

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3613 OF 2014

Pandharinath Parsuram Keni & Ors.	.. Petitioners
V/s	
The Special Land Acquisition Officer, Metro Centre No.3 & Anr.	.. Respondents

Mr. Sachin Punde for the petitioners.
Mr. A.B. Vagyani, Government Pleader with Mr. P.G. Sawant, AGP for the State.

**CORAM: DR. MANJULA CHELLUR, C.J. &
N.M. JAMDAR, J.**

DATE : 7th JUNE 2017

P.C.:

Heard learned counsel for the petitioners as well as the learned Government Pleader.

2. The present writ petition is filed aggrieved by the order dated 30th March 2013 passed by the 1st respondent - Land Acquisition Officer on an application filed under section 28A of the Land Acquisition Act, 1894 (for short “the Act”).

3. According to the petitioners, based upon an award dated 8th February 2013 in respect of Wadghar Unit Case No.68, the petitioners are also entitled for enhancement of compensation in

terms of the said case, therefore the impugned order of the 1st respondent deserves to be set aside. The petitioners contend that their application under section 28A of the Act is maintainable since the litigation with reference to section 18 application reference was decided only on technical ground thereby the petitioners are entitled to file this fresh application under section 28A of the Act especially in the light of the judgment of the Apex Court in *Civil Appeal Nos. 5088-5089 of 2013 (Ambaji Dharma Pardeshi & Ors. vs. State of Maharashtra)* disposed of on 2nd July 2013.

4. There cannot be second opinion that once a claimant approaches the Court under section 18 of the Act, the benefit arising out of section 28A application would not be applicable. In the present case, the petitioners' counsel intends to come under an exception by referring to the aforesaid judgment of the Apex Court, the last paragraph of which reads as under:

“ With a view to do justice to other landowners of Village Wadghar whose land was acquired along with that of the appellants but who may not have been able to approach the Reference Court, the High Court and this Court due to sheer ignorance, poverty and other similar handicaps, we direct that they shall also be paid compensation at the rate of Rs.25/- per sq. mtr. with all statutory benefits and interest. This direction is being given keeping in view the philosophy underlying Section 28A of the Act as interpreted by this Court in *Ramakrishna Rao v. The Singareni Collieries Company Ltd.*

and Anr. (2010) 10 SCC 650 and Girimallappa v. The Special Land Acquisition Officer M and MIP and Anr., (2012) 11 SCC 548 and in exercise of the power vested in this Court under Article 142 of the Constitution.”

The above paragraph of the Apex Court judgment refers to two conditions, one is the person who has not approached the Reference Court and the second is such person has not approached the Court for want of financial support or sheer ignorance or other similar handicaps. In order to bring the case of the petitioners under this exception, apparently they did file reference under section 18 of the Act and in fact the Civil Court did grant enhancement of compensation on their application. That means the reference application made by the petitioners was held in their favour positively. Challenging the said award of the Reference Court, the State came up in appeal before the High Court wherein the enhancement of compensation granted by the Civil Court came to be set aside. Aggrieved by the said order of the High Court, the petitioners filed Special Leave Petition before the Apex Court and the same came to be rejected without interfering with the orders of the High Court. In other words, the reference application filed by the petitioners was considered on merits and came to be set aside by the High Court and the same was confirmed by the Apex Court.

5. In that view of the matter, one cannot conclude that the dismissal of the Special Leave Petition or reversal order made by the

High Court on the application of the petitioners in the earlier round of litigation is equal to a situation where their application was dismissed on the ground of delay or similar ground. After considering their case on merits, enhancement was granted and the same came to be interfered with by the High Court. Therefore, it is not a case where the writ petitioners have not approached the Reference Court and the technical ground on which their earlier application was decided cannot be considered as similar handicaps, i.e sheer ignorance or poverty. Under these circumstances, we are of the opinion that the present writ petition is devoid of any merits and the same deserves to be dismissed. Accordingly the writ petition is dismissed.

(N.M. JAMDAR, J.)

CHIEF JUSTICE