

(2002) 10 BOM CK 0049
In the Bombay High Court
Case No : Writ Petition No. 890 of 1992

Sambhaji Manaji Chate and Another

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 22-10-2002

Acts Referred:

Bombay Court Fees Act, 1959 — Article 15
Land Acquisition Act, 1894 — Section 18

Citation : (2003) 2 MhLj 661

Hon'ble Judges : V.K. Tahilramani, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : Vivek Bhavthankar, for the Appellant; A.V. Gondhalekar, A.G.P. for respondent Nos. 1 and 2, for the Respondent

Judgement

V.K. Tahilramani, J.—Heard both sides.

2. It is stated by the learned advocate for the petitioners that the petitioners are agriculturists and are owners of land G. Nos. 1243, 1244 and 1297 situated at village Khapertone. The Government acquired the petitioners' land to the extent of 96 acres for the purpose of percolation tank in 1987. In the said case, award came to be passed on 11-1-1991. The petitioners accepted the payment of compensation for their land on 18-3-1991 under protest as the compensation awarded was only @ of Rs. 125/- per are. Being dissatisfied with the award passed by the respondent No. 2, the petitioners filed an application for Reference before the respondent No. 2 u/s 18 of the Land Acquisition Act, 1894 for getting enhanced compensation. It is stated in the said application that the petitioners got very meager amount of compensation. It is also submitted that the respondent No. 2 did not consider the sale instances of the adjoining lands while granting compensation to the petitioners and also did not consider the fertility of their land. It was submitted that therefore, they should get compensation at the rate of Rs. 30,000/- per acre.

3. It is stated that the petitioners submitted an application for a Reference in the

office of the respondent No. 2 - SLAO on 26-4-1991 which was within the prescribed period of limitation. However, it is stated that on the date of filing of the Reference, the petitioners could not make available the court fees, hence, they filed an application on the very same day asking for time to deposit court fees. According to the petitioners, the said application came to be granted. Thereafter, despite repeated visits and requests, the amount of court fees was not accepted nor was the Reference forwarded by the S.L.A.O.

4. The petitioners then sent notice through their advocate on 26-2-1992 by R.P.A.D. to the respondent No. 2 to accept the court fees and to send their Reference to the Civil Court u/s 18 of the Act. It is submitted that the petitioners did not receive reply to the said notice from respondent No. 2. The petitioners are aggrieved by the inaction of the respondent No. 2 in sending their Reference to the Civil Court and, therefore, they have approached this Court by filing the present petition.

5. It is contended before us that there is no provision for payment of court fees in Land Acquisition Reference and in view of the fact that Reference u/s 18 does not contemplate any payment of court fees, the S.L.A.O. ought to have forwarded the Reference to the Civil Court. In support of this contention, the learned advocate for the petitioners has placed reliance on the decision of the Apex Court in the case of Kashi Ram Namdeo v. State of Maharashtra reported in 1996 (1) Mh.L.J. 652. In the said case, it has been observed thus :

"Under Section 18, what is required is to make a written application with particulars envisaged u/s 18(2) of the Act, to the Collector requiring the matter to be referred to the civil court to decide his objection regarding measurement of the land or the amount of compensation or the person to whom it is payable or the apportionment of the compensation awarded to the persons interested. The Act is a self-contained Code and it does not speak of payment of any court fee. It requires only that the application should be made within the limitation prescribed either in Clause (a) or (b) of Sub-section (2) of the Act.

The claimant or person interested is not enjoined under law to pay any court fee on the application made u/s 18 while seeking reference for determination of compensation by the Civil Court."

6. However, on behalf of the respondents, it has been brought to our notice that the respondent-State sought clarification of the judgment of the Apex Court in the case of Kashi Ram Namdeo v. State of Maharashtra (supra) by filing Interim Application No. 1 in Civil Appeal No. 3604 of 1982. While disposing the said Interim Application by order dated 10-11-1997, the Apex Court clarified that:

"The abovesaid judgment in Civil Appeal No. 3604 of 1982 shall not be construed to mean that it overrides the effect of Article 15 of Schedule I of the Bombay Court Fees Act, 1959 in cases where that provision applies.

7. Article 15 of Schedule I of the Bombay Court Fees Act, 1959 states thus:

15.

Application to the Collector for a reference to the Court u/s 18 of the Land Acquisition Act, 1894, in its application to the (Bombay area) or the Vidharbha region (of the State of Maharashtra) or section 14 of the Land Acquisition in its application to the Hyderabad area of that State, as the case may be.

One, half of ad valorem fee on the difference, if any, between the amount awarded by the Collector and the amount claimed by the applicant, according to the scale prescribed under Article 1 of Schedule I, subject to a minimum fee of (fifty rupees).

8. In view of the clarification given by the Apex Court, it is clear that the person preferring an application u/s 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 u/s 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 u/s 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 u/s 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.

11. We, therefore, direct the Reference to be made within a period of four weeks from the date of receipt of this order. The court fee shall be paid by the petitioners within a period of three months before the Reference Court and unless such compliance is made, the Reference shall not be registered.

12. Rule is made absolute in above terms with no order as to costs.