34 of the M.I.D. Act. The period of limitation cannot be extended by the Collector or the Courts, and therefore, reference should essentially be filed within the prescribed period of limitation under Section 34(1) of the M.I.D. Act. The claimants whose land is acquired under the Land Acquisition Act can make application for reference within a stipulated time from the date of his acquiring knowledge of the award. Likewise, under the provisions of Section 18 of the Act the period of limitation cannot be extended by the Collector or the Court, and therefore reference should essentially be filed within the prescribed period of limitation under Section 18 of the Act.

23. For the aforesaid reasons, I hold that the land reference filed by the claimants was not within the limitation. The trial Court rightly dismissed the reference as it was not within the limitation. Therefore, in the peculiar facts of the case, as appeal has no merits, hence liable to be

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dismissed.

24. The appeal is dismissed. No order as to costs.

(URMILA JOSHI-PHALKE, J.)

Sarkate./-