

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

WRIT PETITION NO. 7639 OF 2016

Shri Tatya Dnyandev Goyekar

..... Petitioner

Vs.

The State of Maharashtra & Ors.

.....Respondents

Mr. Sagar Kursija I/b T. D. Deshmukh, for the Petitioner.

Mr. V. N. Sagare, AGP, for Respondent Nos.1 and 2.

**CORAM : K. K. TATED &
B. P. COLABAWALLA, JJ.**

DATE : MARCH 14, 2018

P.C.:

1. Heard. By consent of both parties, the matter is taken on Board for final hearing at the stage of admission.
2. The learned AGP Mr. Sagare waives service for final hearing.
3. By this Petition under Article 226 of the Constitution of India, the Petitioner is challenging the order dated 11th March, 2013 passed by Respondent No.3-Special Land Acquisition Officer No.11, Krushna Khore, Solapur rejecting their application under Section 28A of the Land Acquisition Act, 1894 on the ground that earlier the Petitioner claimant filed Reference under Section 18 of the Land Acquisition Act challenging the award passed by the officer.

4. The learned counsel for the Petitioner submits that initially they preferred Reference under Section 18 of the Land Acquisition Act, 1894 on 29.12.2004. The same was rejected by the Civil Judge, Senior Division, Barshi by order dated 13th June, 2006 under Order 7 Rule 11 of the CPC for non payment of court fees. Later on, they preferred application for redetermination of the compensation on the basis of the award/judgment in other matter under Section 28A of the Land Acquisition Act, 1894 on 24th July, 2013. He submits that, that application was rejected by the Land Acquisition Officer by impugned order dated 11th March, 2013. He submits that Land Acquisition Officer held that once reference under section 18 of the said Act is filed then application under section 28A of the said Act is not maintainable. He submits that the Apex Court in the matter of **Union of India v/s Hansoli Devi and Others reported in 2002 7 SCC 273** held that if Reference under section 18 of the said Act rejected on the ground of delay and/or non payment of court fees, in that case, the claimant can file Reference under Section 28A of the said Act. Paragraphs 9 and 10 read 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 Cl & F.85, still holds the field. The aforesaid rule is to the effect:

"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] 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 -"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.”

5. The learned Counsel for Petitioner further submits that our High Court also taken similar view in the matter of **Shri Dada Daji Walhekar and Others v/s The State of Maharashtra and Others in Writ Petition No. 147 of 2016** (Appellate Side) dated 1st February, 2017. He submits that in the teeth of these two orders, the impugned order passed by the learned Special Land Acquisition Officer is required to be set aside.

6. The learned AGP Mr. Sagare appearing on behalf of the Respondent has not disputed these facts.

7. It is to be noted that Reference Application filed by the Petitioner under section 18 of the said Act stands rejected for non-payment of court fees. Same was not decided on its own merits. Hence, there is no bar to file application under section 28 of the said Act.

8. Considering the submissions made by the learned counsel for the Petitioner and the judgment of the Apex Court in the matter of **Union of India v/s Hansoli Devi (supra)** and the order of this Court in the matter of **Shri Dada Daji Walhekar and Others v/s The State of Maharashtra and Others (supra)**, we are satisfied that the Petitioner

has made out a case for grant of this Petition. Hence, the following order:-

(a) The order dated 11th March, 2013 (Exhibit 'E' of Petition) passed by the Special Land Acquisition Officer No.11, Krushna Khore, Solapur is set aside.

(b) Special Land Acquisition Officer is directed to decide the Petitioner's application under Section 28A of Land Acquisition Act, 1894 on its own merits.

(c) Application u/s 28A of the said Act to be decided immediately, in any case within four months from today.

(d) No order as to costs.

Parties to act upon an authenticated copy of this order.

(B. P. COLABAWALLA,J.)

(K.K.TATED,J.)