



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

904 WRIT PETITION NO. 3964 OF 2010

1. YADA MAHADEV SURVE
(DIED) THROUGH LRS
- 1-A) VASANT YADAVRAO SURVE
Age : 50 Age: Major, Occ: Agril,
R/o: Limbachiwadi, Tq: Kaij, Dist: Beed.
- 1-B) Bajrang Yadavrao Surve,
Age: Major, Occ: Agril,
R/o As Above.
- 1-C) Vasant s/o Yadavrao Surve,
Age: Major, Occ: Agril,
R/o: Limbachiwadi, Tq: Kaij, Dist: Beed.
2. Gangubaie w/o Digambar Harale
Age: Major, Occ: Household & Agril,
R/o As Above.
3. Narayan s/o Mugaji Sangale
Died through LR's
- 3A) Nathrao s/o Narayan Sangale
Age: Major, Occ: Agril,
R/o As Above.
- 3B) Prabhu s/o Narayan Sangale
Age: Major, Occ: Agril,
R/o As Above.
4. Pandurang s/o Mahadev Mane,
Age: Major, Occ: Agril,
R/o As Above.

...PETITIONERS

-VERSUS-

- 1) The state of Maharashtra,
Through its Secretary,
Irrigation Department,
Mantralaya Mumbai.
- 2) The Collector, Beed,
Collector Office, Nagar Road,
Beed.
- 3) Special Land Acquisition Officer No.1,
Beed at Ambajogai.

...RESPONDENTS

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Shri A.D. Khot, Advocate i/by Shri Bachate Pralhad D.,
Advocate for the Petitioners.
Mrs.V.N. Patil Jadhav, AGP for Respondent Nos.1 to 3/State.
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**CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.**

DATE :- 20th August, 2024

ORAL JUDGMENT (*Per Ravindra V. Ghuge, J.*):-

1. Leave to add prayer clause in relation to challenging the order dated 23.09.1997. Addition be carried out forthwith.
2. Rule. Rule is made returnable forthwith and heard finally by the consent of the parties.

3. The Petitioners have put forth prayer clauses C and C-1 as under:-

- “C) *By way of issuing appropriate writ or direction in like nature the Land Acquisition Reference which is pending in the office of the respondent no.3 Special Land Acquisition Officer Beed No.1 at Ambajogaie may kindly directed to send in the court in four weeks.*
- C-1) *By way of appropriate writ or order in the like nature, this Hon’ble Court may kindly quash and set aside the order dated 23.09.1997 passed by the Respondent Authority.”*

4. We have heard the learned Advocates for the respective sides.

5. It appears from the affidavit in reply that Respondent No.3/SLAO had received the application under Section 18 of the Land Acquisition Act, 1894 filed by the Petitioners on 19.08.1996, through Advocate V.L. Doiphode. The SLAO has contended that since the court fees stamps were not deposited, Advocate Doiphode was informed, vide the office letter dated 17.05.1997, to deposit the court fees by 26.07.1997. The said letter is at annexure R-1. Since the court fees were not deposited, Advocate Doiphode was informed by the SLAO that the application cannot be sent to the Reference Court. It is in this

backdrop that the letter dated 23.09.1997, was issued informing Advocate Doiphode that the application for reference is rejected.

6. This Court has settled the issue as regards the insistence by the Authorities for depositing the court fees. Firstly, the application was misdirected to the SLAO and the same should have been filed with the District Collector by the Petitioners. Secondly, this Court has delivered the judgment in ***Sambhaji Manaji Chate and another vs. The State of Maharashtra and another, 2003 (2) Mh.L.J. 661***, concluding that a person preferring an application under Section 18, is required to pay court fees under Schedule I of Article 15 and it is appropriate for the Land Acquisition Officer to pass a conditional order on the application for reference and forward it to the appropriate Court. It was concluded in paragraph Nos.8 to 10 as under:-

- “8. *In view of the clarification given by the Apex Court, it is clear that the person preferring an application under Section 18 of the Land Acquisition Act is required to pay the court fees,*
9. *On perusal of Section 18 of the Land Acquisition Act, it is seen that Section 18(1) entrusts to the SLAO a statutory duty to make reference on the fulfilment of the conditions laid down therein. Hence once the necessary conditions under Section*

18 have been complied with by the applicant/petitioners, the S.L.A.O. ought to have forwarded the reference. A written application makes it incumbent on the Collector to make a reference provided that the necessary conditions are fulfilled. The four essential requisites for reference under Section 18 are:

(a) The reference is to be asked for by the party aggrieved not accepting the award or has accepted the award under protest.

(b) It must be an application in writing with a request to make a reference.

(c) It should contain the grounds of objection in clear terms.

(d) The application was made within time.

In the present case the petitioners have complied with all the essential requisites and thus the S.L.A.O. ought to have forwarded their application for reference to the Civil Court by giving some time to the petitioners for removing the deficiency regarding the payment of Court fees either before him or before the reference Court.

10. *In view of the clarification given by the Apex Court, it is clear that the person preferring an application under Section 18 of the Land Acquisition Act is required to pay the court fees. However, this amount could be remitted/deposited even before the Reference Court and, therefore, it is appropriate for the S.L.A.O. to pass a conditional order on the application for Reference preferred by the petitioners and to forward it to the Civil Court."*

7. In view of the above, **this Writ Petition is partly allowed in terms of prayer clauses C and C-1.**

8. The Petitioners undertake to deposit the court fees

within 03 (three) months with the Reference Court. Respondent No.3/SLAO shall forward the case papers tendered by the Petitioners under Section 18, to Respondent No.2/Collector, within 45 days from today. If the office of Respondent No.3 is unable to trace out the applications filed by the Petitioners, copies of the same, which are placed on record by the Petitioners from page Nos.12 to 37, shall be treated as the applications filed by these Petitioners. Each of the Petitioners shall tender a separate affidavit in respect of these documents since those would be photostat copies on record. Thereafter, the Reference Court shall decide the said proceedings within a period of 18 (eighteen) months, provided the court fees are deposited by the Petitioners within three months from today.

9. Insofar as the interest component is concerned, considering the order passed by this Court dated 06.07.2018 in Civil Application Nos.10476/2016 and 10477/2016, the Petitioners would not claim statutory interest from the date of the order of dismissal of the petition till the order of restoration. We further direct that the interest component would not be available to the Petitioners from 23.09.1997 when the Reference

Application was rejected, till the restoration of this petition on 06.07.2018, keeping in view that the delay has been caused by the Petitioners and they cannot derive advantage of causing the said delay, by claiming interest from the State exchequer.

10. Rule is made partly absolute in the above terms.

kps

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)