KASHI RAM NAMDEO ZAMBRO

*v.*

STATE OF MAHARASHTRA

OCTOBER 31, 1995

[K. RAMASWAMY AND B.N. KIRPAL, JJ.]

*Land Acquisition Act, 1894 :*

*S.18—Reference to Civil Court—Application for—Court-fee—Held, not required.*

**Certain lands were acquired under section 4(1) of the Land Acquisition Act, 1894. The Collector made the award and the land owner was required to pay deficit court fee, which he paid. If the reference proceedings, the Civil Court upheld the preliminary objection that the reference was not maintainable as the court fee was not paid within time. The High Court also held against the land-owner. Aggrieved, the land owner filed the appeal by special leave.**

**Allowing the appeal, this Court**

**HELD : 1. The Civil Court and the High Court have committed grave error of law in rejecting the claim of the appellant for determination of the compensation.**

**2. The Land Acquisition Act, 1894 is a self-contained Code and it does not speak of payment of any court-fee. It requires only that the application for seeking reference under s.18 should be made within the limitation prescribed either in clause (a) or (b) of sub-section (2). The applicant is not enjoined under law to pay any court-fee on the application made under section 18(1). [618-G]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3604 of 1982.

From the Judgment and Order dated 27/29.4.82 of the Bombay High Court in C.R.A. Nos. 533-43 of 1981

G.B. Sathe for the Appellant.

A D.M. Nargolkar and S.M. Jadhav for the Respondent.

The following Order of the Court was delivered :

Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short' 'the Act) was published in the State Gazette on January 16, 1975, B acquiring certain extent of land part of which land belonged to the appellant for construction of 'Panzar Talaw'. The Collector made his award under Section 11 on November 15, 1977. Notice of award as required under Section 12 was served on the appellant on November 17, 1977. On an objection raised, the appellant made good the deficit court-fee. Thereafter C the Collector made the reference to the Civil Court. During the reference proceedings, the counsel appearing for the State raised a preliminary objection as to the maintainability of the reference which was upheld since requisite court-fee was not paid within the limitation of six weeks from the date of the receipt of the notice of the award, as required under clause (b) D of proviso to sub-section (2) of Section 18. On appeal, the High Court upheld the contention by judgment dated 27th to 29th April, 1982 and accordingly dismissed the appeal. Thus this appeal by special leave against the decree of the Bombay High Court.

The only question that arises for consideration is whether the E claimant is required to pay court-fee on an application seeking reference under Section 18. We are at a loss to understand that a claimant is required to pay ad valoram court fee on an amount awarded by the Collector under section 11 for seeking reference under section 18. What is required is to make a written application with particulars envisaged under Section 18(2) F of the Act, to the Collector requiring the matter to be referred to 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 G limitation prescribed either in clause (a) or (b) of Sub-section (2) of the Act. It is, therefore, clear that non-payment of the deficit court-fee, though wrongly made by the appellant, is not a necessary. The owner or person interested is not enjoined under law to pay any court-fee on the application made under section 18(1) seeking reference for determination of the H compensation by the Civil Court etc. The Civil Court and the High Court,

therefore, have committed grave error of law in rejecting the claim of the appellant for determination of the compensation. A

The appeal is accordingly allowed and the orders of Courts below stand set aside. The Civil Court shall now proceed to determine the compensation according to law. No costs. B

R.P. Appeal allowed.