

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

WRIT PETITION NO.4916 OF 2018

Laxman Narayan Salekar and Ors. ...Petitioners
Versus
The State of Maharashtra and Ors. ...Respondents
.....
Mr. Gaurav Potnis i/b. Ms Pallavi Potnis for the Petitioners.
Mr. R.P. Kadam, AGP for the Respondent-State.

**CORAM :A.A. SAYED AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 07th FEBRUARY, 2020.

P.C.:-

1. The Petitioners have sought leave to file a single Writ Petition to challenge the order passed by the LAO. Leave is granted subject to the Petitioners paying the requisite court fees.

2. The Petitioners have approached this Court under Article 226 of the Constitution of India for quashing the order dated 18/06/2016 by which Respondent No.2- Land Acquisition Officer has dismissed the application filed by the Petitioners under Section 28A (3) of the Land Acquisition Act, 1894. The Petitioners have also prayed for directions to Respondent No.2 to refer the dispute to the Court under

Section 28 A(3) of the Act.

3. The facts in brief are that the land of the Petitioners was acquired for the purpose of 'Neera Deoghar Irrigation Dam Project' by virtue of notification dated 21/07/1994 under Section 4 of the Land Acquisition Act, 1894. The Land Acquisition Officer made an Award No.LAQ17/SR/9/93 dated 4/8/1997 under Section 11 of the Land Acquisition Act, 1894 and offered compensation of Rs.30,000/- to 52,000/- per hectare. The Petitioners accepted the compensation offered by the Collector.

4. The Petitioners claim that they did not file application under Section 18 of the Act seeking enhancement of the compensation on account of their illiteracy. The other land owners had filed applications under Section 18 claiming enhanced compensation @ Rs.2,55,000/- per hectare. These applications were referred to the District Court as land References 199 of 1998 and 206 of 1998. The Reference Court answered these references by judgment and award dated 27/3/2006 holding the fair market value of land at Rs.1,14,000/- per hectare with other statutory benefits. Being aggrieved by the quantum of compensation awarded by the Reference

Court, these land owners challenged the judgment and award of the Reference Court in First Appeal Nos. 1579 of 2011 and 328 of 2008. It is stated that the said Appeals have been admitted and are pending before this Court.

5. The Petitioners on acquiring knowledge of the judgment and award of the Reference Court filed an application under Section 28 A of the Land Acquisition Act before the Respondent No.2 for re-determination of the amount of compensation on the basis of the award of the Reference Court. The Respondent No.2 by award No.LAO /17/SR/9/93 dated 31/12/1992 passed under Section 28A(1) redetermined the amount of compensation to Rs.1,14,000/- per hectare. The Petitioners, on acquiring knowledge of the said award obtained a copy thereof and being dissatisfied with the quantum of compensation awarded by Respondent No.2 made an application for Reference under Section 28A(3) of the Act seeking enhanced compensation of Rs.2,55,000/- per hectare. Respondent No.2 has rejected the said Reference mainly on the ground that the compensation has been redetermined on the basis of the judgment and award of the Reference Court and hence the Petitioners are not entitled to seek enhanced compensation @ Rs. 2,55,000/- per hectare. Being

aggrieved by this order the Petitioners have invoked the writ jurisdiction of this Court.

6. We have heard the learned Counsel for the Petitioners and the learned AGP for the Respondent-State. Section 28(A) of the Land Acquisition Act, 1894 reads as follows:-

“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 section 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18.”

7. Section 28A has been enacted to give benefit to those, who could not seek Reference for enhancement either due to illiteracy, poverty or other reasons. Scope of Section 28A has been considered by the Apex Court in *VRamakrishna Rao vs Singareni Collieries Company [2010] 10 SCC 650*. It has been held that this Section gives a chance to the land owners, who may not have applied under Section 18 for determination of market value by the Court to seek re-determination of the amount of compensation, if similarly situated land owner succeeds in persuading the Reference Court to fix higher market value of the acquired land. Therefore Section 28A has to be interpreted in a manner which would advance the policy of legislation to give an opportunity to the land owner, who may have due to variety of reasons not been able to move the Collector for making reference under Section 18 of the Act to get higher compensation, if market value is revised by the Reference Court at the instance of other land owners, whose land is acquired under the same notification. The Apex Court

has reiterated that Section 28A is in the nature of beneficent provision intended to remove inequality and to give relief to the inarticulate and poor land owners, who are not able to take advantage of the right of reference to the Civil Court under Section 18 of the Act. The Apex Court has observed that such a provision should be interpreted in a manner which advances the policy of legislation. Whilst interpreting scope of Sub section 3 of Section 28A the Apex Court has observed thus :-

“11. If sub-section (3) of Section 28A is interpreted keeping in view the object sought to be achieved by enacting the provision for removing inequality in the matter of payment of compensation, it must be held that a person who is not satisfied with an award made under Section 28A (2) can make an application to the Collector under Section 28A(3) for making a reference to the Court as defined in Section 3(d) of the Act and this right cannot be frustrated merely because as a result of re-determination made under Section 28A (2) read with Section 28A (1) the applicant becomes entitled to receive compensation at par with other land owners. There is nothing in the plain language of Section 28A (3) from which it can be inferred that a person who has not accepted the award made under Section 28A (2) is precluded from making an application to the Collector with the request to refer the matter to the Court. Of

course, the Court to which reference is made under Section 28A (3) will have to bear in mind that a person who has not sought reference under Section 18 cannot get compensation higher than the one payable to those who had sought reference under that section. “

8. In the instant case, the other land owners have been awarded compensation of Rs.1,14,000/- per hectare as against their claim of Rs.2,55,000/- per hectare. The State or the Acquired Body has not challenged the judgment. However, the judgment and the Award of the Reference Court has been challenged by the holders and the appeals are admitted and pending before this Court. The LAO has declared an award under Section 28A based on the judgment of the Reference Court and has awarded compensation of Rs.1,14,000/-per hectare. The Petitioners have not accepted the award under the Section 28A of the Act and have filed an application to refer the matter for the determination of the Court. In the light of the principles laid down by the Apex Court in **V. Ramakrishna Rao** (supra), the Applications under Section 28A (3) are maintainable. The right of the Petitioners to seek enhanced compensation cannot be frustrated on the ground that the Petitioners have been paid compensation at par with other land owners, moreover, when the appeals filed by the other land

owners challenging the quantum of compensation awarded by the Reference Court are pending before the Court. Needless to state that the Petitioners would be entitled for higher compensation if the High Court allows the Appeals and enhances the compensation payable to the other land owners. In the circumstances, the LAO was not justified in rejecting the Application. Hence, we pass the following order:-

ORDER

- (i) The impugned orders dated 18/06/2016 passed by the Land Acquisition Officer rejecting the Applications of the Petitioners under Section 28(A) (3) are set aside.
- (ii) The matters are remanded to the Special Land Acquisition Officer with directions to refer the Application filed by the Petitioners under Section 28A(3) of the Land Acquisition Act, 1894 to the Court.
- (iii) The Reference Court shall pass appropriate order only after and in terms of judgment in First Appeal Nos.1579 of 2011 and 328 of 2008.

9. The Petition stands disposed of in above terms.

Megha
Parab

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by Megha Parab
Date: 2021.01.12
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(SMT. ANUJA PRABHUDESSAI, J.)

(A.A. SAYED, J.)