

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 812 OF 1998
WITH CA/7563/2001 IN WP/812/1998

1. Eknath Ramji Pawar
2. Dnayanoba Nivrutti Pawar
3. Nivrutti Sitaram Pawar
4. Eknath Sitaram Pawar
5. Sopan Dhondiba Pawar
6. Narhari Bhaurao Pawar
7. Ram Tulshiram Pawar
8. Manik Tulshiram Pawar
9. Keshav Pandhari Pawar
10. Sopan Manaji Pawar
11. Bapu Wamanrao Pawar
12. Anna Bajirao Pawar
13. Raghunath Ganpati Pawar
14. Rajaram Sheshrao Pawar
15. Ananda Sheshrao Pawar
16. Sudhabai Sheshrao Pawar
17. Dagdu Malu Pangari
18. Shriram Nivrutti Pawar
19. Narhari Sheshram Pawar.

All Age : Major, Occ : Agri.
R/o. Ghatangara, Tq : Gangakhad,
Dist : Parbhani

... Petitioners

Versus

1. The State of Maharashtra
Through Collector Parbhani,
2. Executive Engineer,
Appar Penganga Prkalp,
Parbhani, Tq. & Dist : Parbhani.

[Petition stands dismissed as against
R.No. 2 vide order dated 26.07.2010]

3. Special Land Acquisition Officer,
Appar Penganga Prkalpa,
Tq. & Dist. : Parbhani. ... Respondents

...
Advocate for Petitioners : Shri A. B. Kale (absent)
AGP for Respondents: Mr. K.J. Ghute Patil
.....

**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

**Date of Reserving
the Judgment : 12.03.2015**

**Date of pronouncing
the Judgment : 13.03.2015**

JUDGMENT (PER V.K. JADHAV, J.):

1. The petitioners' land alongwith the lands of other villagers came to be acquired by the respondents under one and the same notification. Consequently, the award was also passed on 29.3.1979. Some of the villagers had preferred the Land Acquisition Reference, as provided under Section 18 of the Land Acquisition Act and the learned C.J.S.D. Parbhani has finally decided the said L.A.R. No. 35 of 1981 by its judgment and order dated 31.12.1983. Since the petitioners came to know about enhancement of compensation by the judgment and order passed in the aforesaid L.A.R. No. 35 of 1981 by the Reference Court, they submitted an application under

Section 28A of the Land Acquisition Act seeking same benefit and additional amount which is given to the other villagers by way of enhanced compensation. The respondents, however, by order dated 26.6.1995 rejected the application filed by the petitioners under Section 28A on the sole ground that the S.L.A.O. had passed an award prior to 30.4.1982. The petitioners, therefore, filed the present writ petition.

2. The learned counsel of the petitioners submits that though the award was passed by the S.L.A.O. prior to 30.4.1982, the L.A.R. No. 35 of 1981 preferred by some of the villagers was decided by the Reference Court on 31.12.1983. The learned counsel further submits that in view of the transitional provision of land Acquisition (Amendment) Act, 1984, the provisions of Section 28A shall be deemed to have been applied to the award made by the Court. The learned counsel further submits that the award passed in L.A.R. No. 35 of 1981 was challenged by the State in appeal before this Court and this Court had dismissed the appeal filed by the State by judgment and order dated 31.1.1987 and the judgment and award passed by the Reference Court was confirmed. The learned counsel thus submits that the petitioner got knowledge about the same and accordingly had obtained copies of judgment and order from this Court. The learned counsel further submits that the application under

Section 28A of the Land Acquisition Act is filed within limitation from the date of order passed by this Court and the same is maintainable and the applications are also maintainable in view of the authoritative pronouncement of the Hon'ble Apex Court in the case of Union of India vs. Pradeepkumari, reported in 1995 AIR (SC) 2259 and the order passed by the Single Judge of this Court in the case of State of Maharashtra vs. Bhanudas Maruti Kadakne, reported in 2006 (6) ALL MR 730

3. The learned AGP however, submits that the said transitional provisions of the Amended Act 68 of 1984 granted restricted retrospectivity to the provisions of Section 23(2) and Section 28 only. The learned AGP placed reliance on the judgment of the Apex Court in the case of Babua Ram and others vs. State of U.P. and another, reported in (1995) 2 SCC 689. The learned AGP thus submits that the writ petition is devoid of any merits and it is liable to be dismissed.

4. On careful perusal of the copy of application filed under Section 28A of the Land Acquisition Act, by the petitioners before the S.L.A.O. Parbhani, it appears that though the learned C.J.S.D. has decided the Land Acquisition Reference No. 35 of 1981 on 31.12.1983, the L.A.R. No. 35 of 1982 arising out of same award and

decision rendered therein by the Civil Court was challenged by the State in appeal before this Court. The said appeal preferred by the State came to be dismissed by this Court by order dated 31.1.1987 and the award passed by the Reference Court stood confirmed. Consequently, the petitioners have preferred an application under Section 28A of the Land Acquisition Act for enhanced compensation before the Land Acquisition Officer, as per the award passed by the Reference Court as aforesaid and confirmed by this Court in the appeal preferred by the State.

5. We have carefully gone through the provisions of Section 30 of the Amended Act 1984. By this transitional provisions, the restrictive retrospectivity is given to the provisions of sub Section (2) of Section 23 and Section 28 of the Principal Act, as amended, however, the said retrospectivity is not extended to the provisions of Section 28A of the Principal Act. Consequently, the provisions of Section 28A of the Act has got prospective effect. It does not apply to the award made prior to the commencement of the amended Act 68 of 1984 dated 24.9.1984, even though three months period prescribed for making application for redetermination of compensation has not expired by that date.

6. It is thus clear that where the award under Section 11 as made

prior to 24.9.1984, but the Reference Court determined the higher compensation on or after 24.9.1984, the persons interested in other lands covered by the said notification would be entitled to apply for re-determination of compensation. A right to an aggrieved person under Section 28A arises only when the Reference Court grants compensation in excess of the amount awarded under Section 11 after 24.9.1984. Though the said transitional provision cannot be made applicable to the provisions of Section 28A, the question arises whether the application filed under Section 28A after confirmation of award by the High Court, are maintainable.

7. The learned AGP vehemently submits that in view of the authoritative pronouncement judgment of Hon'ble Supreme court in the case of Babua Ram and others vs. State of U.P (supra) the benefit of redetermination of amount of compensation under Section 28A can be availed of only on the basis of first award.

8. The learned counsel for the petitioners has placed reliance on the judgment of the Hon'ble Apex Court in the case of Union of India vs. Pradeepkumari (supra) wherein the Hon'ble Apex Court has overruled the law laid down in the case of Babua Ram and others vs. State of U.P (supra) and in para 13 of the judgment made the following observations:-

“13. We are, therefore, unable to agree with the view expressed in Babua Ram (1995 AIR SCW 65) (supra) and Karnail Singh (1995 (1) SCALE 21) (supra) that application under Section 28-A for redetermination of compensation can only be made on the basis of the first award that is made after the coming into force of Section 28-A. In our opinion, the benefit of re-determination of amount of compensation under Section 28-A can be availed on the basis of any one of the awards that has been made by the Court after the coming into force of Section 28-A provided the applicant seeking such benefit makes the application under Section 28-A within the prescribed period of three months from the making of the award on the basis of which re-determination is sought. The first contention urged by Shri Goswamy in support of the Review petitions is, therefore, rejected.”

9. In view of this, the application under Section 28A filed by the petitioners after the order passed by this Court confirming the award passed by the Reference Court, are maintainable. The Special Land Acquisition Officer has rejected the application filed under Section 28A of the Act only on the ground that Special Land Acquisition officer has passed an award prior to 30.4.1982. In any case the impugned order passed by the Special Land Acquisition Officer is not proper, correct and legal.

10. There are certain factual assertions in respect of filing of

application under Section 28A within limitation. The petitioners have also filed separate application for condonation of delay before the S.L.A.O.. The S.L.A.O. has not passed any order on the application filed for condonation of delay but rejected the application filed under Section 28A of the Act, as stated above.

11. In view of this, keeping the point of limitation open, we are inclined to relegate the matter to the S.L.A.O. Special Land Acquisition Officer, Appar Penganga Prakalpa, Parbhani for considering the point of limitation on its own merits and if the S.L.A.O., after giving opportunity of being heard to the petitioners, finds that the applications are within limitation, then decide the application under Section 28A of the Act in accordance with law. Hence, following order:-

ORDER

- i) The writ petition is hereby partly allowed.
- ii) The impugned order dated 26.1.1995 passed by the Special Land Acquisition Officer, Parbhani is hereby quashed and set aside.
- iii) We relegate the matter to the Special Land Acquisition Officer, Parbhani for considering the point of limitation on its own merits after giving an opportunity of being heard to the petitioners and if the S.L.A.O. finds that the

applications under Section 28A are within limitation, then decide the said applications in accordance with law.

- iv) Writ petition is disposed of accordingly. Rule made absolute in the above terms. In the circumstances, there shall be no order as to costs.

12. In view of disposal of Writ Petition, nothing remains to be adjudicated in the Civil Application No. 7563 of 2001 and accordingly, the same is also disposed of.

(V. K. JADHAV, J.)

(A. V. NIRGUDE, J.)

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