

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8542 OF 2014

Sk. Allauddin S/o. Sk. Jilani,
Age – 70 Years, Occu.: Agril.,
R/o. Ellora, Tq. Khultabad,
Dist. Aurangabad.

... PETITIONER.

VERSUS

1. The State of Maharashtra
Through the chief Secretary,
Tourism Development
Mantralaya, Mumbai -32.
2. The Divisional Commissioner
(Land Acquisition)
Aurangabad Division, Aurangabad.
3. The Collector,
Aurangabd, Dist. Aurangabad.
4. The Special Land Acquisition Officer,
(J.P.1), Aurangabad
Through
Sub Divisional Officer, Kannad,
Tq. Kannad, Dist. Aurangabad.
(Copy of respondent No.1 to 4 to be
served on G.P. High Court of Bombay,
Bench at Aurangabad)
5. The Director, M.T.D.C. Mumbai,
Through
Regional Manager, M.T.D.C.,
Railway Station, Dist. Aurangabad.

... RESPONDENTS.

Mr. N.R. Thorat, Advocate for Petitioner
Mrs. V.AShinde, A.G.P. for Respondents No.1 to 4
Mr. A.R. Nikam, Advocate for Respondent No.5

CORAM : R.M. Borde and P.R. Bora, JJ.

RESERVED ON : 24th February, 2015
PRONOUNCED ON : 05th March, 2015

JUDGMENT: (Per : P.R. Bora, J.)

- 1) Heard.
- 2) Rule. Rule made returnable forthwith. By consent of learned counsel for the parties, petition is taken up for final disposal at admission stage.
- 3) The Petitioner has filed the present Petition seeking directions against the Respondents to consider his application submitted under section 28A of the Land Acquisition Act and to pass an award.
- 4) Vide notification dated 12.03.1991, issued under section 4 of the Land Acquisition At, 1984 (hereinafter referred to the 'Act'), certain lands came to be acquired for Ellora Development Tourism plan. The agriculture land bearing Gat No. 25 owned by the present Petitioner was the part of the lands acquired by the aforesaid notification. The final award under section11 was passed on 15.09.1992, thereafter notice under section 12(2) of the Act was served on a Petitioner. Petitioner objected the award so passed by filing his objection to the Collector and prayed for making a reference to the appropriate Court for determination of the appropriate compensation. The

reference so made which was numbered as Land Acquisition Reference No.332/1998 came to be dismissed by the 5th Adhoc Additional District Judge, Aurangabad vide Judgment and Order passed on 07.04.2005.

5) The land owners of Gat No.38 and 39, which were also acquired by the same notification along with Gat No.25 belonging to the present Petitioner, had also filed Land Acquisition References bearing No. 338/1998 and 339/1998. Vide common Judgment passed on 31.03.2011 by Jt. Civil Judge, Senior Division, Aurangabad., both the references have been allowed and the Reference Court has substantially enhanced the compensation. In view of the fact that, the lands which were subject matter of the aforesaid Land Acquisition References i.e. 338/1998 and 339/1998 and the land belonging to the present Petitioner bearing Gat No.25 were acquired by one and the same notification issued on 12.03.1991, the Petitioner has now come out with the case that, he also deserves to be granted compensation at par with the compensation awarded to the owners of Gat No. 38 and 39 by the Reference Court in the common Judgment passed in L.A.R. No.338/1998 and 339/1998. After declaration of the award in the aforesaid Land Acquisition References on 31.03.2011, the present Petitioner submitted an application to the Special land Acquisition Officer and the

Director M.T.D.C. Mumbai (the acquiring body) invoking the provisions under section 28A of the Act and prayed for granting him the compensation at par with the compensation awarded to the land owners of the other lands forming part of the notification dated 12.03.1991. Since the application so submitted was not considered by the Respondents, even after lapse of about three years, the Petitioner also served the Respondents with a notice dated 12.08.2014 through his counsel. However since the same has been also not been responded to, the Petitioner has filed the present Petition with the prayers as aforesaid.

6) The learned counsel for the Petitioner submitted that though the Reference filed by the Petitioner under section 18 of the Act has been dismissed by the Reference Court, since the same has been dismissed on the point of limitation, his application under section 28A of the Act can very well be considered by the Respondents. The submissions made on behalf of the Petitioner and the prayers made by him have been strongly opposed by the learned A.G.P. Mrs. Shinde. The learned A.G.P. submitted that, after having availed remedy under section 18 of the Act, Petitioner is estopped from claiming any relief under section 28A of the Act.

7) It is not in dispute that, the Petitioner had filed Reference under section 18 of the Act, which was numbered as

L.A.R. No.332/1998. It is also not in dispute that the 5th Adhoc District Judge, Aurangabad vide his Judgment and Order dated 07.04.2005 has dismissed the said Reference. Though the learned counsel for the Petitioner has submitted that the Reference so filed by the petitioner has been dismissed on the ground of limitation, perusal of the said Judgment reveals that, the Reference Court has dealt with the matter on merits also. It was the contention of the learned A.G.P. that, when the Reference Court has dismissed the Reference filed by the petitioner even on merits, he has lost the right of claiming the benefit of section 28A of the Act. The learned A.G.P. submitted that, the learned Reference Court had framed all the relevant issues including that of limitation and has recorded his findings on all the issues. The learned A.G.P. further submitted that, the Petitioner had adduced the evidence on the point of the adequate price of the land owned by him and acquired by the Respondents to substantiate his contention that he was entitled for enhanced compensation. The learned A.G.P. further submitted that the object of Section 28A is to confer a right of making the Reference on the person who did not make a Reference earlier under section 18 and therefore the Petitioner who has already made a reference under section 18 and got it answered by the reference Court will not get the right under section 28A of the Act.

8) To meet the objections so made by the learned A.G.P. the Petitioner has relied upon the Judgment of the Constitution Bench of the Supreme Court in the case of **Union of India Vs. Hansoli Devi, AIR 2002 SC 3240**. The learned counsel invited out attention to paragraph No.4 of the said Judgment wherein the Hon'ble Apex Court has observed that, "when an application under section 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application under section 28A cannot be denied". The learned counsel submitted that, the Hon'ble Apex Court has in clear terms held that the dismissal of an application seeking reference under section 18 on the ground of delay would tantamount to not filling of an application within the meaning of section 28A.

9) Now the question is, whether, can it be said that the L.A.R. No.332/1998 has been dismissed by the Reference Court only on the point of limitation? As we have earlier noted, along with the point limitation the Reference Court had also framed the other relevant issues, the parties have also adduced evidence on those points and the Reference Court has decided all those issues while rejecting the said Reference. As such, it was the

contention of the learned A.G.P. that, the law laid down in the case of **Union of India Vs. Hansoli Divi** (cited supra) may not be of any help to the Petitioner. Section 18 of the Act deals with the Reference to Court and the procedure thereon. It envisages that the application under Section 18 shall be made;

- (a) if the person making it was present or represented before the Collector at the time when he made his award (or the amendment) within six weeks from the date of the Collector's award (or the amendment)
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section(2), or within six months from the date of the Collector's award (or the amendment), whichever period shall first expire.

10) In the instant case, as is revealing from the discussion made by the learned Reference Court, the Petitioner had not filed the application under section 18 of the Act within prescribed period of limitation. The question is, when the application was not made within the prescribed period of limitation, whether the Reference Court was having any right to adjudicate the same? The learned counsel relied upon the Judgment of the Division Bench of this Court in the case of **State of Maharashtra Vs. Keru Baban Avhad, 2008(6) Mh.L.J. 766**. Paragraph No.22 of the said Judgment is relevant on the point, which is reproduced herein below:

22. The other important aspect of the case is whether the provisions of section 5 of the Limitation Act or any other provisions could be invoked by the

Collector or the Reference Court to condone the delay in filing petitions under section 18 of the Act and under section 34(1) of the MID Act. Both these provisions which prescribed for a specific period of limitation do not empower the Collector or the Court to condone the delay in filing a petition for reference. It is thus clear that wherever the petition filed under section 18 of the Act is barred by time, the Collector or the Court has no jurisdiction to condone the delay. Similarly, if a petition is filed under section 34(1) of the MID Act, it must be filed within a period of sixty days from the date of the decision of the Collector and/or at best from a date which could be construed to be the date when the claimants had a fair knowledge about the essential features of the award. But once that date is known and/or determined, in that event, there is no power vested in the Collector or the court to condone the delay in filing the appeal. In this regard, reference can be made to the judgment of the Supreme Court in the case of *Officer on Special Duty v. Land Acquisition and another Vs. Shah Manilal Chandumal and others*, 1996(1) Mh.L.J. (SC) 609 = (1996) 9 SCC 414. Reference in this regard can also be made to the judgment of the Supreme Court in the case of Mahadeo Bajirao Patil (supra).

From the observations and the conclusions recorded by the Division Bench as above, it is clear that, the Reference Court had no power to adjudicate upon the application under Section 18 of the Act if it was received beyond the period of limitation.

11) In view of the law laid down by the Division Bench of this Court in the case of **State of Maharashtra Vs. Keru Banban Avhad** (cited supra), when the Reference Court held that the Reference filed by the Petitioner bearing Reference No. 332/1998 was not filed within prescribed period of limitation, it should not have indulged in making any discussion on merits of the matter. In the circumstances, though the Reference Court

might have dealt with the matter on merits also the findings so recorded will have to be simply ignored and it has to be held that the Reference so made by the Petitioner, since was not made within the stipulated period was not liable to be adjudicated. In other words, the situation can be described as if no Reference under section 18 was made at all.

12) The learned counsel for the Petitioner has also placed reliance on one another Judgment of the Division Bench of this Court in the Case of **State of Maharashtra Vs. Sadashiv Ganpat Avhad, 2008(5) Mh.L.J. 363**. More particularly the learned counsel invited our attention to paragraph No. 22, which reads thus:

22. The provisions of section 28A can be invoked by a person interested in the land, if he had not filed an application under section 18 of the Act and the Court had enhanced the compensation in relation to the land covered by the said notification as that of the person interested. Such a written application has to be made to the Collector within the specified time. The above dictum of the Supreme Court which is directly applicable to the facts of the present case protects the right of the person interested in the land, even if he had filed an application under section 18 of the Act and the same was dismissed as being barred by time. Such filing has been construed by the Supreme Court :as if not filed". In the cases in hand we have already held that the applications filed by the claimants under section 18 of the Act at the time of their filing were barred by time. But this finding could not be recorded because no such objection was raised on behalf of the State and in fact it was overlooked by the learned Reference Court as well. As the finding that these applications are being barred by time is for the first time recorded by this Court in appeal, the right of the claimants to move the Collector in terms of section 28A

cannot be taken away, subject to the applicants satisfying the statutory and other requirements of section 28A of the Act.

13) In the afore said Judgment, a Reference is made to the Judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of **Hansoli Devi** (cited supra). We find it appropriate to reproduce herein below, paragraph No.4 of the said Judgment, which is relevant for understanding the controversy in the matter.

4. Before we embark upon an inquiry as to what would be the correct interpretation of Section 28-A, we think it appropriate to bear in mind certain basic principles of interpretation of statute. The rule stated by Tindal, C.J. in *Sussex Peerage case*, (1844)(1) Cl and F 85, still hold the field. The aforesaid rule is to the effect:

"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary then to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law-giver"

It is a cardinal principle of construction of stature that when language of the stature is plain and unambiguous, then the court must give effect to the words used in the statue and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In *Kirkness V. John Hudson and Co. Ltd.*, 1955(2) All ER 345, Lord Reid pointed out as to what is the meaning of "ambiguous" and held that "a provisions is not ambiguous merely because it contains a word which in different context is capable of different meanings and it would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning. "it is no doubt true that if on going through the plain meaning of the language of statures, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the

statue has been brought and would try to give a meaning, which would adhere to the purpose of stature. Patanjali Sastri, C.J. in the case of Aswini Kumar Ghose V. Arabinda Bose, 1953 SCR 1 had held that it is not a sound principle of construction to brush aside words in a stature as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the stature. In Quebec Railway Light Head and Power Co. V. Vandray, AIR 1920 PC 181, it had been observed that the Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statue which are not there unless on a literal construction being given a part of the stature becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskillfulness of the draftsmen in introducing certain words in the stature results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the stature effective. Bearing in mind the aforesaid principle, let us now examine the provisions of Section 28-A of the Act to answer the questions referred to us by Bench of two learned Judges. It is no doubt true that the object of Section 28-A of the Act to confer a right of making a reference, who might have not made a reference earlier under Section 18 and, therefore, ordinarily when a person makes a reference under Section 18 but that was dismissed on the ground of delay, he would not get the right of Section 28-A of the Land Acquisition Act when some other person makes a reference and the reference is answered. But he parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is give to the expression "had not made an application to the Collector under Section 18" in Section 28-A of the Act. The aforesaid expression would mean that if the land owner had made an application for reference under Section 18 and that reference is entertained and answered. In other words, it may not be permissible for a land owner to make a reference and get it answered

and then subsequently make another application when some other person gets the reference answered and obtains a higher amount. In fact in Pradeep Kumari's case the three learned Judges, while enumerating the conditions to be satisfied, whereafter an application under Section 28-A can be moved, had categorically stated "the person moving the application did not make an application to the Collector under Section 18". The expression "did not make an application", as observed by this Court would mean, did not make an effective application which had been entertained by making the reference and the reference was answered. When an application under Section 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application under Section 28-A cannot be denied. We, accordingly answer question No.1(a) by holding that the dismissal of an application seeking reference under Section 18 on the ground of delay would tantamount to not filing an application within the meaning of Section 28-A of the Land Acquisition Act, 1984".

14) From the observations made and the law laid down by the Hon'ble Apex Court as above, there remains no doubt that, application made under section 18 of the Act, if is rejected by the Reference Court on the ground of limitation, the same would not fructify into any reference and as such would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application under section 28A would remain undisturbed.

15) For the reasons stated above, we reject all the objections raised by Respondents and hold that, the Petitioner is

entitled to make an application under section 28A of the Act.

16) It is not in dispute that, the common award passed in L.A.R. Nos. 338/1998 and 339/1998 is in relation to the lands covered by the same notification as that in relation to the land belonging to the present Petitioner. The Petitioner has thus every right to make a request under section 28A of the Act to consider his claim in terms with the award passed in the aforesaid References i.e. L.A.R. Nos. 338/1998 and 339/1998.

17) The record shows that, the petitioner has filed such an application under section 28A of the Act with the Respondents in the year 2011, however till date the Respondents have not considered the same. In the circumstances, without observing anything on merits and keeping all defences available to Respondents unaffected, we direct the Respondents to consider application filed by the present Petitioner, in accordance with law, within a period of three months from the date of communication of this order and to pay the amount of compensation which may be determined within the period of next three months.

18) The Petitioner shall communicate this order to the concerned authority with appropriate application and shall remain present before the said authority on 16th March, 2015. The period of three months given to the said authority, shall

begin to run from 16th March, 2015.

19) Rule is made absolute in the above terms. No order as to cost.

**P.R. Bora,
Judge**

**R.M. Borde,
Judge**

S P Rane