

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1150 OF 2020

Mahadev Sadhu Ingale]
(Since deceased) Through L.R.s]
1a. Rangrao Mahadev Ingale]
1b. Nanda Rajendra Bhosale] ... Petitioners

Versus

1. The State Of Maharashtra]
2. The Ld. Deputy Collector,]
(Land Acquisition)]
Office of the Ld. Collector,]
Vijay Nagar, Sangli]
3. Sitaram Sadhu Ingale {Deleted}]
4. Sakhubai Tukaram Zade {Deleted}] ... Respondents

Mr.Kuldeep U. Nikam for Petitioners.
Mrs.Rupali M. Shinde, A.G.P for Respondent Nos.1 & 2 (State).

CORAM : R. D. DHANUKA &
S. M. MODAK, JJ.

DATE : 3rd FEBRUARY 2022.
(Through Video Conference)

ORAL JUDGMENT (Per : R.D. Dhanuka, J.) :-

1. Mr.Nikam, learned counsel for the Petitioners seeks liberty to delete Respondent Nos.3 and 4 from the cause title of the Petition. Leave to amend is granted. Amendment be carried out by 5.00 pm tomorrow. Re-

verification is dispensed with.

2. Rule.

3. Learned A.G.P waives service for Respondent Nos.1 & 2. By consent of learned counsel for the parties, Petition is taken up for final hearing.

4. By this Petition filed under Article 226 of the Constitution of India, the Petitioners have prayed for writ of certiorari for quashing and setting aside the impugned Order dated 15th July 2019 thereby rejecting the Reference No.360 of 2019 on the application preferred by the Petitioners under Section 18 of the Land Acquisition Act, 1894 and further prays that the said application filed by the Petitioners be allowed.

5. The Land Acquisition Officer made an Award on 15th March 2002 under Section 11 of the Land Acquisition Act, 1894 (for short, 'the said Act'). On 2nd August 2004, the Petitioners received a notice under Section 12(2) of the said Act to receive compensation in respect of the said acquisition. It is the case of the Petitioners that, the Petitioners received the said compensation without prejudice to their rights and contentions.

6. On 13th September 2004 the Petitioners preferred an application under Section 18 of the said Act, requesting to make reference before the Competent Court for the purposes of adjudication of the claim of the Petitioners.

7. It is the case of the Petitioners that, on 30th March 2019 the Petitioners received a communication from the Office of the Respondent No.2 informing that the papers and proceedings of the application dated 13th September 2004 filed under Section 18 of the said Act are not traceable in the Office of the Respondent No.2. The Petitioners accordingly re-constructed the papers and proceedings of the said application on the file of the Respondent No.2 on 17th June 2019.

8. On 15th July 2019 the Respondent No.2 however rejected the said application filed by the Petitioners on the ground that the said application was made after 15 years from the date of award. The Petitioners have thus filed this Petition.

9. Mr.Nikam, learned counsel for the Petitioners invited our attention to the application under Section 18 of the said Act for the reference of the claim to the Competent Court, annexed at Exh.A to the Petition and would submit that the said application was filed in the Office of the Deputy Collector on 13th September 2004. He submits that, the Deputy Collector himself was the Land Acquisition Officer No.6, Sangli.

10. It is submitted that, the Petitioners had made the said application under Section 18 of the said Act without prejudice to the rights and contentions of the Petitioners after accepting the compensation paid by the Respondents.

11. It is made clear that, since the Petitioners received a notice from the Office of the Respondent No.2 that the papers and proceedings of the said application made by the Petitioners were not traceable on 30th March 2019, the Petitioners reconstructed the papers and proceedings of the said application dated 13th September 2004 by filing a new set of said application on 17th June 2019.

12. Learned counsel for the Petitioners invited our attention to the averments made in paragraph No.4 of the Affidavit-in-Reply, affirmed on 17th March 2020, filed by the Deputy Collector (Land Acquisition) No.6, Sangli and would submit that it is admitted by the Respondents that the application was made by the Petitioners under Section 18 of the said Act in the year 2004. He submits that, merely because the said papers and proceedings in the said application filed by the Petitioners under Section 18 of the said Act were not traceable in the record of the Respondent No.2, the Respondent No.2 cannot consider the date of reconstruction of the papers and proceedings on the request of the Respondent No.2 on 17th June 2019, as the date of filing of application under Section 18 of the said Act and thus could not have rejected the said application on the ground that the application was filed after expiry of 15 years.

13. Learned A.G.P for the Respondent Nos.1 & 2 placed reliance on the averments made in the paragraph No.4 of the said Affidavit and would

submit that, since the papers were not traceable on the record of the Respondent No.2 and the Petitioners have reconstructed the papers only in the year 2019, the date of reconstruction of the papers and proceedings was rightly considered by the Deputy Collector, while rejecting the application made by the Petitioners under Section 18 of the said Act.

14. Section 18 of the said Act provides that any person who has not accepted the award may, by a 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. Sub Section 2 of Section 18 provides that 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 person or represented before the Collector at the time when he made his award, within six weeks from the date of Collector's award.

15. Learned A.G.P for the Respondent Nos.1 & 2 could not dispute that, the Petitioners have made an application under Section 18 of the said Act, as referred in the Petition in the year 2004. It is the specific case of the Respondent Nos.1 & 2 that the records were not available in the Office of the Deputy Collector. It is not disputed by the Respondent Nos.1 & 2 that the Petitioners had already filed their application under Section 18 on 13th

September 2004. The award was made by the Deputy Collector (Land Acquisition Officer) on 15th March 2002. The notice was received by the Petitioners under Section 12(2) of the Land Acquisition Act only on 2nd August 2004. The application thus filed by the Petitioners on 13th September 2004, annexed at Exh.A to the Petition, was filed within the time prescribed under Section 18(2)(a) of the said Act.

16. In our view, merely because the record in the Office of the Respondent No.2 was not traceable and were allowed to be reconstructed pursuant to the letter dated 30th March 2019 by the Petitioners on 17th June 2019, the date of reconstruction of the papers and proceedings on 17th June 2019 could not be considered as the date of filing such application under Section 18(2)(a) of the said Act. The application was already filed as far back as on 13th September 2004, which was within the time prescribed under Section 18(2)(a) of the said Act and thus the Respondents ought to have considered the date of filing the said application as on 13th September 2004 and not the date of reconstruction of the papers and proceedings in the said application filed under Section 18 of the said Act.

17. In our view, the impugned Order is passed totally without application of mind on the part of the Respondent No.2 in rejecting the application on the ground that the same was filed after 15 years and contrary to Section 18(2)(a) of the said Act.

18. We accordingly pass the following Order :-

- (a) Impugned Order dated 15th July 2019 passed by the Respondent No.2 is quashed and set-aside.
- (b) The application filed by the Petitioners on 13th September 2004 is restored to file.
- (c) The Respondent No.2 shall decide the said application dated 13th September 2004 on its own merits and in accordance with law without being influenced by the observations made and conclusion drawn in the impugned Order dated 15th July 2019 expeditiously and not later than 12 weeks from the date of uploading of this Order on the High Court Website.
- (d) Writ Petition is allowed in the aforesaid terms.
- (e) Rule is made absolute.
- (f) No Order as to costs.
- (g) Parties to act on the basis of an authenticated copy of this Order.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]