

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 4316 OF 2015

Kashinath Shivram Patil and another.

.. Petitioners

Vs

The Special Land Acquisition Officer,
Uran and others.

.. Respondents

Mr.Sachin Punde, for Petitioners.

Mr.A.P.Vanarase-AGP, for Respondent-State.

*CORAM : DR.MANJULA CHELLUR, CJ.
AND N.M.JAMDAR, J.*

DATE : JULY 12, 2017.

P.C.:

Rejoinder is placed on record by the petitioners. Heard learned counsel for the petitioners and Government Advocate.

2. The present petition is filed challenging the rejection of application filed under section 28-A of the Land Acquisition Act, 1894. Apparently, land of the petitioner was notified for acquisition of New Bombay project in the year 1970 and subsequently, as per submissions of learned counsel for the petitioners, an award came to be passed in the year 1980. The petitioners apparently, did not file reference under section 18 of the Land Acquisition Act, seeking

enhancement of compensation. They approached respondent No.1 by filing an application under section 28-A somewhere between 1994 and 1996 claiming enhancement of amount of compensation on par with the award in Land Acquisition Reference No.8 of 1984 which came to be disposed of on 11 September 1989. They also approached this Court and took a direction against the concerned authorities to decide the application filed under section 28-A. On 18 March 2008, First Appeal No.70 of 1991 challenging the award of the Reference Court in L.A.R No.8 of 1984 came to be dismissed. Again the petitioners taking that factual situation, approached respondent no.1 requesting him to redetermine the compensation, so far as the land is concerned based on the compensation awarded for the land in L.A.R No.8 of 1984.

3. In order to appreciate the stand of the petitioners, one has to read section 28-A of the Act, which is as under-

“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 sub-section, 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.”

The actual purpose behind this amendment in the year 1984 was to see that the owners of the land who lose their land under acquisition proceedings, irrespective of measurement and situation should get equal and same compensation provided they all fall under the notification i.e. same notification. It is possible that when a huge project like New Bombay project is initiated, the lands though required for the entire project are identified but acquisition

proceedings may be initiated at different times for different lands. In the same village, so far as one land, acquisition could be on earlier date but the neighbouring lands could be acquired under a later notification after quite some time. Therefore, when this amendment was introduced the law makers were certain for what purpose they were making the amendment and therefore irrespective of the land / property involved in the award, they said as long as the lands are covered under the same notification, if conditions envisaged under section 28-A exist, same benefit should be extended to the Applicant.

4. Now the argument of the petitioners seems to be that since no reference under section 18 of the Act came to be preferred by the petitioners and further the land involved in L.A.R. No.8 of 1984 is a land in the neighbouring village of the land of the petitioner covered under a different notification and also different award subsequent to the award of the petitioners' land therefore, the words 'same notification' under section 28-A must be read as same village, since the very enactment and concept of awarding compensation is in the arena of social justice. No doubt, so far as computation of compensation or damages subsequent to removal of right to property as one of the fundamental rights, in terms of Article 300A just compensation has to be made, for losing the property by the owner or interested person. The intention and purpose was if the land loser had not challenged the quantum of award by an application for reference under section 18 of the Act, if some other owner of land

under the same notification gets higher compensation, then such fact can be taken note of by land acquisition officer to enhance compensation without again compelling him to approach Civil Court. Such benefit came to be extended by creating provision under section 28-A. This was a social legislation or commitment on the part of the State by inserting section 28-A. It cannot be understood as all the lands if acquired for the same purpose can also be covered for such benefit. Even if the lands were to be of different villages, if they are under the same and are having similar characteristics, the owner or the person interested in such lands can always approach the Court seeking higher compensation on par with such awards.

5. Under these circumstances, for the reasons mentioned above, we decline to intervene with the impugned order and accordingly, petition is dismissed.

(N.M.JAMDAR, J.)

CHIEF JUSTICE