

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 880 OF 2016**

Shri Annasaheb Tulsiram Kharat	)	
Age: Major, Occupation : Agriculture	)	
R/O, Mirgavhan Taluka: Karmala	)	
Dist Solapur	)	..Petitioner

Vs.

1 The State of Maharashtra	)	
(copies to be servd on G. P	)	
of High Court of Bombay)	)	
 2 The Deputy Collector i.e.	)	
(Land Acquisition No.11)	)	
Krishna Khore, Solpaur	)	
 3 Mr. M. B. Borkar	)	
The Then Deputy Collector	)	
(Land Acquisition)	)	
Special Land Acquisition Officer No.11	)	
i.e. now District Rehabilitation Officer,	)	
Solapur	)	
 4 The Executive Engineer i.e.	)	
Krushna Khore Mahamandal	)	
Sinchan Bhavan, Mangalwar Peth, Pune	)	..Respondents

Mr. T. D. Deshmukh a/w Mr. Sagar Kursija for the Petitioner
Mrs. M. S. Bane “B” Panel Counsel for the Respondent Nos.1 and 2

CORAM : R. M. SAVANT, J.
DATE : 13th FEBRUARY, 2017

ORAL JUDGMENT

1 At the outset, the Learned Counsel for the Petitioner Mr. Deshmukh seeks deletion of the Respondent No.4. The said Respondent is accordingly allowed to be deleted at the risk of the Petitioner.

2 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

3 The Writ Jurisdiction of this Court is invoked against the order dated 11-3-2014 passed by the Deputy Collector, Land Acquisition No.11, Krishna Khore Project, Solapur. By the said order, the application filed by the Petitioner under Section 28-A of the Land Acquisition Act, 1894 (for short the said Act), came to be rejected.

4 The Petitioner's land bearing Gat No.73 admeasuring 4 Hecters sitauted at Village Mirgavan, Taluka-Karmala, District-Solapur was notified for acquisition for the Sina – Kolegaon Irrigation Project. The notification under Section 4 of the said Act was issued on 30-4-1998. The Award in respect of the said land was declared on 1-2-2002. By the said Award, the Petitioner was offered compensation for the acquired land. It seems that after the said Award was declared, several land owners whose lands were acquired for the said project filed Reference Applications in the office of the Respondent No.3. The said Land Reference were referred to the Reference Court i.e. the Learned Civil Judge Senior Division, Barshi under Section 18 of the said Act for redetermination of the compensation. The Petitioner had also filed a reference under Section 18 of the said Act before the SLAO-11, Krishna Khore Project,

Solapur on 29-2-2004. The SLAO after the receipt of the said application had referred the Reference to the court of the Learned Civil Judge Senior Division, Barshi. An objection was raised in respect of the Reference on the ground that the Petitioner has not paid the requisite court fees as required by Article 15 of Schedule-I of the Bombay Court Fees Act, inspite of the notice being given to the Petitioner. The said notice was not complied with by the Petitioner resulting in the said Reference being dismissed under Order VII Rule 11 of the CPC for non payment of Court fees on 13-6-2006. Hence in so far as the said Reference is concerned, the proceedings did not fructify and in fact did not see the light of the day.

5 After the Reference being L.R.No.34 of 2006 was allowed by the Reference Court which Reference also concerned a land covered by the same notification and for the same acquisition, the Petitioner and 32 other land owners filed an Application under Section 28-A of the said Act for redetermination of the compensation on the basis of the award passed in the said L.R.No.34 of 2006. The Petitioner filed the said application within limitation on 29-7-2013. The said application was however rejected by the SLAO-11, Krishna Khore Project, Solapur by the impugned order dated 11-3-2014. The rejection of the application was on the ground that the Petitioner had filed an application for Reference under Section 18 and therefore as posited in Section 28-A (1), the Petitioner could not invoke the said provision.

It is the said order dated 11-3-2014 which is taken exception to by way of the above Petition.

6 The Learned Counsel appearing on behalf of the Petitioner Mr. Deshmukh would contend that since the Reference under Section 18 had not fructified and has been rejected on the ground of the court fees not being paid, the filing of the Reference cannot be held against the Petitioner and therefore the application filed under Section 28-A was maintainable. The Learned Counsel relying on the judgment of the Apex Court in the matter of **Union of India Vs. Hansoli Devi & Ors.**¹ would contend that a person would be disentitled to apply under Section 28-A if there is an effective application meaning thereby that the Reference under Section 18 had been entertained and the reference was answered. The Learned Counsel would therefore contend that in the facts and circumstances of the present case where the reference filed by the Petitioner has been rejected on a technical ground of non payment of court fees, the said test laid down by the Apex Court for dis entitling a person to the benefit of Section 28-A cannot be said to have been satisfied.

7 Per contra on behalf of the Respondents the Learned AGP Mrs. Bane would try to support the impugned order by contending that since the Reference Application was made though rejected on a technical ground, the

¹ 2002(7) Supreme Court Cases 273

said fact would have to be held against the Petitioner thereby dis entitling the Petitioner to the benefit of Section 28-A of the said Act. However, the Learned AGP did not make the said submission with any degree of conviction.

8 Having heard the Learned Counsel for the parties, I have considered the rival contentions. The question that arises is whether the order passed by the Deputy Collector and SLAO-11, Krishna Khore Project, Solapur rejected the application filed by the Petitioner can be sustained. As indicated above, the Petitioner's land has been acquired for the Sina-Kolegaon Irrigation Project. No doubt the Petitioner had filed an application invoking Section 18 of the said Act, however, the said application has been rejected by the Reference Court on the ground that the Petitioner had not paid the requisite court fees as contemplated by Article 15 of Schedule-I of the Court Fees Act. Hence the application filed for Reference had not fructified and in fact had not even seen the light of the day. Before proceeding further, it would be necessary to refer to Section 28-A of the said Act, the same is reproduced herein under for ready reference :

"28-A. Re determination of the amount of compensation on the basis of the award of the Court- (1) Where in an award under this Part, 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](#), 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:

Provided that in computing the period of three months within which an application to the Collector shall be made under this subsection, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded (2) The Collector shall, on receipt of an application under sub- section (1) conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub -section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of [Sections 18 to 28](#) shall , so far as may be, apply to such reference as they apply to a reference under [Section 18](#).

9 One of the factors which disentitles a person who is covered by the same notification from filing an application under Section 28-A, would be the fact that he has already made an application to the Collector under Section 18. The Respondent No.2 i.e. SLAO-11, Krishna Khore Project, Solapur has rejected the application for Reference under Section 18. In the said context a

useful reference could be made to the judgment of the Apex Court in Hansoli Devi's case (supra). In the said case the lands of the Respondent – Hansoli Devi were acquired and the said Hansoli Devi had filed an application under Section 18 for redetermination of the compensation. The said application was rejected on the ground of limitation. Thereafter the said Hansoli Devi had filed an application under Section 28-A after a Reference under Section 18 in respect of a land covered by the said notification was decided by the Reference Court, claiming enhancement of the compensation on the basis of the award passed by the Reference Court. The said application was rejected by the SLAO on the ground that Hansoli Devi had already filed a Reference under Section 18 and in terms of Section 28-A clause (1) her application could not be entertained. The Five Judge Bench of the Apex Court construed the provisions of Section 28-A and held that Section 28-A is a beneficial provision and it would cause great injustice if a literal interpretation is given to the expression “had not made an application to the Collector under Section 18” in Section 28-A of the Act. The Apex Court held that the aforesaid expression would mean that the landowner has made an application for reference under Section 18 and that reference is entertained and answered. The dis-entitlement to make an application under Section 28-A would arise according to the Apex Court if the said Reference under Section 18 is entertained and answered. The Apex Court held that expression “did not make an application” would mean, did not make an effective application which has been entertained by making a

Reference and the Reference was answered. The Apex Court in the facts of the said case when the Reference under Section 18 was not entertained on the ground of limitation, the same not having fructified into any Reference, would not tantamount to an effective application and consequently the rights of such applicant would not be affected so as to move an application under Section 28-A. Hence the Apex Court has held that making an application to the Collector under Section 18 would have to be construed as an effective application which has been answered by the Reference Court and not otherwise. Paragraph 9 of the judgment of the Apex Court is material, excerpt thereof is reproduced herein under for ready reference :

It is no doubt true that the object of [Section 28-A](#) of the Act was 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 the Parliament having enacted [Section 28-A](#), as a beneficial provision, it would cause great injustice if a literal interpretation is given 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 has 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.

10 In the instant case as indicated above, the Reference filed by the Petitioner under Section 18 has been rejected on the ground of non payment of court fees. Hence the Reference filed by the Petitioner did not fructify and therefore was not entertained by the Reference Court resulting in the Reference not being answered. Hence the Judgment of the Apex Court in Hansoli Devi's Case would apply on all fours to the facts of the present case. The application filed by the Petitioner under Section 28-A was therefore maintainable. The impugned order dated 11-3-2014 passed by the Respondent No.2 is required to be quashed and set aside and is accordingly quashed and set aside. The application filed by the Petitioner under Section 28-A is held to be maintainable, the same is remitted back to the Deputy

Collector, SLAO No.11, Krishna Khore Project Solapur, who would decide the same in accordance with law.

11 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]