

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

WRIT PETITION NO.352 OF 2016

Shri Dhondiba Sudam Sonawane
(Since deceased through Lrs)

a. Magan Dhondiba Sonawane and Ors.

.. Petitioners

vs.

The State of Maharashtra and Ors.

.. Respondents

Mr.T.D.Deshmukh with Mr.R.S.Kale for the petitioners

Mrs.Madhubala Kajle, 'B' Panel Counsel for the respondent nos.1 and 2

**CORAM : K. K. TATED &
B.P. COLABAWALLA, JJ.
DATE : MARCH 5, 2018**

P.C.:

1. Heard the learned counsel for the parties.
2. By this petition, under Article 226 of the Constitution of India, petitioners claimants are challenging the order dated 11.03.2014 passed by the Deputy Collector, Special Land Acquisition Officer 11, Krushna Khore, Solapur rejecting the petitioners' application under section 28-A of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act") on the ground that the earlier the petitioners had filed Reference under section 18 of the said Act.

3. The learned counsel for the petitioners submits that initially, they filed Reference under section 18 of the said Act for additional compensation. He submits that, that reference was rejected by Special Land Acquisition Officer-11 by his letter dated 03.05.2005 for non payment of court fees.

4. The learned counsel for the petitioners submits that Special Land Acquisition Officer erred in coming to the conclusion that Reference Application filed by them under section 28-A of the said Act was not maintainable in view of earlier Reference Application under section 18 of the said Act. He submits that earlier Reference Application was dismissed for non-payment of court fees. Therefore, there is no bar in filing another application under section 28-A of the said Act. In support of this contention, he relies on the Apex Court Judgment in the matter of ***Union of India & Anr. vs. Hansali Devi and Ors. (2002) 7 SCC 273***. He submits that in that authority, the question was framed by the Apex Court as under:

“(a) Whether dismissal of the application seeking reference under section 18 on the ground of Appeal amounts to “not filing an application” within the meaning of Section 28-A of the Land Acquisition Act, 1894?”

“(b) Whether a person whose application under section 18 of the Land Acquisition Act, 1894 is dismissed on the ground of delay or any another technical ground is entitled to maintain an application under section 28-A of the Land Acquisition Act?”

5. The learned counsel for the petitioners submits that the Apex

Court answered both these questions in affirmative holding that application under section 28-A of the said Act is maintainable. Paragraph 9 and 10 reads thus:

“9. 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 C1 & Fin 85 still holds the field. The aforesaid rule is to the effect: (ER p. 1057)

"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."

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)

"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]4SCR1, 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 & 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 un-skillfulness 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 Section 28-A of the Act, to answer the questions referred to us by the Bench of 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, (sic on one) who might have not made a reference earlier under Section 18 and,

therefore, ordinarily when a person makes a reference under Section 185 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 (1995) 2 SCC 736 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. 1(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."

“10. So far as question 1(b) is concerned, this is really the same question, as in question 1(a) and, therefore, we reiterate that when an application of a land owner under Section 18 is dismissed on the ground of delay, then the said land owner is entitled to make an application under Section 28-A, if other conditions prescribed therein are fulfilled.”

6. The learned counsel for the petitioner further submits that similar view taken by our High Court in the matter of ***Mr. Tatya Manik Wayse vs. The State of Maharashtra & Ors. in Writ Petition No.8389 of 2016 High Court (Appellate Side)***. Paragraph 7 of the said order reads thus:

“7. The question therefore arises for consideration is whether the rejection of a reference under Section 18 of the Act of 1894 for non-payment of Court fees would dis-entitle an applicant from seeking benefit of Section 28-A. This question is no longer resintegra. A Division Bench of this Court in Dada Daji Walhekar & Ors. V/s. The State of Maharashtra & Ors.¹ has held that the rejection of the reference for non-payment of Court fees cannot be considered as an effective adjudication of the reference. It was held that if the Court fees are not paid, the application made under Section 18 cannot be considered as effective. The Division Bench placed reliance on the decision of the Apex Court in the case of Union of India & Anr. V/s. Hansoli Devi & Ors. ² It is therefore clear that since the references made by the Petitioner was rejected for payment of Court fees, there was no effective application. Rejection of his reference on the ground of non-payment of Court fees will not dis-entitle the Petitioner from pursuing his application under Section 28-A of the Act of 1894.

7. The learned counsel for the petitioners submits that considering

the Apex Court judgment as well as the view taken by our court, order passed by Special Land Acquisition Officer dated 11.03.2014 is required to be set aside directing him to consider the petitioners application under section 28-A of the Land Acquisition Act on its own merits.

8. On the other hand, the learned A.G.P. for the Respondent State vehemently opposed the present Writ Petition. They filed their affidavit in reply dated 28.08.2017. He submits that earlier the petitioners filed Reference under section 18 of the said Act. In that Reference, Special Land Acquisition Officer called upon the petitioners on several occasions to pay the deficit court fees. In spite of that, petitioners failed and neglected to pay the court fees. Hence, that reference was rejected for non payment of court fees. Therefore, there is no question of allowing the petitioners claimants to make another application under section 28-A of the said Act. There is no substance in the present Writ Petition and same is required to be dismissed with costs.

9. We have heard both the sides at length. Admittedly in the present proceeding, earlier the Reference filed by the petitioners under section 18 of the said Act was dismissed for non payment of court fees. In view of the Apex Court Judgment in the matter of ***Union of India & Anr. vs. Hansali Devi and Ors.*** (Supra) and order of our High Court in the matter of ***Mr. Tatya Manik Wayse vs. The State of Maharashtra & Ors.***, it is crystal clear that if Reference Application under section 18 of the said Act stands dismissed for non-payment of court fees and or on the point of limitation, in that case, claimants can make application under section 28-A of the said Act if it is available to them. Therefore,

the view taken by Special Land Acquisition Officer is not correct. Same is required to be set aside with a direction to entertain petitioners' application under section 28 of the said Act on its own merits without raising issue of maintainability in this case.

10. At the same time, it is made clear that we have set aside the impugned order passed by Special Land Acquisition Officer rejecting the petitioners application under section 28-A of the said Act holding that petitioners cannot be debarred from making an application under section 28-A of the said Act on the ground of rejecting of reference, but we have no comments on any other aspects of the matter and therefore, application filed by the petitioner under section 28-A of the said Act will have to be decided and disposed of on its own merits. Hence, following order is passed:

- a) Order dated 11.03.2014 passed by Deputy Collector, Special Land Acquisition Officer 11, Krushna Khore, Solapur is set aside.
- b) Application filed by petitioners under section 28-A of the Land Acquisition Act, 1894 is restored on file before Deputy Collector, Special Land Acquisition Officer 11, Krushna Khore, Solapur for deciding on its own merits.
- c) Authority to decide application under section 28-A of the said Act as early as possible but in any case within four months from the receipt of copy of this order with notice to all the parties.

- d) Writ Petition stands disposed of accordingly.
- e) No order as to costs.

(B.P.COLABAWALLA, J.)

(K.K.TATED, J.)