

(1983) 04 BOM CK 0026

In the Bombay High Court

Case No : Civil Revision Application No. 220 of 1983

Vasant Bapurao Sakare

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 22-04-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 149
Land Acquisition Act, 1894 — Section 18(3), 53

Citation : (1983) 2 BomCR 623

Hon'ble Judges : B.D. Deshpande, J

Bench : Single Bench

Advocate : U.B. Binwade, for the Appellant; B.B. Jadhav, A.G.P., for the Respondent

Judgement

B.D. Deshpande, J.—The petitioner's property was acquired by the State under the Land Acquisition Act and compensation was offered to him by respondent No. 2, the Special Land Acquisition Officer, Kalamnuri. The petitioner was not satisfied with the quantum of compensation awarded to him and so he sought for a reference to the Civil Court. While seeking for a relief from the Civil Court, a petitioner is required to pay necessary Court-fee in accordance with law. Instead of paying the necessary Court-fee, the petitioner submitted an application for time to pay the Court-fee. This petition was submitted on 6-5-1981. It appears that the matter was kept pending till 12-11-1982, and on the last mentioned date, the learned Special Land Acquisition Officer passed an order below the application for time to pay Court-fee that the application is rejected and thereafter he held that the Court-fee was not paid and as such the request for reference was not within limitation and so he rejected the application asking for a reference to the Civil Court. These two orders are challenged in this Court by a revision under the amended section 18, sub-section (3) of the Land Acquisition Act, 1894.

2. Mr. B.B. Jadhav appearing on behalf of the State opposed the civil revision

application. He was fair enough to point out section 53 of the Land Acquisition Act. It runs as follows :---

"Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, shall apply to all proceedings before the Court under this Act."

Now section 149 of the Code of Civil Procedure, is the section enabling the Court to grant time for payment of Court-fee. Mr. B.B. Jadhav was also fair in stating section 18, sub-section (3) of the Land Acquisition Act. It runs as follows :

"(3) Any order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court within the meaning of section 115 of the Code of Civil Procedure, 1908."

It will, therefore, be seen that in the instant case the Special Land Acquisition Officer is a Court subordinate to the High Court and by virtue of section 53 of the Land Acquisition Act, all provisions of the Code of Civil Procedure, unless they are inconsistent with the provisions of the Land Acquisition Act, are applicable to these proceedings. I have already pointed out that there is no inconsistency between section 149 of the CPC and the provisions of the Land Acquisition Act.

3. It will be seen that the application was kept pending from 6-5-1981, till 12-11-1982, when all of a sudden the application for time to pay Court-fee was rejected. It was urged by Mr. Binwade that this was rejected without any notice to the petitioner or without any information to the petitioner and consequent upon the rejection of the application, respondent No. 2 held that the application for reference was not within limitation. I am satisfied that the petitioner deserves to be granted time to pay Court-fee and any order passed against the petitioner without any notice or without the knowledge of the petitioner is bad and must be quashed. I am satisfied that both these orders of rejection of the application and of rejection of reference, dated 12-11-1982, deserve to be quashed and they are accordingly quashed. The petitioner is granted time till 30-6-1983, for payment of necessary Court-fee.

4. Rule made absolute, but in the circumstances, there will be no order as to costs.