

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF  
ANDHRA PRADESH**

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**Writ Appeal No.5 of 2005**

**Between:**

The Hyderabad Urban Development Authority, Hyderabad.

.... Appellant

And

Mr.Laxminarayana Goel (died) rep. by his L.Rs. & Ors.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 25.01.2018.

**SUBMITTED FOR APPROVAL:**

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN  
AND  
HON'BLE SRI JUSTICE M.GANGA RAO**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reports/Journals - Yes -
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? - Yes -

**RAMESH RANGANATHAN, ACJ**

**\* HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN**  
**AND**  
**\* HON'BLE SRI JUSTICE M.GANGA RAO**

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# The Hyderabad Urban Development Authority, Hyderabad.  
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 .... Respondents

! Counsel for the Appellant: Sri Y.Rama Rao, Learned Standing Counsel.

^ Counsel for respondents-writ petitioners: Sri Ch.Pushyam Kiran,

^ Counsel for respondents 3 & 4 : Learned Government Pleader for Land Acquisition (TG)

< GIST:

> HEAD NOTE:

? Citations:

1. AIR 1974 Bombay 249
2. (1995) 3 SCC 723
3. MANU/AP/0969/2010
4. AIR 2016 SC 3024
5. (1985) 3 SCC 72
6. AIR 1961 (Mad) 59
7. MANU/DE/0239/1972 : (1972) ILR 2 Delhi 92
8. (2003) 5 SCC 561
9. (1964) 6 SCR 294
10. 1930 AIR (PC) 64
11. (2001) 4 SCC 534
12. (2013) 3 SCC 117
13. (2001) 5 SCC 407
14. 1953 SCR 1 = AIR 1952 SC 369
15. (2001)8 SCC 676
16. (2001) 8 SCC 540
17. (1964) 7 SCR 539
18. (1899)2 QB 158
19. (2013) 11 SCC 451 : AIR 2013 SC 30
20. (2014) 3 SCC 92

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN  
AND  
HON'BLE SRI JUSTICE M. GANGA RAO**

**WRIT APPEAL No. 5 OF 2005**

**JUDGMENT:** (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred by the second respondent in W.P. No.22844 of 1994, aggrieved by the order of the Learned Single Judge dated 16.09.2004 allowing the Writ Petition. Respondents 1 and 2 filed the Writ Petition seeking a mandamus directing the Land Acquisition Officer, Hyderabad Urban Development Authority ("HUDA" for short) to comply with their request, vide their letter dated 08.09.1994, to make a reference to the Civil Court under Section 18 of the Land Acquisition Act.

Facts, to the limited extent necessary, are that a notification was issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter called the "1894 Act") on 06.12.1986 for acquisition of a total extent of Ac.526.19 guntas. However only Ac.216.02 guntas was retained and the rest of the land, including the petitioners lands, were deleted by way of a notification issued, under Section 48(1) of the 1894 Act, on 04.12.1989. Respondents 1 and 2 herein filed an application, under Section 48(2) of the 1894 Act, claiming compensation for the damages they sustained in the interregnum. As their request was not considered, they approached this Court by way of W.P. No.11486 of 1992 and, by order dated 09.09.1992, the appellant was directed to consider their application. Contempt Case No.247 of 1994, filed by them for non-compliance of the directions in W.P. No.11486 of 1992 dated 09.09.1992, was disposed of by order dated 03.08.1994, directing the appellants herein to complete the process within a period of one month. Thereafter the appellants herein passed an order dated 24.08.1994

rejecting the claim of respondents 1 and 2 for damages. The petitioners filed an application on 08.09.1994, followed by a reminder on 05.10.1994, seeking reference to the Civil Court to determine the quantum of damages suffered by them. As no action was taken pursuant thereto, they invoked the jurisdiction of this Court which culminated in the order under appeal being passed.

In the order under appeal, the Learned Single Judge observed that, under Section 48(2) of the 1894 Act, a party, who has suffered damages, is entitled for compensation which has to be determined by the Collector under Section 48(3) of the Act; the entire provisions of Part III of the 1894 Act would apply for determination of compensation payable under the said Section; in view thereof, Section 18 of the 1894 Act, which was one of the provisions under Part III of the said Act, squarely steps in; a party, who is aggrieved by any order passed in regard to payment of damages or quantum thereof, can seek a reference under Section 18 of the 1894 Act; and the impugned action of the appellants, in not acting on the application filed by respondents 1 and 2 herein, was wholly illegal. The Writ Petition was allowed, and the appellants herein were directed to refer the matter to the competent Civil Court, under Section 18 of the 1894 Act, for the purpose of determination of compensation in the form of damages. The entire exercise was directed to be completed within a period of two months from the date of receipt of a copy of the order. Aggrieved thereby the present appeal.

Before us Sri Y. Rama Rao, Learned Standing Counsel for the appellant, would submit that Section 48(1) of the 1894 Act is attracted only when possession, of the lands under acquisition, has not been taken; Section 48(2) confers power on the Collector, whenever the

Government withdraws from acquisition, to determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder; Section 48(3) makes the provisions of Part III of the 1894 Act (from Sections 18 to 28A) applicable only in so far as it applies to determination of the compensation payable under Section 48; Sections 23 and 24 provide guidance for determination of compensation; what is referred to in Section 48(3) is only to Sections 23 and 24 of the Act, and not to Part III in its entirety; Section 18 of the 1894 Act has no application to cases where the Government withdraws from acquisition under Section 48(1) of the 1894 Act; the Learned Single Judge had erred in directing the appellants to refer the claim, made by respondents 1 and 2 herein for damages under Section 48(2) of the Act, to the Reference Court under Section 18 of the 1894 Act; and since possession of the subject land was not taken by the Government, during the pendency of acquisition proceedings, respondents 1 and 2 cannot be said to have suffered damages justifying their claim for compensation.

Sri Y. Rama Rao, learned counsel for the appellant, would also place emphasis on the words '*determination of compensation*', in Section 48 (3) of the Act, to submit that it is only such of the provisions of Part III which relate to '*determination of compensation*' which are applicable; since Sections 23 and 24 in Part III of the Act are the only provisions which relate to determination of compensation, Section 18 of the 1894 Act cannot be read into Section 48 (3) of the Act; the construction placed on the said provision by the Bombay High Court in **Ramaji Baliramji Sawarkar v. Special Land Acquisition Officer**<sup>1</sup>, if accepted and

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<sup>1</sup> AIR 1974 Bombay 249

followed, would amount to judicial legislation, which is impermissible; the words '*so far as may be*' in Section 48 (3) of the Act would enable the District Collector to be guided by the principles in Sections 23 and 24 of the Act even though these two provisions would not automatically apply to proceedings under Section 48 of the Act, as they relate mainly to cases where possession of the land is taken by the government; Section 18 of the Act specifically refers to an "*award*" which, in the context, means the award made by the District Collector under Section 11 of the Act; and as the compensation to be determined by the District Collector under Section 48 (2) of the Act cannot be termed an "*award*", Section 18 of the Act is inapplicable.

On the other hand Sri Ch. Pushyam Kiran, Learned Counsel for the respondent-writ petitioner, would submit that, if the legislature intended to confine Section 48(2) of the 1894 Act, only to Sections 23 and 24 of Part III of the 1894 Act, it would have referred only to Sections 23 and 24 and not to Part III of the 1894 Act in its entirety; unlike Section 48(3), Section 15 of the 1894 Act specifically refers to Sections 23 and 24; the very fact that the Legislature has chosen not to use the same expression, as used in Section 15 of the 1894 Act, would show that all the provisions of Part III of the Act are applicable in the case of withdrawal from acquisition under Section 48 of the 1894 Act; in such an event, Section 18 of the 1894 Act would be attracted; on an application being made by respondents 1 and 2 herein, the Collector ought to have made a reference to the Court, as Section 18 is mandatory in character; the order impugned in the Writ Petition suffers from non-application of mind; the contention of respondents 1 and 2 herein was rejected by the Collector on the ground that possession of

the subject land had not been taken and they were, therefore, not entitled for payment of damages; Section 48 (1) enables the Government to withdraw from acquisition only in cases where possession of the subject land has not been taken; it is evident, therefore, that damages can be awarded under Section 48(2) only in cases where land acquisition proceedings have been initiated, and possession of the subject land has not been taken; the order, impugned in the Writ Petition, necessitates being set aside; and consequent to the order of withdrawal dated 24.08.1994, the respondent-petitioners request, in their letter dated 08.09.1994, for reference under Section 18 of 1894 Act ought to have been acceded to. Learned Counsel would rely on **Balram Chandra v. State of U.P.**<sup>2</sup>; **Special Deputy Collector, Land Acquisition, ONGC v. Secretary, N.G.O. Association**<sup>3</sup>; **Visakhapatnam Urban Development Authority v. S.S. Naidu**<sup>4</sup> and **Ramaji Baliramji Sawarkar**<sup>1</sup>.

Sri Ch. Pushyam Kiran, learned counsel for the petitioner, would further submit that, since Sections 23 and 24 of the Act are not *per se* applicable to Section 48 of the Act as the former provisions are applicable only where possession of the land is taken, it is evident that the Legislature intended to make Part III of the 1894 Act applicable to proceedings under Section 48 of the Act in its entirety; consequently, Section 18 of the Act would automatically apply; the words '*as far as may be*' fell for consideration in **Dr. Pratap Singh v. Director of Enforcement, Foreign Exchange Regulation Act**<sup>5</sup>, and these words were construed to mean that the methodology prescribed, for carrying

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<sup>2</sup> (1995) 3 SCC 723

<sup>3</sup> MANU/AP/0969/2010

<sup>4</sup> AIR 2016 SC 3024

<sup>5</sup> (1985) 3 SCC 72

out the exercise of determination of compensation, would be applicable; and in such an event Section 18 of the Act, which contemplates the procedure for determination of compensation by the Court, would also apply to proceedings under Section 48 of the Act. He would refer to the judgment of the Madras High Court in **Express Newspapers Ltd. 'Club House' v. State of Madras**<sup>6</sup> to submit that determination of compensation, under Section 48 (2) of the Act, is not restricted only to the guiding factors stipulated in Sections 23 and 24 of the Act; and, in the light of the law declared by the Division Bench of the Madras High Court in the aforesaid judgment, it is evident that the other provisions of Part III, apart from Sections 23 and 24 of the Act, are also applicable to withdrawal proceedings under Section 48 of the Act.

Learned Counsel would further submit that, in **Private Limited, New Delhi v. Messrs Edward Keventer (Successor) Private Limited**<sup>7</sup>, a Division Bench of the Delhi High Court has held that a reference can be sought to the Court under Section 18 of the Act in view of Section 48(3) of the Act; consequently, a Mandamus was issued directing the respondents to refer the petitioner's claim for damages to the competent Civil Court; and since Part III in its entirety applies only on a reference being made to the Court, the submission that Section 48 (3) would not bring within its ambit Section 18 of the Act, does not merit acceptance.

Section 48(1) of the 1894 Act stipulates that, except in cases provided for in Section 36, the Government shall be at liberty to withdraw from acquisition of any land of which possession has not been taken. Section 48(2) stipulates that, whenever the

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<sup>6</sup> AIR 1961 (Mad) 59

<sup>7</sup> MANU/DE/0239/1972 : (1972) ILR 2 Delhi 92

Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and to pay such amount to the person interested, together with all costs, reasonably incurred by him in the prosecution of the proceedings under the 1894 Act, relating to the said land. Section 48(1) of the 1894 Act does not permit withdrawal of acquisition proceedings of any land after possession of the land is taken. **(S.S. Naidu<sup>5</sup>)**. The very fact that the Government can withdraw from the acquisition, only in respect of lands of which possession has not been taken, would go to show that the compensation payable under Section 48(2) of the 1894 Act, for the damages suffered by the land owner, would apply only to cases where possession of the land has not been taken for, if possession of the land had been taken, then Section 48(1) would disable the Government from withdrawing from the acquisition. To the extent the claim of respondents 1 and 2 for payment of damages was rejected by the District Collector, by his order dated 24.08.1994 on the ground that possession of the subject land has not been taken, the said order does not accord with law.

It is, however, wholly unnecessary for us to dwell on this aspect any further, as the memo dated 24.08.1994 has not been subjected to challenge in the Writ Petition, and the relief sought for therein is only for a reference to be made to the Court under Section 18 of the 1894 Act since the claim of respondents 1 and 2, for damages under Section 48(2) of the 1894 Act, was rejected by the Land Acquisition Officer by his order dated 24.08.1994. The scope of Section 48(3) of the 1894 Act, and whether it would bring

within its ambit Section 18 in Part III of the 1894 Act also, necessitates examination, for it is only if Section 18 of the 1894 Act is held to apply to cases under Section 48(3) of the 1894 Act, would respondents 1 and 2 be justified in seeking to have their claim, for payment of damages for wrongful loss caused to them as a result of initiation of land acquisition proceedings, referred to the Court under Section 18 of the 1894 Act.

Neither before the Division bench of the Delhi High Court in **Private Limited, New Delhi**<sup>7</sup>, nor before the Division bench of the Madras High Court in **Express Newspapers Ltd.**<sup>6</sup>, did the aforesaid question arise for consideration. In **Private Limited, New Delhi**<sup>7</sup>, the question which arose for determination was regarding the extent of compensation which the respondents were entitled in terms of Section 48(2) of the Act, for the damages suffered by them and towards the costs reasonably incurred in connection with the prosecution of the proceedings under the Act. The Division bench of the Delhi High Court held that they were persuaded to hold that the claim to compensation for 'damage suffered', within the meaning of Section 48(2), must be the direct consequence of the proceedings for acquisition.

In **Express Newspapers Ltd**<sup>6</sup>, the award of the Land Acquisition Collector was made on 30th January, 1956; and an application was made by the respondents on the 14th of May, 1957, under Section 18 of the Act moving the Land Acquisition Collector for making a reference to the Court. In an appeal, preferred against the award passed by the Additional District Judge, the Division bench of the Madras High Court observed that the very fact that, under Section 48(1) of the Act, withdrawal had

to necessarily take place before possession was taken of the land was sufficient to dispose of the argument that the damages should really be related to concrete injuries sustained by actual acts of possession by the authorities, or merely to incidental costs; on the contrary, assessment of compensation would include conjectural claims through uses to which the property could have been put, and income derived therefrom, but from which the owner was prevented by the pending acquisition; the principles applicable to compulsory acquisition, such as compensation for special adaptability etc would apply *mutatis mutandis* to a case of withdrawal also; but the claim must be founded upon realism, upon the hard core of fact, though it may be inevitably conjectural to a certain extent; if the owner claimed that there was a particular income-yielding use to which he could have put the property, he must adduce material to prove this, and to prove that this was perfectly practicable; even otherwise, compensation could be awarded on the basis of the rent which the owner could have obtained, and did not obtain, due to pending acquisition proceedings; grandiose schemes, not related to practicability or fact, ought not to be taken into account by courts in awarding such compensation; the owner must also prove the other elements, necessary for substantiating his claim, such as the demand for the property, or for buildings therein during the period covered by the proceedings etc; it was impossible to adumbrate all the relevant considerations, in what was essentially a question of fact; and they could only make clear the guiding principles which Courts should bear in mind.

As the contention of respondents 1 and 2 herein finds support only from the judgment of the Division Bench of the Bombay High Court in **Ramaji Baliramji Sawarkar<sup>1</sup>**, it is necessary to take note of the law declared therein. The Division Bench of the Bombay High Court observed:

“.....Reference was then made to sub-section (3) of Section 35 and Section 37 of the Act. Part VI which contains these sections deals with temporary occupation of land. In case of the temporary occupation of the land, compensation is to be paid to the person interested in such land and a question may also arise as to the condition of the land at the expiration of the term. If the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, then under sub-section (3) of Section 35, the Collector has to refer such difference to the decision of the Court. If the Collector and the persons interested differ as to the condition of the land at the expiration of the term or as to any matter connected with the said agreement, the Collector has to refer such difference to the decision of the Court under Section 37. It is urged that, in cases of decisions which cannot be called awards, a separate provision for reference has been made by the Legislature wherever it wanted to provide for a reference thereby confining the reference under Section 18 only to the awards as contemplated by Section 11 and 12-A of the Act. It is urged that if the Legislature wanted to give power to the Collector to make a reference in respect of the compensation determined under Section 48(2) of the Act, a similar provision would have been made since the determination of the compensation under Section 48(2) has not been described as an award. The non-applicants, therefore, contend that under Section 48(3) only those provisions of Part III would apply as relate to the determination of the compensation and they are only Section 23 and 24 from Part III of the Act and other provision would not be applicable in respect of compensation payable under Section 48(2). In our opinion, such a limited construction cannot be put on the provision of sub-section (3) of Section 48. **Section 48(3) does not, by reference, incorporate only Section 23 and 24 out of Part III of the Act. If that was the intention of the Legislature, then they would have specifically confined the application only to Section 23 and 24 as has been done in Section 15 of the Act. The method and manner of determination of compensation by the Court has been given in Section 23 and 24 of the Act. Some guiding principles are applicable for the determination of the compensation by the Collector. Instead of repeating the whole thing that is contained in Section 23 and 24 in Part II which deals with the proceeding before the Collector, the said provisions have been incorporated in Part II by reference by enacting Section 15, as if the provisions contained in Section 23 and 24 were part and parcel of Part II of the Act. If the Legislature wanted to confine the application of Section 23 and 24 of the Act also to Section 48 in Part VIII, a provision similar to the one in Section 15 would have been made. A difference in the language of Section 15 and of Section 45 and the words of Part III and not only Section 23 and 24 are made applicable to the matters contained in Section 48(2) so far as they are applicable.**

What is to be determined under Section 48(2) is also compensation payable to the owner of the land, though not for the acquisition of the land but for the damage suffered by the owner because of his being deprived of the enjoyment of his property during the acquisition proceedings till the acquisition was withdrawn. In acquiring the property the Collector acts as an agent of Government who acquires the property. When the Collector determines the compensation payable to the owner of the land, he determines the same in quasi-judicial proceeding for enabling him to make an offer of compensation to the owner which the owner may accept or refuse. If the owner accepts the offer made by the Collector, the matter ends there. If the owner accepts the offer made by the Collector, the matter ends there. If, however, he does not accept the same, he may

require the Collector to make a reference to the Court for determining the compensation whose order subject to the appeal is final. The Collector who determines the compensation is not entitled to move the Court for determining the compensation below that which has been determined by him, but the owner can claim a higher compensation than that offered by the Collector, compensation is similarly to be determined by the Collector under Section 48(2) for the damage suffered by the owner during the intervening period, namely, the commencement of the acquisition proceedings and the withdrawal thereof. There also the Collector acts as an agent of the Government as it is the Government who is liable to pay the compensation and what that compensation should be is to be determined by the Collector. Here also, the proceedings is a quasi-judicial one and the Collector determines the amount of compensation to enable him to make an offer on behalf of the Government to the owner. The owner of the property may accept or refuse the said compensation. If he is satisfied with the compensation offered, the matter ends there. If however, he does not accept the offer he has got a further remedy of claiming a higher compensation.

According to the non-applicants, the owner can claim a higher compensation by filing a civil suit against the acquiring body after giving requisite statutory notice but he cannot take recourse to Section 18 of the Act requiring a reference to be made. In our view Section 48(2) has been enacted precisely with the object. **When he can have a reference made under Section 18 with respect to the compensation payable on the acquisition, there does not seem to be any rhyme or reason why he should be driven to a separate suit for claiming a higher compensation for the damage suffered by him in consequence of the acquisition proceedings which have later been abandoned.** The Land Acquisition Act is a Special Act for the special purpose and ordinarily it is expected to deal with all the matters connected with, and incidental to, the compulsory acquisition of land which could also include the withdrawal of the acquisition or the withdrawal proceedings. If we closely examine Sections 23 and 24 contained in Part III of the Act, the principles laid down in those sections may not be squarely applicable to the compensation which is determined under sub-section (2) of Section 48; Sub-section (3), therefore, must necessarily refer to the other provisions of part III and in our view it points out more to Section 18, 19 to 22 and 25 to 28, which are consequential to the action taken under Section 18 of the Act and it would be only by considerable stretching that some one or the other provision of Sections 23, and 24 will be made applicable. If Section 48 had stood at sub-sections (1) and (2) only and, since sub-sections (2) of section 48 does not make mention of the word 'award' being passed on determining the amount of compensation, there would not perhaps have been any remedy for the affected person to claim more compensation if he was not satisfied with the amount determined by the Collector. It could not have been the intention of the Legislature to leave the affected owner at the mercy of the Collector who at all stages of the acquisition had been acting as an agent of the Government in the matter of determining the compensation.

The affected person could not also be expected to go in for protracted proceedings by a regular civil suit on payment of the full court-fee stamps for no fault of his. Previously on a reference being made under section 18, no court-fees were required to be paid on the amount which was claimed by the person interested in excess of the amount awarded by the Collector. Recently, however by an amendment to the court-fees Act. the person interested is required to pay court-fees on half the amount which is claimed by him in excess of the amount awarded by the Collector. Even then the remedy is cheaper than that of a civil suit and remedy by reference is not so elaborate as in the case of a regular civil suit. **The legislature could not have intended to put a person in the position of the applicant to a greater disadvantage than a person whose land is finally acquired and taken possession of. Seen in this context, it appears that sub-section (3) of Section 48 has been enacted to given a right to the person whose land is withdrawn from acquisition similar to the right of a person whose land is finally acquired and to whom compensation is to compensation payable" in sub-section (3) of section 48 of the Act cannot be related only to Sections 23 and 24 of part III of the**

**Act. What the Collector does under Section 11 is determination of the compensation and Section 18 of the Act is also a step in the determination of the compensation by the court on a reference being made by the Land Acquisition Officer. Section 18, therefore, can also be said to be a provision in the matter of the determination of the compensation and that provision can be made applicable also in the matter of determination of compensation payable under Section 48 of the Act. It would not, therefore, be correct to say as is urged on behalf of the non-applicants that sub-section (3) of section 48 would make only sections 23 and 24 of part III applicable and no other provisions thereof. Instead if repeating what is contained in part III, under Section 48, the provisions thereof have been incorporated in section 48 by reference by enacting sub-section (3), the effect of which would be as if the provisions contained in Part III to be read in section 48.**

**It was argued that if the legislature wanted to give a right to make reference as in section 18 or as in sub-section (3) of section 35 or section 37, a similar provision could have been conveniently made in section 48. No doubt such a provision could have been made, but in the case of the compensation under section 48, only that much as is contained in sub-section (3) of section 35 and section 37 would not have been sufficient but other provisions contained in part III also would have to be incorporated. Instead of repeating the whole thing again, the effect is sought to be achieved by enacting sub-section (3) in section 48 so as to make almost the whole of Part III applicable to the matters contained in section 48 as far as possible and to the extent they would be applicable. Taking into consideration all these matters, we are inclined to take the view that section 18 of the Land Acquisition Act is applicable in respect of the compensation determined under sub-section (2) of section 48 of the Act....." (emphasis supplied).**

The Division Bench of the Bombay High Court has, in the aforesaid judgment, held that Part III of the 1894 Act has been incorporated by reference in its entirety in Section 48(3) of the 1894 Act; consequently, on the petitioners claim for damages being rejected, the Collector is bound to make a reference under Section 18 of the 1894 Act, if such a request is made; if Section 48(3) was confined only to Sections 23 and 24, nothing preventing the Legislature from so stating, instead of referring to Part III of the 1894 Act in its entirety; the difference in language in Section 15 on the one hand, and Section 48(3) on the other, was significant; while Section 15 referred to Sections 23 and 24 of the 1894 Act, absence of a specific reference to these provisions, and a reference to Part III of the Act in its entirety, was also significant; the Legislature must, therefore, be held to have incorporated by reference to Part III of the 1894 Act in its entirety, including

Section 18 thereof; and consequently on a claim for damages under Section 48(2) of the 1894 Act being rejected, and on a request being made for referring the matter to the Court, the Collector was duty bound, under Section 48(3) of the 1894 Act, to make such a reference.

We must respectfully express our inability to agree with the aforesaid view. The reasons which weigh with us in taking a view, different from that of the Bombay High Court in **Ramaji Baliramji Sawarkar**<sup>1</sup>, would require a brief reference to the relevant provisions of the 1894 Act. Section 4 of the 1894 Act relates to publication of the preliminary notification, and the powers of officers thereupon. Under sub-section (1) thereof, whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such a notification. Section 4(2) confers power on any Officer, on such a notification being issued, either generally or when specifically authorized by the Government (a) to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub-soil; (b) to do all other acts necessary to ascertain whether the land is adapted for such purpose; (c) to set out the boundaries of the land proposed to be taken, and the intended line of the work (if any) proposed to be made thereupon; (d) to mark such levels, boundaries and line, by placing marks and cutting trenches; and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut

down and clear away any part of any standing crop, fence or jungle.

Section 5 of the 1894 Act relates to payment for damages and stipulates that the officers so authorised shall, at the time of such entry, pay or tender payment for all necessary damage to be done as stated in Section 4(2) and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other Chief Revenue Officer of the district, and such decision shall be final. Section 8 requires the Collector, after the declaration under Section 6, and on the appropriate Government directing him under Section 7, to take order for acquisition of the land, to cause the land to be marked out, to cause it to be measured, and a plan to be made of the same. It is not necessary for us to refer to the provisions of Part II of the 1894 Act, relating to objections being raised or for a declaration to be issued or for an award enquiry to be caused, and it would suffice if the contents of Section 11 are noted.

Section 11 of the 1894 Act requires the Collector, after a notice is issued under Section 9, to make an award under his hand of (i) the true area of the land; (ii) the compensation which, in his opinion, should be allowed for the land; and (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him. Section 12(1) stipulates that the award, made under Section 11, shall be filed in the Collector's office and shall be final and conclusive evidence, as between the Collector and the persons

interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested. Section 12(2) requires the Collector to give immediate notice of his award to such of the persons interested, as are not present personally or by their representatives when the award is made.

Section 15 of the 1894 Act requires the Collector, in determining the amount of compensation, to be guided by the provisions contained in Sections 23 and 24. Section 16 enables the Collector, on his having made the award under Section 11, to take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances. Section 18(1), in Part III of the 1894 Act, enables any person interested, who has not accepted the award, by written application to the Collector, to require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested. Section 18(2) requires the applicant to state the grounds on which an objection to the award is taken. Under the proviso thereto, every such application shall be made (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award; (b) in other cases, within six weeks of receipt of the notice from the Collector under Section 12(2), or within six months from the date of the Collector's award, whichever period shall first expire.

A reference to the Court can be sought, under Section 18(1) of the 1894 Act, by any person interested who has not accepted the award made by the Collector under Section 11 of the Act. The applicant is required to state, in the said application, the grounds on which he objects to the award made by the Collector under Section 11 of the Act. The time limit specified under proviso (a) and (b), for making an application for reference under Section 18, is also from the date on which the Collector has passed an award (i.e the award made under Section 11 of the 1894 Act).

The claimants, on receipt of notice of the Collector making the award under Section 11, are entitled to receive the amount on protest, and to make an application under Section 18 of the Act with objections regarding the extent of the nature of the land, or the amount awarded or the persons entitled to receive compensation. When such an application within the limit prescribed under the proviso to Section 18 is made, the Collector is required, under Section 19 of the Act, to refer the objections with a statement with regards the objections raised, to the Civil Court. **(Balam Chandra<sup>2</sup>)**. It is mandatory for the Referring Officer, under Section 18 of the Act to refer the written application, requiring the matter to be referred to the Court, if it is made within the statutory period. **(Secretary, NGO Association<sup>3</sup>)**. The District Judge is then enjoined to examine the objections raised by the claimants, while making an enquiry under Section 20, and to pass an award under Section 26 of the Act with reference to the objections raised by the claimants in respect of the area of the land or the amount of compensation. **(Balram Chandra<sup>2</sup>)**. The reference court cannot go behind the reference. **(Balram Chandra<sup>2</sup>)**. The Reference Court

gets jurisdiction only if the matter is referred to it under Section 18 of the Act by the Land Acquisition Officer. It has the authority only to decide the objections referred to it, and cannot widen the scope of its jurisdiction or decide matters which are not referred to it. **(Secretary, NGO Association<sup>3</sup>; Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Limited v. Allahabad Vikas Pradhikaran<sup>8</sup>).**

The matter goes to the Court only upon a reference made by the Collector. It is only after such a reference is made that the Court is empowered to determine the objections made by a claimant to the award. Section 21 restricts the scope of the proceedings before the Court to consideration of the contentions of the persons affected by the objection. The jurisdiction of the Court arises solely on the basis of a reference made to it. The reference would not invest the Court with the jurisdiction to consider a matter not directly connected with it. **(Secretary, NGO Association<sup>3</sup>; Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Limited<sup>8</sup>; K. Kankarathanamma v. State of Andhra Pradesh<sup>9</sup>).**

The jurisdiction of the Courts, under the 1894 Act, is a special one and is strictly limited by the terms of these Sections. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the "matter" referred, and the Court has no power to determine or consider anything beyond it. **(Secretary, NGO Association<sup>3</sup>; Prayag**

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<sup>8</sup> (2003) 5 SCC 561

<sup>9</sup> (1964) 6 SCR 294

**Upnivesh Awas Evam Nirman Sahkari Samiti Limited<sup>8</sup>;**  
**Pramatha Nath Mullick Bahadur v. Secy. of State<sup>10</sup>).**

The order passed by the Reference Court, under Section 26 of the 1894 Act, is also called an award. Section 26(1) requires every award, made under Part III of the 1894 Act, to be in writing signed by the Judge and to specify the amount awarded under the first clause of Section 23(1) and also the amounts, if any, respectively awarded under each of the other clauses of the same sub-section together with the grounds of awarding each of the said amounts. Section 23 relates to the matters to be considered in determining compensation, and sub-section (1) thereof stipulates that, in determining the amount of compensation to be awarded for the land acquired under the Act, the Court shall take into consideration several factors which include those mentioned therein.

The words '*determination of compensation*', used in Section 48 (3) of the Act, are also to be found in Section 23 (1) of the Act which relates to matters to be considered in determining compensation. Likewise, Section 24 of the Act contains matters to be neglected in determining compensation. Section 28A, inserted by Act No.68 of 1984 w.e.f. 24.09.1984, relates to re-determination of compensation, and prescribes the exercise required to be undertaken by the District Collector on the basis of the award passed by the Court under Section 26 of the Act. Clause (3) of Section 28A of the Act enables any person, who has not accepted the award made by the Collector under Section 28A (2) of the Act, to seek a reference to the Collector for determination by the Court

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<sup>10</sup> 1930 AIR (PC) 64

and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to reference under Section 18 of the Act.

Part VI of the 1894 Act relates to temporary occupation of the land and, under Section 35 (1) thereof, subject to the provisions of Part VII (from sections 38 to 44B), whenever it appears to the appropriate Government that temporary occupation and use of any waste or arable land is needed for any public purpose, the appropriate Government may direct the Collector to procure the occupation and use of the same for such term as it thinks fit not exceeding three years from the commencement of such occupation. The power conferred on the appropriate Government under Section 34 (1) of the Act is to procure the occupation and use of waste and arable land for a period not exceeding 3 years. Section 35 (2) of the Act requires the Collector to give notice in writing to the persons interested in such land and to pay them such compensation either in a gross sum of money or by monthly or periodically, such amounts as may be agreed upon in writing between him and such persons. In case there is a difference as to the sufficiency of the compensation or apportionment, the Collector is required, under Section 35 (3) of the Act, to refer such difference to the decision of the Court.

Section 36 (1) of the Act stipulates that the Collector, on payment of such compensation or on execution of an agreement or on making a reference under Section 35 of the Act, to enter upon and take possession of such land and use it in terms of the notice issued. Section 36 (2) stipulates that, on expiry of the term, the Collector shall make or tender, to the persons interested,

compensation for the damage done to the land and not provided for by an agreement, and to restore the land to the persons interested therein. Section 37 of the Act stipulates that, in case the Collector and the persons interested differ as to the condition of the land at the expiration of the term or as to any matter connected with the agreement, the Collector should refer such difference to the decision of the Court.

Both before entering into the land for temporary occupation, and later on after handing the land back to the land owner, the payment made for the future use of the land and the payment made later for damages caused by the temporary use to the land, in case of difference, is to be referred to the Court. While Sections 35 (3) and 37 specifically stipulate that the Collector should refer the dispute to the Court, Section 28A (3) further provides a reference to be made as in Section 18 of the Act. Unlike the aforesaid provisions, neither Section 5 nor Section 48 (3), both of which also relate to payment of damages, expressly provide for a reference to be made to the Civil Court. The question which would necessitate examination is whether, by the use of the words *“the provisions of Part III of the Act shall apply”*, Parliament intended to make Section 18, in Part III of the 1894 Act, applicable even to cases of determination of compensation by the Collector under Section 48 (2) of the Act?

Section 15, in Part-II of the 1894 Act, stipulates that, in determining the amount of compensation, the Collector shall be guided by the provisions contained in Sections 23 and 24. Reference to the Collector in Section 15 is in the context of his making an award under Section 11 of the 1894 Act. It is no doubt

true that Sections 23 and 24 are also in Part-III of the 1894 Act. We find it difficult, however, to agree with the view taken by the Bombay High Court that, by use of the words “Part-III” in Section 48(3), Parliament intended to bring Section 18 also within the ambit of the said Section, unlike Section 15 which expressly refers only to Sections 23 and 24 of the 1894 Act and not to Part-III in its entirety.

It is necessary, in this context, to note that both Sections 15 and 48(3) refer to the determination of compensation. While Section 15 refers to determination of compensation while making an award under Section 11 of the 1894 Act, Section 48(3) relates to determination of compensation, for the damages caused to the land owner consequent upon a notification being issued for acquisition of such lands and its subsequent withdrawal. Section 18 does not relate to “*determination of compensation*”, and only enables an interested person, who has not accepted the award, to request the Collector to refer his objections, regarding the amount of compensation etc, for determination by the Court.

As noted hereinabove, while Section 23 details the matters to be considered in determining compensation, Section 24 relates to matters to be neglected in determining compensation. Unlike Section 18, it is only Sections 23 and 24 which relate to “*determination of compensation*”. That Parliament chose to use the words “*provisions of Part-III*” in Section 48(3), unlike the specific mention of Sections 23 and 24 in Section 15 of the Act, matters little as application of the provisions of Part-III have been restricted, by Section 48(3), only in so far as it relates to the “*determination of compensation*”. If Parliament had intended that Part-

III, in its entirety, should have been made applicable, it would not have restricted application of the provisions of Part-III of the Act only to determination of compensation payable under the Act and would have, like Sections 28-A, 35 and 37, expressly provided for reference of the dispute to the Court.

Accepting the submission, urged on behalf of the petitioner, would render the words *“in so far as may be, to the determination of compensation payable under this Section”*, used in Section 48(3), redundant and inapposite surplusage. It is well settled that efforts should be made to give meaning to each and every word used by the legislature, and it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have a proper application in circumstances conceivable within the contemplation of the Statute. (**Gurudev datta v. State**<sup>11</sup>; **Justice Chandrashekaraiah v. Janejere**<sup>12</sup>; **Manohar Lal v. Vinesh Anand**<sup>13</sup>; **Aswini Kumar Ghose v. Arabhinda Bose**<sup>14</sup>). Any interpretation which leads to addition/deletion of words in a statute should be avoided. When the legislative intent is found specific mention and expression in the provisions of the Act itself, the same cannot be whittled down or curtailed and rendered nugatory. (**Bharathidasan University v. All India Council for Technical Education**<sup>15</sup>). Effect should be given to all the provisions and a construction that reduces one of the provisions to a “dead letter” must be avoided. (**Anwar Hasan Khan v. Mohd. Shafi**<sup>16</sup>). Any interpretation which results either in addition or

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<sup>11</sup> (2001) 4 SCC 534

<sup>12</sup> (2013) 3 SCC 117

<sup>13</sup> (2001) 5 SCC 407

<sup>14</sup> 1953 SCR 1 = AIR 1952 SC 369

<sup>15</sup> (2001) 8 SCC 676

<sup>16</sup> (2001) 8 SCC 540

deletion of words or as rendering any statutory provision redundant must be avoided. (**Banarsi Debi v. ITO**<sup>17</sup>; **Attorney-General v. Carlton Bank**<sup>18</sup>).

It is no doubt true, as held by the Bombay High Court, that, while determining the compensation payable both under Section 11 and Section 48(2), the Collector, even though he acts as the agent of the Government, exercises quasi-judicial powers. The fact, however, remains that the 1894 Act enables the owner of the land to convey his refusal to accept the offer made by the District Collector in making an award, and to seek a reference, under Section 18 of the Act, to the competent Court which would enable them to claim higher compensation than what has been determined under the Award made by the Collector. No such provision has been made in Section 48 for the owner of the land to seek enhancement of the quantum of damages assessed by the Collector. Absence of a statutory provision, for the owner of the land to seek enhancement of the quantum of damages, would not justify a judicial prescription of an appeal or a reference, for that would amount to judicial legislation. Courts cannot re-write, recast or reframe legislation as it has no power to legislate. (**Rohitash Kumar v. Om Prakash Sharma**<sup>19</sup>; **Hardeep Singh v. State of Punjab**<sup>20</sup>). That does not mean that the land owner is devoid of any legal remedy to claim enhancement of the quantum of damages determined by the Collector for, in the absence of any specific provision in a Statute, it is always open to the owner of the

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<sup>17</sup> (1964) 7 SCR 539

<sup>18</sup> (1899)2 QB 158

<sup>19</sup> (2013) 11 SCC 451 : AIR 2013 SC 30

<sup>20</sup> (2014) 3 SCC 92

land to avail his common law remedy of invoking the jurisdiction of the competent Civil Court.

It is also true that Sections 23 and 24, in Part-III of the Act, relate to determination of compensation, among others, on possession of the land being taken by the District Collector. These provisions would not, automatically, apply to ascertainment of damages under Section 48(3), since withdrawal from acquisition under Section 48(1) is only if the Government has not taken possession of the subject land under Section 36 of the 1894 Act. It is only because the factors to be borne in mind, for determination of compensation as stipulated in Sections 23 and 24, are not automatically applicable, has Parliament cautiously used the words “*in so far as may be*” in Section 48(3). The expression “*so far as may be*” has always been construed to mean that those provisions may be generally followed to the extent possible. (**Dr. Pratap Singh**<sup>5</sup>). It is only in so far as they are applicable, would Sections 23 and 24 apply for determination of damages under Section 48(2) of the Act.

Reliance placed by Sri Ch. Pushyam Kiran on **Dr. Pratap Singh**<sup>5</sup>, to contend that the methodology prescribed in Section 18, for carrying out the exercise of determination of compensation, would be applicable, is misplaced. Section 37(2) of the Foreign Exchange Regulation Act stipulated that the provisions of the Code of Criminal Procedure, 1898 relating to searches shall, “*so far as may be*”, apply to searches under Section 37(2) subject to the modification that sub-section (5) of Section 165 Cr.P.C. shall have effect as if for the word “*Magistrate*”, wherever it occurs, the words “*Director of Enforcement or other officer exercising his powers*” is

substituted. In construing these provisions, the Supreme Court, in **Dr. Partap Singh**<sup>5</sup>, observed that, in order to give full meaning to the expression “*so far as may be*”, sub-section (2) of Section 37 of the Foreign Exchange Regulation Act, should be interpreted to mean that broadly the procedure relating to searches, as enacted in Section 165 Cr.P.C shall be followed; but if a deviation becomes necessary to carry out the purposes of the Foreign Exchange Regulation Act, in which Section 37(1) is incorporated, it would be permissible except that, when challenged before a court of law, justification will have to be offered for the deviation; and this view would give full play to the expression “*so far as may be*.” Use of these words “so far as may be”, in Section 48(3) of the 1894 Act, can therefore only mean that broadly the provisions of Part III, relating to determination of compensation, shall be applicable in determining the damages payable under Section 48(2), and nothing more. At the cost of repetition, the only provisions in Part III which relate to determination of compensation are Sections 23 and 24, and not Section 18.

Parliament has, in its wisdom, chosen to provide a reference under Section 18 only against an award made by the District Collector under Section 11 of the Act, and has not so stipulated in cases of determination of damages by the Collector under Section 48(2) of the Act. That cannot be understood as the affected land owner being left to the mercy of the District Collector, who acts as an agent of the Government, since the land owner would still have the remedy, consequent on withdrawal of acquisition by the Government under Section 48(1) of the Act, of approaching the

competent Civil Court seeking enhancement of the quantum of damages for the loss caused to him.

Persons whose lands are acquired by the Government, with respect to which an award is made under Section 11 of the Act, constitute a class distinct and different from those whose lands were sought to be acquired, but the Government later decided to withdraw from the acquisition. While in the case of the former, the land owner is deprived of his property for all times to come, in the case of latter there is no deprivation since he has never been dispossessed of his land by the Government. The view taken by the Bombay High Court that the Legislature could not have intended to put a person, who seeks enhancement in the quantum of damages under Section 48(2) and (3) of the Act, at a greater disadvantage than those whose lands are acquired, does not appeal to us since, as noted hereinabove, both these categories of land owners are not similarly situated. Section 18 cannot be held to be a “*step in the determination of compensation*” by the Court for what the said provision enables is only for a reference to be made to the Court, which would then enable the land owner to seek enhancement of the compensation determined in terms of the award made under Section 11 of the Act.

Reference, under Section 18 of the Act, only enables the land owner to seek enhancement of compensation. The said provision does not deal with the actual determination of compensation by the reference Court which is dealt with under Sections 25 and 26 of the 1894 Act. Determination of compensation by the Court is in the form of an award under Section 26 of the Act. While Section 15 requires the District Collector to be guided by the provisions of

Sections 23 and 24 in determining the amount of compensation payable under the award made by him under Section 11 of the Act, Section 26(1) specifically requires the Award to be made by the Court, on a reference being made to it under Section 18 of the Act, after referring to each of the clauses mentioned in Section 23(1) of the Act. For the aforesaid reasons, we find ourselves unable to agree with the view taken by the Bombay High Court that Section 18 is a step in the determination of compensation by the Court.

We are satisfied, therefore, that the Learned Single Judge was not justified in referring the respondent-writ petitioners' claim, for enhancement of the quantum of damages, to the Reference Court under Section 18 of the Act. The order under appeal is set aside, and the Writ Appeal is allowed. Suffice it to make it clear that the order now passed by us would not disable the respondent-writ petitioner from availing his common law remedy of filing a Civil Suit seeking enhancement of the quantum of damages. The Miscellaneous Petitions, if any pending, shall also stand disposed of. No costs.

**RAMESH RANGANATHAN, ACJ**

**M. GANGA RAO, J.**

Date: 25.01.2018.

Note: L.R. copy to be marked.  
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