

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 309 OF 2015

Bharatsing s/o Gulabsingh Jakhad
& others

.. PETITIONERS

VERSUS

The State of Maharashtra
& others

.. RESPONDENTS

Mr. A.B. Kale, advocate holding for Mr. C.K. Sonawane, advocate for petitioners.

Mr. S.G. Karlekar, AGP for the State.

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**CORAM : R.M. BORDE &
P. R. BORA, JJ.**

RESERVED ON : 15th JUNE, 2015

PRONOUNCED ON : 13th AUGUST, 2015.

PER COURT : (R.M. BORDE, J.)

1. Petitioners, whose landed property has been acquired for public purpose, are seeking directions against respondents to take decision on the application tendered under section 28A of the Land Acquisition Act, for redetermination of amount of compensation on the basis of judgment delivered by this Court in First Appeal No. 569/1997, decided on 23.03.2009.

2. Agricultural lands belonging to petitioners have been acquired for development of irrigation project. The Special Land Acquisition Officer, after observing the procedure prescribed under Land Acquisition Act, declared award on 04.06.1977. Being aggrieved and dis-satisfied with the award passed by the State Authority, claimant, covered by the same section 4

notification as in the case of petitioners, presented Land Acquisition Reference no. 129/1983, whereas one another claimant presented separate reference application being Land Acquisition Reference No. 123/2003, which applications came to be decided by the 2nd Additional District Judge, Aurangabad, on 01.10.1992. The reference Court was pleased to direct enhancement in the amount of compensation payable to claimants. Petitioners herein, in view of judgment and order passed by the 2nd Additional District Judge, Aurnagabad, on 01.10.1992, tendered applications under section 28A of the Land Acquisition Act for redetermination of amount of compensation in accordance with the decision delivered by the reference Court. Applications tendered by petitioners came to be allowed and the amount of compensation payable to petitioners herein was re-determined by the Collector/Land Acquisition Officer on 01.10.1992 on the basis of judgment delivered by the reference Court. The acquiring body, being dis-satisfied with the award passed by the reference Court, presented appeal bearing First Appeal No. 569/1997 before this Court. Claimants also presented cross-objection claiming enhancement in amount of compensation. This Court, after hearing the parties, was pleased to dismiss the first appeal presented by acquiring body and allowed the cross objection tendered by claimants thereby granting compensation at the rate of Rs. 18,000/- per acre to them. Petitioners herein, on the strength of judgment delivered by this Court in first appeal, presented second application under section 28A of the Land Acquisition Act, seeking re-determination of amount of compensation. According to petitioners, the Land Acquisition Officer is reluctant to decide the application and as such,

claims that suitable directions be issued to the Land Acquisition Officer.

3. Section 28-A of the Land Acquisition Act stipulates that wherein an award under this Part (Part III), the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18, may by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court. Entitlement of claimant who has not presented reference application challenging the award of the Collector to claim re-determination of amount of compensation is on the strength of award passed by the reference Court on an application tendered by another claimant covered by same section 4 notification. Re-determination of amount of compensation payable under section 28-A is in reference to award under Part III. The term 'award' shall necessarily mean an award of the Court or an award of the Land Acquisition Officer. Entitlement of claimant to claim re-determination of amount of compensation in the event he does not present application for reference to the Court, is only in the matters of enhancement of amount of compensation by the Court in reference application under section 18 of the Act presented by a claimant covered by same section 4 notification. In the instant matter, petitioners herein did tender applications to the Collector in

exercise of rights under section 28-A of the Land Acquisition Act, which came to be decided in the year 1992. Again, the claimants have presented successive application seeking re-determination of amount of compensation under section 28-A of the Act on the strength of judgment of this Court in First Appeal No. 569/1997 decided on 23.03.2009, which application, according to us, is not entertainable.

4. Petitioners, placing reliance on judgment in the matter of Union of India Vs. Munshi Ram and others reported in **(2006) 4 Supreme Court Cases 538**, contend that compensation payable to claimants who have applied under section 28A of the Land Acquisition Act, is the enhanced compensation decreed by the reference Court, the decree must be understood to mean the decree of the reference Court as modified in appeal by the higher Courts. In the reported matter, after declaration of award by the Land Acquisition Officer, reference applications were presented by claimants, which were allowed and, the amount of compensation payable to claimants was enhanced. The award passed by the reference Court was a matter of challenge at the instance of Union of India as well as claimants in first appeal. The learned Single Judge directed further enhancement in the amount of compensation payable in respect of block A and B lands. Letters Patent Appeals presented by Union of India were dismissed on 17.06.1994. The Union of India presented Special Leave Petition against dismissal of Letters Patent Appeals which were ultimately allowed and the amount of compensation payable to claimants was reduced. In the meanwhile, during pendency of Special Leave Petition before the High Court, some of the

claimants presented applications under section 28A of the Land Acquisition Act, seeking re-determination of amount of compensation payable to them on the basis of judgment of reference Court, within prescribed period of limitation. The order re-determining compensation under section 28A of the Act was passed on 12.11.1990. The Union of India challenged various re-determination orders passed by the Collector by filing writ petitions before High Court which were dismissed on the ground of delay. Special Leave Petitions were presented by Union of India against the order of dismissal of writ petitions. While dealing with the petitions presented by Union of India, the Supreme Court observed that High Court ought not have dismissed the petitions presented by Union of India for the reason that order directing re-determination of amount of compensation on the basis of award passed by the Collector needs to be looked into by the High Court. Such observations are made in the context that claimants who presented reference applications and, the orders passed in reference applications, which were carried to the High Court and the Supreme Court, are getting less amount than the claimants who did not challenge the orders by filing reference application. Claimants who did not challenge the award before reference Court are likely to get more amount than those who challenged the orders before the reference Court and ultimately, in an appeal presented by the Union of India to the Supreme Court, the amount awarded by the reference Court has been reduced. Beneficiaries are those who tendered application on the strength of decision in reference matters which were carried upto the Supreme Court, however, those who fought the litigation are put to dis-advantageous situation. In this context, the Supreme Court

observed that reduction in the amount of compensation by the Supreme Court, on consideration of appeals challenging the decision of the High Court and the reference Court, is to be taken note of and, re-determination of amount of compensation payable to such of those claimants, who did not present reference applications, need to be brought at par with the claimants who challenge the award before reference Court.

5. In the instant matter, though the amount has been directed to be enhanced in an appeal presented by the claimants who challenged the decision of the reference Court by filing reference applications, petitioners having secured the first stage of benefit on the strength of determination of amount of compensation by reference Court, cannot be permitted to present successive applications seeking re-determination of amount of compensation. Re-determination of amount of compensation, as contemplated under section 28A of the Land Acquisition Act, is on the basis of award passed under Part III of the Act and, shall not be referable to an appellate decree by the High Court under Part VI of the Act.

6. Judgment delivered by this court in Writ Petition no. 2127/2014 in the matter of Ek Nath Gangaram Sabale and others Vs. The State of Maharashtra and others, decided on 21.04.2014, is also referred. However, in the aforesaid matter, the case of claimants was not in respect of successive application under section 28A of the Act. As such, reliance placed on aforesaid judgment is mis-placed. Judgment in the matter of Datta Rao, Subhash and Uttam Rao Vs. The State of Maharashtra reported in

2014(3) Mh.L.J. 923 needs to be looked into wherein, it has been concluded that second application presented under section 28A of the Land Acquisition Act in pursuance to judgment of the learned Single Judge in first appeal, is untenable in law. It is contended by petitioners that the issue as to whether the award of the Court i.e. Civil Court under section 26 of the Act on reference under section 18 of the Act would include the judgment and decree of the appellate Court under section 54, is pending consideration before the Larger Bench and as such, the Collector may be directed to deal with the applications tendered by petitioners.

7. For the reasons recorded above, the legal position, as it stands, is that, the application for re-determination of amount of compensation is entertainable on the basis of award passed under Part III of the Act, which is evident from the language of the section itself. The judgment of the Supreme Court in the matter of Union of India and another Vs. Pradeep Kumari and others reported in **AIR 1995 SC 2259** deserves to be looked into. It is observed in paragraph no. 11 of the judgment that the object underlying section 28A would be better achieved by giving the expression “an award” in section 28A its natural meaning as meaning the award that is made by the Court in Part III of the Act after coming into force of section 28A. If the said expression in section 28A(1) is construed, a person would be able to seek re-determination of the amount of compensation payable to him provided the following conditions are satisfied :-

(i) An award has been made by the court under Part III after the coming into force of Section 28A;

(ii) By the said award the amount of

compensation in excess of the amount awarded by the Collector under Section 11 has been allowed to the applicant in that reference;

(iii) The person moving the application under Section 28A is interested in other land covered by the same notification under Section 4(1) to which the said award relates;

(iv) The person moving the application did not make an application to the Collector under Section 18;

(v) The application is moved within three months from the date of the award on the basis of which the re-determination of amount of compensation is sought; and

(vi) Only one application can be moved under Section 28A for re-determination of compensation by an applicant.

8. In view of discussion as above, we are of the view that the successive application tendered by petitioners seeking re-determination of amount of compensation is not entertainable and as such, the direction as requested by petitioners need not be issued. Writ petition is devoid of substance hence stands rejected.

(P. R. BORA)
JUDGE

(R. M. BORDE)
JUDGE