IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition NO. 147 OF 2016

Shri. Dada Daji Walhekar And Ors. ...Petitioners

Versus

The State Of Maharashtra And Ors. ...Respondents

Mr.Tejas Deshmukh, for the Petitioners.

Mrs.Neha Bhide, "B" Panel Counsel for the State-Respondent.

CORAM :- DR. MANJULA CHELLUR, C.J., & G. S. KULKARNI, J.

DATE :- FEBRUARY 1, 2017

P. C. :-

1. The petitioners are before this Court challenging the impugned order rejecting the consideration of their application filed under Section 28A of the Land Acquisition Act,1894 on the ground that the reference filed under Section 18 of the said Act by the petitioners was dismissed and, therefore, they are not entitled to claim any benefit arising out of Section 28A Application.

2. The petitioners have narrated how their land was acquired for the project for public purpose and the difficulties faced subsequent to the acquisition of the land, for not getting just compensation towards the land they have lost in the acquisition proceedings. According to the petitioners, in the absence of any effective adjudication of the reference filed under Section 18 of the Land Acquisition Act, it would not be an action initiated by the petitioners by filing an application which shall end in effective

adjudication of the reference. In order to have an effective adjudication, one has to have effective application. In other words, an application requires to be entertained since it does not lack statutory obligation or condition like limitation or payment of court fees. If an application is dismissed for want of payment of proper court fees, then one can consider the same as effective application. An application becomes effective only if it is entertainable. If proper court fees is not paid or a petition is filed which is barred by limitation applicable for considering the reference, it does not fall within the meaning of making an application under Section 18 for effective adjudication of reference based on effective application. Reliance is placed on the case "***Union of India & Anr. Vs. Hansoli Devi and Ors.***"[1] and more particularly paragraph 9 which reads thus:-

> "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, CJ in Sussex Peerage case, *(1844) 11 Cl & F.85:8ER 1034*, still holds the field. The aforesaid rule is to the effect:(ER p.1057)
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> > "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver."
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> It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute 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 & Co. Ltd, [1955] 2 All ER 345*, Lord Reid pointed out as to what is the meaning of "ambiguous' and held that: (All ER p.366 C-D)

1 (2002)7 SCC 273

> "A provision 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 statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, CJ 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 statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In Quebec Railway, Light Heat 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 statute which are not there unless on a literal construction being given a part of the statute 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 unskilfulness of the draftsman in introducing certain words in the statute 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 statute effective. Bearing in mind the aforesaid principle, let us now examine the provisions of the Section 28-A of the Act, to answer the questions referred to us by the Bench of the two learned Judges. 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 (SCC p.743, para 10)-"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. l(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, 1894." (emphasis supplied)

3. In the light of the above observations, since in the present case, the reference application of the petitioners was dismissed for non-payment of court fees, it has to be treated as 'as if no application of the petitioners was made under Section 18 for reference'.

4. Accordingly, the appeal is allowed. We direct the Respondent –

Authority to consider the application of the petitioners under Section 28A of the Land Acquisition Act and dispose of the same strictly in accordance with the procedure contemplated, in the light of our observations,within a period of six months from today.

(G. S. KULKARNI, J.) **(CHIEF JUSTICE)**