

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13494 OF 2019

Kaleshwar Devasthan Trust through
Tatyrao Dhondiba Chavan,
Age Adult, Occ. Agriculture,
Both R/o. Toramba, Tq. Lohara, Dist.
Osmanabad.

... **Petitioner.**

VERSUS

1. The State of Maharashtra,
Through The Collector,
Collector Office,
Solapur-Vadodara High Way,
Tq. & Dist. Osmanabad.
2. The Special Land Acquisition
Officer No. 1 & 2.
Sub Divisional Magistrate Office
Omerga, Tq. Omerga, Dist.
Osmanabad.

... **Respondents.**

...

Advocate for the Petitioner : Mr. R.R. Karpe, h/f Mr. Vivek V. Kabade.
A.G.P. for the Respondents/State : Mr. B.V. Virdhe.

CORAM : MANGESH S. PATIL, J.

DATE : 11/09/2020

JUDGMENT :

Heard both the sides. Rule. Rule is made returnable forthwith.
With the consent of both the sides the matter is heard finally at the stage of
admission.

2. It is made clear that in spite of availability of an alternate remedy
the matter is being entertained in view of the peculiar facts and
circumstances.

3. The land of the petitioner/Trust admeasuring 6-H 6-Are from Survey No. 288 was compulsorily acquired and an Award was passed. However, since on a reference under Section 18 of the Land Acquisition Act 1894 of another claimant, the Reference Court awarded increment, the petitioners/Trust submitted an application under Section 28A of the Land Acquisition Act seeking modification of the Award accordingly. However, by the impugned order the respondent No. 2 the Special Land Acquisition Officer rejected the application on two grounds, firstly, on the ground of limitation observing that the application was submitted on 18.11.2013 i.e. beyond 90 days. Secondly, on the ground that the Land Acquisition Reference No. 240/2005 that was being relied upon by the petitioner was subsequently dismissed by the Reference Court on the ground of limitation. Being aggrieved, the petitioner-Trust is before this Court.

4. The learned advocate Mr. Karpe, h/f Mr. Kabade learned advocate for the petitioner submits that the Land Acquisition Act is a beneficial legislation. The owners who have lost property due to compulsory acquisition are deprived of their property and are sought to be compensated suitably. In a sense this is not an adversarial litigation. He submits that it was indeed an error in referring to the Land Acquisition Reference No. 240/2005 in the application preferred by the petitioner under Section 28A of the Land Acquisition Act. However, the mistake was *bona fide*. Reference ought to have been made to the Award passed in Land Acquisition Reference No. 238/2005 arising out of the same land acquisition process. However the Special Land Acquisition Officer has stuck to the technicality and has rejected the application without even referring to the Land Acquisition Reference No. 238/2005. The request of the petitioner could have been considered in the light of the Award passed in Land Acquisition Reference No. 238/2005, may be by allowing him to modify his request.

5. Learned advocate Mr. Karpe further submits that the application submitted by the petitioner under Section 28-A of the Land Acquisition Act

clearly bears an endorsement of some Officer from the Office of the Land Acquisition Department put in the margin bearing a date '16/11' which would certainly mean '16.11.2013'. He would further point out that instead of explaining such an endorsement atleast when an affidavit-in-reply is filed in this petition, the concerned Land Acquisition Officer has maintained his stand about the application of the petitioner having been filed in his office on 18.11.2013. Since the fact having not been traversed and or atleast failed to be explained away, the observation and conclusion of respondent No. 2/Special Land Acquisition Officer holding the application to be time barred is clearly perverse and arbitrary.

6. Lastly, the learned advocate Mr. Karpe submits that this Court in Writ Petition No. 8416/2018 by the order dated 02.01.2020, in a similar matter arising out of the same land acquisition process wherein a similar mistake was committed in referring to the Land Acquisition Reference No. 240/2005 instead of Land Acquisition Reference No. 238/2005, has allowed the Writ Petition and has quashed and set aside a similar order rejecting the application under Section 28A of the Land Acquisition Act of some other claimants and the Land Acquisition Officer has been directed to extend an opportunity to the petitioners therein to carry out amendment and further directing him to decide the application afresh. The learned advocate therefore submits that relying on this earlier decision, even the present petitioner can be given a similar opportunity.

7. The learned A.G.P. submits that no error was committed by the Special Land Acquisition Officer in rejecting the application particularly when the petitioner was merely relying upon the Award passed in Land Acquisition Reference No. 240/2005 and there was no whisper to Land Acquisition Reference No. 238/2005 in its application. Therefore to that extent the observation and the conclusion drawn by the Special Land Acquisition Officer rejecting the application since the Land Acquisition Reference No. 240/2005 itself was dismissed by the Reference Court cannot

be faulted with. The learned A.G.P further submits that even the observation of the Special Land Acquisition Officer that the application submitted by the petitioner to his Office on 18.11.2013 is clearly borne out from the stamped endorsement appearing on the application (Exhibit R-1) submitted by the petitioner. The learned A.G.P lastly submits that he has no instructions as to if the State has challenged the order of this Court in Writ Petition No. 8416/2018 dated 02.01.2020.

8. I have carefully gone through the papers. It is a matter of record that the petitioner had filed an application under Section 28A of the Land Acquisition Act relying upon and referring to the Land Acquisition Reference No. 240/2005 and even the respondent No. 2/Special Land Acquisition officer seems to have proceeded strictly by referring to the Land Acquisition Reference No. 240/2005. It is therefore clear that factually speaking, the respondent No. 2/Special Land Acquisition Officer cannot be faulted with in making a reference to Land Acquisition Reference No. 240/2005 and holding that since that Land Acquisition Reference itself was dismissed even the claim of the petitioner under Section 28A of the Land Acquisition Act was not tenable.

9. However, as has been submitted by the learned advocate for the petitioner, the Land Acquisition Act is a beneficial legislation and seeks to compensate the persons whose lands have been acquired by the State compulsorily may be in public interest. It is therefore expected that not only the State but all its Authorities would act bearing in mind the object of passing of that Act. It is not expected that the legitimate claims of the persons deprived of their property are to be rejected on sheer technicalities.

10. It is important to note that the respondent No. 2/Special Land Acquisition officer must have been aware about the Land Acquisition Reference No. 238/2005 arising out of the same process. In fact, not only Land Acquisition Reference No. 240/2005 but Land Acquisition Reference

No. 238/2005 and few other land references were decided by the Reference Court by a common judgment and order dated 16.08.2013. If such was the state of affairs, the conduct of the respondent No. 2 in rejecting the application only because the petitioner had made a reference to Land Acquisition Reference No. 240/2005 when he ought to have referred to the Land Acquisition Reference No. 238/2005, clearly shows that the respondent No. 2/Special Land Acquisition Officer had rejected the application of the petitioner by taking a hyper technical view.

11. Coming to the question of limitation, the petitioner had submitted the application under Section 28A of the Land Acquisition Act to the Office of the Special Land Acquisition Officer and its copy has been produced along with affidavit in reply (Exhibit R-1). As can be seen, in fact there are two endorsements, one appearing in the form of impression of a rubber stamp of the Inward/outward Desk of the Office of the Collector Osmanabad mentioning that it was received on 18.11.2013. However, simultaneously, it also bears another endorsement which reads:

“Bhusampadan
16/11 ”

The petitioner is specifically contending that it had submitted this application with the Office of the respondent No. 2/Special Land Acquisition Officer on 16.11.2013 however, the respondent No. 2/Special Land Acquisition Officer in his affidavit in reply has conspicuously omitted to explain away how this endorsement purportedly reading that the application was received on 16.11.2013 could appear on the application. For want of the fact having not been explained away one can safely proceed by accepting the stand of the petitioner that it had submitted the application on 16.11.2013. It is necessary to note that even at the bottom of this application (Exhibit R-1) same date i.e. 16.11.2013 appears at two places. It is in view of such peculiar state of affairs, the respondent No. 2/ Special Land Acquisition Officer has grossly erred in concluding that the application

was submitted on 18.11.2013 when in fact it was received by his office on 16.11.2013. Consequently, even the ground of limitation resorted to by the Special Land Acquisition Officer is not factually and legally sustainable.

12. As is pointed out earlier, this Court in Writ Petition No. 8416/2018 arising out of a similar dispute has quashed and set aside a similar order passed by the Special Land Acquisition Officer in respect of a similar request under Section 28A of the Land Acquisition Act by another land owner and has remitted the application to the Special Land Acquisition Officer for decision afresh by allowing the petitioner therein to carry out necessary amendment. Therefore, apart from merits even on the ground of parity the petitioner deserves the same treatment since both these disputes arise out of the same land acquisition process.

13. The Writ Petition is allowed.

14. The impugned order is quashed and set aside. The application preferred by the petitioner under Section 28A of the Land Acquisition Act is remitted to the respondent No. 2 for decision afresh on merits. However, he shall extend an opportunity to the petitioner to carry out necessary amendment. He shall decide the application afresh within eight weeks from the date of appearance of the petitioner.

15. The petitioner to appear before the respondent No. 2 on 18.09.2020.

16. Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

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