

PVR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6747 OF 2009

Sambhaji Vikram Gutal

...Petitioner

Vs.

The Special Land Acquisition Officer Pune & Ors.

...Respondents

AND

WRIT PETITION NO.6366 OF 2009

Pandurang Shankar Kate since deceased

Ambadas Pandurang Kate & Ors.

...Petitioners

Vs.

The Special Land Acquisition Officer & Ors.

...Respondents

AND

WRIT PETITION NO.6186 OF 2009

Kuberdas Pilaji Kanerkar deceased

Santosh Kuberdas Kanerkar

...Petitioner

Vs.

The Special Land Acquisition Officer & Ors.

...Respondents

AND

WRIT PETITION NO.6185 OF 2009

Vithal Bhagwan Nanaware & Anr.

...Petitioners

Vs.

The Special Land Acquisition Officer & Ors.

...Respondents

AND

WRIT PETITION NO.6184 OF 2009

Jalindar Bhika Godase

...Petitioner

Vs.

The Special Land Acquisition Officer & Ors.

...Respondents

AND

WRIT PETITION NO.6183 OF 2009

Dnyaneshwar Madhavrao Ajotikar

...Petitioner

Vs.

The Special Land Acquisition Officer & Ors.

...Respondents

AND

WRIT PETITION NO.6367 OF 2009

Ganesh Ramchandra Dardare	...Petitioner
Vs.	
The Special Land Acquisition Officer, Pune & Ors.	...Respondents

AND

WRIT PETITION NO.6369 OF 2009

Laxman Bhagwan Salunke	...Petitioner
Vs.	
The Special Land Acquisition Officer, Pune & Ors.	...Respondents

AND

WRIT PETITION NO.6222 OF 2009

Sandipan Pilaji Kanerkar	...Petitioner
Vs.	
The Special Land Acquisition Officer, Pune & Ors.	...Respondents

AND

WRIT PETITION NO.6368 OF 2009

Mukinda Pilaji Kanerkar	...Petitioner
Vs.	
The Special Land Acquisition Officer, Pune & Ors.	...Respondents

AND

WRIT PETITION NO.6373 OF 2009

Bal Krishna Rupanmwar deceased	
Mahadeo Bali Rupanwar & Ors.	...Petitioners
Vs.	
The Special Land Acquisition Officer & Ors.	...Respondents

AND

WRIT PETITION NO.6372 OF 2009

Damu Narayan Mahar deceased	
Vaman Damu Mahar	...Petitioner
Vs.	
The Special Land Acquisition Officer & Ors.	...Respondents

AND
WRIT PETITION NO.6371 OF 2009

Ramchandra Pilaji Kanerkar deceased
Tanaji Ramchandra Kanerkar & Anr. ...Petitioners
Vs.
The Special Land Acquisition Officer & Ors. ...Respondents

AND
WRIT PETITION NO.6370 OF 2009

Shrirang Rama Kanerkar deceased
Kusum Manik Gutal & Anr. ...Petitioners
Vs.
The Special Land Acquisition Officer & Ors. ...Respondents

AND
WRIT PETITION NO.6403 OF 2009

Shankar Hari Deokar deceased
Narayan Shankar Deokar & Ors. ...Petitioners
Vs.
The Special Land Acquisition Officer ...Respondent

AND
WRIT PETITION NO.6404 OF 2009

Suryakant Baburao Gutal ...Petitioner
Vs.
The Special Land Acquisition Officer & Ors. ...Respondents

AND
WRIT PETITION NO.6543 OF 2009

Baliram Sadashiv Landge ...Petitioner
Vs.
The Special Land Acquisition Officer, Pune & Ors. ...Respondents

AND
WRIT PETITION NO.6537 OF 2009

Tatyaba Arjun Sarade since deceased
Narayan Tatyaba Sarade & Ors. ...Petitioners
Vs.
The Special Land Acquisition Officer, Pune & Ors. ...Respondents

AND
WRIT PETITION NO.6538 OF 2009

Dashrath Ramdas Salunke & Ors. ...Petitioners
Vs.
The Special Land Acquisition Officer, Pune & Ors. ...Respondents

AND
WRIT PETITION NO.6539 OF 2009

Maruti Pandharinath Salunke ...Petitioner
Vs.
The Special Land Acquisition Officer, Pune & Ors. ...Respondents

AND
WRIT PETITION NO.6540 OF 2009

Mahadeo Anna Salunke & Ors. ...Petitioners
Vs.
The Special Land Acquisition Officer, Pune & Ors. ...Respondents

AND
WRIT PETITION NO.6541 OF 2009

Dhaniram Yedu Nagare deceased
Mariappa Yedu Nagare & Ors. ...Petitioners
Vs.
The Special Land Acquisition Officer, Pune & Ors. ...Respondents

AND
WRIT PETITION NO.6542 OF 2009

Dhondo Krishnaji Ajotikar since deceased
Vasant Dhondopant Ajotikar & Ors. ...Petitioners
Vs.
The Special Land Acquisition Officer, Pune & Ors. ...Respondents

AND
WRIT PETITION NO.6728 OF 2009

Bhiva Nan Salunke ...Petitioner
Vs.
The Special Land Acquisition Officer , Pune ...Respondent

AND

WRIT PETITION NO.6727 OF 2009

**Pralhad Hari Deokar since deceased
Waman Pralhad Deokar & Ors.**

...Petitioners

Vs.

The Special Land Acquisition Officer, Pune

...Respondent

AND

WRIT PETITION NO.6726 OF 2009

Murlidhar Pilaji Kanerkar

...Petitioner

Vs.

The Special Land Acquisition Officer, Pune

...Respondent

AND

WRIT PETITION NO.6725 OF 2009

**Govind Pilaji Kanerkar deceased
Hanumant Govind Kanerkar**

...Petitioner

Vs.

The Special Land Acquisition Officer, Pune

...Respondent

AND

WRIT PETITION NO.6734 OF 2009

**Dharma Sukha Dardare deceased
Tuljiram Dharma Dardare & Ors.**

...Petitioner

Vs.

The Special Land Acquisition Officer, Pune

...Respondent

AND

WRIT PETITION NO.6733 OF 2009

**Dagadu Fatubhai Mulani deceased
Bashir Dagadu Shaikh**

...Petitioner

Vs.

The Special Land Acquisition Officer, Pune

...Respondent

AND

WRIT PETITION NO.6732 OF 2009

**Krushna Hari Deokar deceased
Shripati Krushna Deokar & Ors.**

...Petitioners

Vs.

The Special Land Acquisition Officer Pune

...Respondent

AND

WRIT PETITION NO.6731 OF 2009

**Dhondiba Bhujaba Salunke deceased
Dnyandeo Dattatraya Salunke & Ors.**

...Petitioners

Vs.

The Special Land Acquisition Officer Pune

...Respondent

AND

WRIT PETITION NO.6730 OF 2009

Somnath Baburao Gotal

...Petitioner

Vs.

The Special Land Acquisition Officer Pune

...Respondent

AND

WRIT PETITION NO.6729 OF 2009

**Bhanudas Hari Deokar deceased
Ajinath Bhanudas Deokar & Ors.**

...Petitioners

Vs.

The Special Land Acquisition Officer Pune

...Respondent

AND

WRIT PETITION NO.6739 OF 2009

Changdeo Krishna Kanerkar

...Petitioner

Vs.

The Special Land Acquisition Officer Pune

...Respondent

AND

WRIT PETITION NO.6738 OF 2009

**Kundalik Bapu Thatkar deceased
Sakharam Kundalik Thatkar & Ors.**

...Petitioners

Vs.

The Special Land Acquisition Officer Pune

...Respondent

AND

WRIT PETITION NO.6737 OF 2009

Anil Vasantrao Ajotikar & Ors.

...Petitioners

Vs.

The Special Land Acquisition Officer Pune & Ors.

...Respondents

AND

WRIT PETITION NO.6736 OF 2009

**Shamrao Namdeo Gutal deceased
Jagannath Shamrao Gutal & Ors.**

...Petitioners

Vs.

The Special Land Acquisition Officer Pune & Ors.

...Respondents

AND

WRIT PETITION NO.6735 OF 2009

**Vishvanath Krishna Kanerkar deceased
Devidas Vishvanath Kanerkar**

...Petitioner

Vs.

The Special Land Acquisition Officer Pune & Ors.

...Respondents

AND

WRIT PETITION NO.6748 OF 2009

**Dhondo Krishnaji Ajotikar deceased
Jayant Vasantrao Ajotikar & Ors.**

...Petitioners

Vs.

The Special Land Acquisition Officer Pune & Ors.

...Respondents

AND

WRIT PETITION NO.6746 OF 2009

**Nivrutti Bhagwan Salunke deceased
Hanumant Nivrutti Salunke & Ors.**

...Petitioners

Vs.

The Special Land Acquisition Officer Pune & Ors.

...Respondents

AND

WRIT PETITION NO.6745 OF 2009

**Baba Bala (Bhoi) Nagare deceased
Rakhamabai Baba Nagare & Anr.**

...Petitioners

Vs.

The Special Land Acquisition Officer Pune & Ors.

...Respondents

AND

WRIT PETITION NO.6744 OF 2009

**Balasaheb Krishnaji Kulkarni deceased
Suman Balasaheb Kulkarni & Ors.**

...Petitioners

Vs.

The Special Land Acquisition Officer Pune & Ors.

...Respondents

AND
WRIT PETITION NO.6743 OF 2009

Maruti Laxman Rupanwar	...Petitioner
Vs.	
The Special Land Acquisition Officer Pune & Ors.	...Respondents

AND
WRIT PETITION NO.6742 OF 2009

Chandar Krishna Dardare (Bhoi) deceased	
Harising Chandare Dardare	...Petitioner
Vs.	
The Special Land Acquisition Officer Pune & Ors.	...Respondents

AND
WRIT PETITION NO.6741 OF 2009

Prabhakar Dhondopant Ajotikar	...Petitioner
Vs.	
The Special Land Acquisition Officer Pune & Ors.	...Respondents

AND
WRIT PETITION NO.6740 OF 2009

Baburao Aburo Gutal deceased	
Gorakhnath Baburao Gutal & Ors.	...Petitioners
Vs.	
The Special Land Acquisition Officer Pune & Ors.	...Respondents

Mr.Gaurav Potnis with Ms.Pallavi H.Potnis, for the Petitioners.
Mr.Rajan S. Pawar, AGP for the State.

CORAM : G.S. KULKARNI, J.
RESERVED ON: 26 AUGUST 2021
PRONOUNCED ON: 14 SEPTEMBER 2021

JUDGMENT:

1. A short but interesting question arises for consideration in this batch of petitions, in regard to the applicability of Section 28A(1) of the

Land Acquisition Act, 1894 when the land acquisition award is a modified award of the Reference Court.

2. Learned Counsel for the parties are *ad idem* on the commonality of the facts in relation to this batch of petitions. Hence, Writ Petition No.6747 of 2009 was considered as the lead petition as also arguments were advanced on this petition, so as to cover all the petitions. The factual antecedents which lie in a narrow compass are not in dispute. The following facts as referred in the lead petition, are being noted:-

The lands of the petitioners were subject matter of acquisition, for the public purpose of “Submergence of Ujjani Project”. A notification under Section 4 of the Land Acquisition Act, 1894 (for short ‘**the Act**’) was issued on 9 October 1969 to include several lands. Following the legal procedure, the land acquisition proceedings concluded in a common award dated 30 November 1974 published by the Special Land Acquisition Officer (for short “**SLAO**”), under Section 11 of the Act, which was to the following effect:-

“26. AWARD—

I hereby declare the award under section 11 of the Land Acquisition Act, under my own hand and certify that:-

- | | | | |
|----|---|------------------|----------------|
| 1. | The true area of the lands
under this award. | A. G.
1554-00 | H.A.
628-26 |
| 2. | The total amount of Compensation | Rs.12,81,341-26 | |
| 3. | The total amount of compensation
will be apportioned as per statement
“A” attached to this award. | | |

The lands will vest in Government free from all encumbrances.

In addition, amount of Rs.625-00 will be paid as measurement fee by the Acquiring Body and credited to Government.”

3. Some of the claimants (Keshav Krishaj Ajotikar and others) being aggrieved by the SLAO's Award, made an application to the Collector under Section 18 of the Act, seeking enhancement of compensation. Such an application was referred by the Collector for adjudication by the Competent Court, being the Court of District Judge at Pune. The proceeding was numbered as Reference Application No.8 of 1979. The learned Extra Joint District Judge, Pune, decided such Reference by judgment and order dated 15 February 1984 in the following terms:-

“ The claimant is entitled and be paid an amount of Rs.72807.07P as enhanced compensation. He is also entitled to an amount of interest at the rate of 4% p.a. from the date of dispossession till payment. Parties to bear the costs in proportion to their success or failure.”

4. During the pendency of the said reference before the Reference Court, the Central Government having regard to the Directive Principles of State Policy enshrined in Part IV of the Constitution and to promote public welfare to bring about an equitable and indiscriminate payment of compensation between persons who are similarly situated, under the same land acquisition notification and in recognizing the sacrifice they make in the larger public interest, introduced a bill dated 30 September 1982 before the Parliament to amend the Act, by *inter alia* incorporating Section 28A. Such amendment was intended considering the stark

realities, that many poor and inarticulate owners of acquired land were not usually taking advantage of making a reference provided by Section 18 of the Act, to seek an enhanced/adequate compensation for their acquired lands. The Statement of Objects and Reasons of the Bill described the intention for the proposed legislation in the following words:-

“Considering that the right of reference to the civil court under Section 18 of the Act is not usually taken advantage by poor and inarticulate and is usually exercised only by the comparatively affluent land owners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested persons, it was proposed to provide an opportunity to all aggrieved parties whose land is covered under the same Notification to seek re-determination of compensation, once any one of them has obtained orders of payment of higher compensation from the reference court under Section 18 of the Act.”

5. The 1982 Bill was followed by the enactment of the Land Acquisition (Amendment) Act, 1984 (for short the “**1984 Amendment Act**”), which was brought into effect on 24 September 1984. Although, the relevant amendment for the purpose of the present proceedings is the incorporation of Section 28A by Section 19 of the 1984 Amendment Act, providing for ‘re-determination of the amount of compensation on the basis of the award of the Court’, it would also be necessary to note some other provisions of the 1984 Amendment Act namely Section 15, Section 18 and Section 30 which would have some bearing on the issue. These provisions read thus:

“**15. Amendment of Section 23.**-In Section 23 of the principal Act,-
(a) after sub-section (1), the following sub-section shall be

inserted, namely:-

"(1-A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.-In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.";

(b) in sub-section (2), for the words "fifteen per centum", the words "thirty per centum" shall be *substituted*.

.....

18. Amendment of Section 28.-In Section 28 of the principal Act,-

(a) for the words "six per centum", the words "nine per centum" shall be *substituted*;

(b) the following proviso shall be inserted at the end, namely:-

"Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry".

.....

30. **Transitional provisions** (1) The provisions of sub-section (1A) of section 23 of the principal Act, as inserted by Clause (a) of section 15 of this Act, shall apply, and shall be deemed to have applied, also to and in relation to,-

(a) every proceeding for the acquisition of any land under the principal Act pending on the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill in the House of people) in which no award has been made by the Collector before that date;

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the commencement of this Act.

(2) The provisions of sub-section (2) of section 23 and section 28 of the principal Act, as amended by clause (b) of section 15 and section 18 of this Act respectively, shall apply, and shall be

deemed to have applied, also to, and relation to, any award made by the Collector or Court or to any order passed, by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April 1982 (the date of introduction of the Land Acquisition (Amendment) Bill 1982, in the House of the People and before the commencement of this Act.

(3) The provisions of section 34 of the principal Act, as amended by section 20 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,

(a) every case in which possession of any land acquired under the principal Act had been taken before the 30th of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill 1982, in the House of the People), and the amount of compensation for such acquisition had not been paid or deposited under section 31 of the principal Act until such date, with effect on and from that date; and

(b) every case in which such possession had been taken on or after that date but before the commencement of this Act without the amount of compensation having been paid or deposited under the said section 31 with effect on and from the date of taking such possession.” (emphasis added)

6. By virtue of the “Transitional provisions” of the 1984 Amending Act, the provisions of sub-Section (2) of Section 23 and Section 28 of the Principal Act, as amended by clause (b) of Section 15 and Section 18 of the Amending Act, were deemed applicable, also in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after 30 April 1982, being the date of introduction of the Land Acquisition (Amendment) Bill, 1982, before the Parliament and before the commencement of the 1984 Amendment Act. These transitional provisions, according to the petitioners, become relevant for the reason that as on 30 April 1982 the land acquisition

reference was pending, before the Court of learned District Judge, Pune, which eventually came to be decided on 15 February 1984.

7. The next provision and the plinth of the present proceedings, is Section 28-A which came to be inserted by Section 19 of the 1984 Amendment Act, providing for '*re-determination of the amount of compensation on the basis of the award of the Court.*' Section 28A was brought into effect from 24 September 1984. It reads thus:-

"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 sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18.]"

(emphasis supplied)

8. As seen from the Statement of Object and Reasons of the Amending Act the legislative intent behind Section 28A was primarily to

provide an opportunity to all aggrieved parties whose lands were covered under the same notification to seek re-determination of compensation, once any one of the interested parties had obtained orders for payment of higher compensation from the Reference Court under Section 18 of the Act. Such amendment was intended for the reason that the right to avail of a reference to the Civil Court under Section 18 of the Act, was not usually taken advantage by inarticulate and poor people and/or was seen to be exercised only by comparatively affluent land owners, which had resulted into an apparent inequality in the payment of compensation, to persons falling under the same notification for the same or similar quality of land. The object of such amendment was to bring parity in payment of compensation to persons who are similarly situated, however, who otherwise had formed two classes, one who had approached the Reference Court and the others who were inherently deprived of approaching the Reference Court for want of economic resources. The legislature in its wisdom considered it appropriate to provide an advantage of payment of a higher compensation if so determined by the Reference Court to those who although were aggrieved by the award of the SLAO, however, due to economic constraints could not approach the Reference Court, in terms of what was envisaged in Section 28A.

9. Having noted the intervening legislative developments which had taken place, when the Reference proceedings before the Court of learned District Judge, at the behest of some persons were pending, the further factual developments that took place are required to be noted:

The Reference applicants being aggrieved by the award/judgment dated 15 February 1984 (supra) rendered by the learned District Judge on the land acquisition reference, preferred Miscellaneous Application No.369 of 1986 praying for review and modification of such award/judgment. The learned District Judge by an order dated 5 September 1994 disposed of the review application by modifying the original award/judgment dated 5 February 1984, enhancing the compensation as originally awarded, by granting benefit of enhanced solatium as per the amended provisions inserted by the 1984 Amendment Act. The relevant extract of the modified award of the learned District Judge is required to be noted, which reads thus:-

“5. I have verified that, the Collector has passed an award on 30-11-74, but the court has passed an award on 15-2-84 i.e. after 30-4-82. I have also seen original judgment (Ex.29) in L.R.No.8/79 which does show that, the applicant has been awarded enhanced compensation to the tune of Rs.89,934.07 ps. In view of the provisions of the amended Act mentioned above, the applicant is entitled to get additional reliefs and I therefore, pass the following order.

Order

1. The opponent do pay an amount calculated at the rate of 12% p.a. on the sum of Rs.89,934.07 ps. (72,807.07 ps – 17127) from the date of publication of the notification under Sec. 4(1) of the L.A.Act, till the date of taking over the possession of the land vide Sec.23(I-A) of the Act.

2. The opponent do pay interest at the rate of 9% p.a. on the enhanced amount of Rs.89,934.07 ps. from the date of taking over possession of the land till the period of one year and at the rate of 15% p.a. from the date of expiry of the said period of one year till the date of payment into court, vide Sec. 34 of the L.A.act. However, while so making the payment of interest, the opponent shall deduct the amount of interest paid to the applicant as per the award in L.R.No.8/79.

3. The opponent do pay additional solatium at the rate of 15% p.a. on the sum of Rs.72807.07 pa. and the opponent do pay further solatium at the rate of 30% p.a. on the enhanced amount of Rs.17,727/- to the applicant vide Sec.23(2) of the L.A. Act.

4. Parties to bear their own costs of this application.

Dt. 1-9-94

(A.VKarnik)

Extra Jt. District Judge Pune.

Resumed again:

Section 23(1-A) reads thus:-

“In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Sec.4, sub-section 91, in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.”

In the instant case, the Collector has declared his award on 30/11/74 and therefore, additional component at the rate of 12% p.a. which has been inadvertently awarded in my earlier order dated 1/9/94, would not be payable.

Hence, I pass the following order:

Order

Para No.1 of the final order dated 1.9.94 stands deleted, and the opponent shall pay only the amounts as mentioned in detail in para Nos.2 & 3 of the final order dated 1.9.94.

Dt. 5/9/94

(A.VKarnik)

Extra Jt.District Judge,Pune.”

10. After the review judgment was pronounced by the Reference Court on 5 September 1994, the petitioners applied for its certified copy on 28 October 1994. The certified copy was kept ready for delivery on 14 December 1994. Thereafter, on 6 January 1995 the petitioners filed an application under Section 28A(1) of the Act praying for re-determination of the amount of compensation on the basis of the award of the Court. By the impugned communication dated 18 September 2008 the Collector rejected such application of the petitioners primarily on two grounds, firstly assigning a reason that the original award being dated 15 February 1984, the provisions of 28A could not be availed by the petitioners as the said provisions would not have a retrospective operation; and secondly, even if the date of the modified award was considered to be 1 September 1994 (sic 5 September 1994), the petitioners' application was barred by the limitation of three months, as prescribed by sub-section (1) of Section 28A. The impugned order reads thus:-

“(Translation of a copy of an Order, typewritten in
Marathi.)

Read :- 1. Application of the Applicant under section 28 A
and the documents enclosed therewith.

A. Decision dated 15/02/1984 in Land Reference
No. 8/79.

B. Decision dated 01/09/1994 in Miscellaneous
Application No. 369/86.

2. Section 28 A of the Land Acquisition Act, 1894.

3. Opinion- Letter No. G/8/5096/08 dated
16/09/2008 of the District Government Pleader,
Pune.

4. Sanctioned Noting dated 17/09/2008 of the

Collector, Pune.

Special Land Acquisition Officer No.6,
Collector Office Premises,
No. S. L. A. O. No. S.R./49/2008.
Pune,
Date- 18/09/2008

ORDER

Applicant Sambha Vikram Gutal had submitted application under section 28 A of the Land Acquisition Act, 1894 on the date 06/01/1995 to this Office. The said application is in respect of the land bearing Survey No. 34/1 acquired for the Ujani Dam at village Ajoti, Tal. Indapur, Dist. Pune and the Award in respect thereof is bearing No. is SPL/LAQ/UPD/SR/3/1967 dated 21/03/1975.

Considering the said application and the documents annexed therewith, decision dated 15/02/1984 in Land Reference No. 8/79 and the decision dated 01/09/1994 in Miscellaneous Application No.369/86 as well as the legal provisions in the documents referred to hereinabove at Serial No. 1 to 5, the belowmentioned facts are noticed.

The decision in Land Reference No. 8/79, annexed with the application, has been declared on the date 15/02/1984 and thereafter, the decision on Miscellaneous Application No. 369/86 has been declared on the date 01/09/1994. The provision of Section 28 A in the Land Acquisition Act, 1894 has come into existence on the date 24/09/1984 and the Award and the decision under Section 18 of the District Court in respect of the Land Reference in this matter are of the date prior to coming into existence of the legal provision, and therefore, the said section does not apply to the aforesaid Award. Moreover, as per the provisions of Section-28-A, the said Application was required to be within a period of three months from the date of the Award in respect of the Land Reference. However, the same has been filed on the date 06/01/1995 within a period of three months from the date of decision dated 01/09/1994 on the Miscellaneous Application No. 369/86 (?)

As per the opinion bearing No. G-8/5096/2008, dated 16/09/2008 of the District Government Pleader thereon, the said Application has not been filed within the time limit from the date of Award in respect of the Land Reference.

Considering the aforesaid documents and the legal points, the said Application under Section 28-A is rejected.

The aforesaid decision should be intimated to the persons concerned.

Special Land Acquisition Officer No.6
Pune-1”

11. Mr.Potnis, learned Counsel for the petitioners in assailing the impugned order passed by the Collector would submit that the Collector has failed to take into consideration that the original Award of the Reference Court dated 15 February 1984 rendered on the reference application stood modified by the subsequent judgment and order dated 5 September 1994 passed by the Reference Court on the review application. It is his submission that for the purposes of an application made by the petitioners under Section 28A(1), the relevant award of the Reference Court was the award dated 5 September 1994 (award on review), and not the original award dated 15 February 1984. According to him, for the purposes of the claim as made by the original claimants, the final award in favour of the original claimants was the award dated 5 September 1994 rendered on the review application, which gave rise to a cause of action in favour of the petitioners to invoke the beneficial provisions of Section 28A of the Act. He submits that the impugned order is required to be held illegal on both the reasons it attributes, to reject the petitioners applications. Mr. Potnis submits that the Collector could not have overlooked the award made by the Reference Court on the review application. Thus, according to him, there was no question of

any retrospective application of the provisions of Section 28A of the Act in the facts of the present case, merely for the reason that the original award (prior to the review) was dated 15 February, 1984 (i.e. prior to the provisions of Section 28A were brought into force). Mr.Potnis submits that such reason as set out in the impugned order, is not only factually erroneous being oblivious to the final award dated 5 September 1994 but also overlooks the application of Section 30 of the 1984 Amendment Act namely the “transitory provisions”, which clearly conferred the benefit of the amended provisions of Section 23(2) and Section 28 of the Principal Act (by virtue of Sections 15 and 18 of the 1984 Amendment Act), to matters which were pending adjudication before the reference Court. In support of this submission, Mr. Potnis has placed reliance on the decision of the Supreme Court in **Union of India Vs. Raghubir Singh**¹.

12. The next submission of Mr.Potnis referring to the decision of the Supreme Court in **Union of India & Anr. Vs. Pradeep Kumari & Ors.**² is to the effect that the Supreme Court has construed the words “an award” used in Section 28-A(1) of the Act, to hold that the object underlying the said provision would be better achieved by giving such expression its natural meaning, namely, a meaning that the award that is made by the Court under Part III of the Act. Mr.Potnis submits that the Supreme Court

¹ (1989) 2 SCC. 754

² (1995) 2 SCC 736

has set out six conditions which need to be satisfied for a person to be entitled to seek re-determination of the amount of compensation payable to him under Section 28A of the Act which according to him were satisfied by the petitioners.

13. On the second ground on which the petitioners application under Section 28A(1) was rejected by the Collector, Mr.Potnis would submit that even in calculating the period of limitation, there is an apparent illegality committed by the Collector as, according to him, although the Collector had noted with relevance the review award dated 5 September 1994 on the basis of which the petitioners had submitted their application, however, the Collector overlooking “the proviso” below sub-section (1) of Section 28A, which provides that in calculating the period of limitation as prescribed by sub-section (1) the time which was taken from the date of pronouncement of the award (in the present case the review award) and obtaining a copy of such award would stand excluded. Mr.Potnis would, hence, contend that the impugned order on both the counts, is rendered illegal and is required to be quashed and set aside.

14. On the other hand, Mr.Pawar, learned Assistant Government Pleader has supported the impugned orders. It is his submission that the Collector is correct in his reasoning that the provisions of Section 28A

cannot have retrospective operation as according to him when the reference Court originally decided the reference on 15 February 1984, the amended Section 28A was not in existence. In support of this contention Mr.Pawar has relied on the decision of the Supreme Court in **Babua Ram & Ors. Vs. State of U.P. & Anr..(1989) 2 SCC. 754**³ to contend that in such decision the Supreme Court has held that the provisions of Section 28A do not have retrospective application and that Section 28A was a complete code in itself. Mr.Pawar, however, would have no answer to the petitioners case that for the application as made by the petitioners under the provisions of Section 28A(1), the proviso to sub-section (1) was relevant and was required to be noticed by the Collector in considering such applications, and more particularly when the Collector in the impugned order not only refers but also notices the modified award of the reference Court dated 5 September 1994. Mr. Pawar submits that the petitions do not warrant consideration and deserve to be dismissed.

Reasons and conclusions

15. There ought not to be any dispute on the proposition that by virtue of the order dated 5 September 1994 passed by the Reference Court on the review application of the claimants, the original award/judgment (dated 15 February 1984) on the land acquisition

3 (1995)2 SCC 689

reference stood modified. In other words, the judgment and order dated 15 February 1984 stood merged in the review orders/award passed on the review application, by application of the doctrine of merger. The principles in this regard are well settled, namely, that when an application for review of a decree is allowed, it results in vacating of the decree earlier passed. The decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one. To appreciate the concept of the doctrine of merger, reference can be made to the decision of the Supreme Court in **Kunhayammed & Ors. Vs. State of Kerala & Anr.**⁴ as also the decision in **Special Deputy Collector & Ors. Vs. Chakali Linga & Ors.**⁵

16. In **Kunhayammed & Ors.** (supra) the Supreme Court has held that the doctrine of merger is neither a doctrine of constitutional law nor a doctrine statutorily recognised. It is a common law doctrine founded on principles of propriety in the hierarchy of justice delivery system. The logic behind such doctrine being that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time.

17. In the context of the Land Acquisition Act such principle has been recognized by the Supreme Court in **Chakali Linga's** case (supra). In this case, the Supreme Court was seized with an issue in regard to the benefit being claimed by Chakali Linga under the provisions of Section

4 (2000)6 SCC 359

5 (2005)13 SCC 404

23(2) of the Act, for award of solatium at 30%. An award was made by the land acquisition officer on 29 December 1975 against which a reference was made by some claimants before the learned District Judge who enhanced the compensation by his judgment and order dated 31 March 1979. A review application came to be made in the year 1982 praying for further enhancement in respect of the trees which were subject matter of acquisition. The review application was decided in favour of the original claimants by an order dated 31 December 1983. In the year 1991, Chakali Linga filed an interlocutory application before the reference Court claiming benefit under Section 23(2) of the Act as amended by the 1984 Amendment Act. It was Chakali Linga's case that the judgment and decree passed by the reference Court was reviewed by its order dated 31 December 1983 by granting enhanced compensation in respect of trees. Thus, according to Chakali Linga the decree finally passed by the Reference Court was the one passed on 31 December 1983 namely on the review application, which modified the original award/decreed dated 31 March 1979. Taking recourse to the doctrine of merger, Chakali Linga claimed that since the decree was passed by the Reference Court on 31 December 1983, applying the provisions of sub-section (2) of Section 30 of the 1984 Amendment Act, Chakali Linga was entitled to solatium at the rate of 30% of the market value instead of 15% as earlier awarded. This contention of Chakali Linga was

accepted by the Reference Court and confirmed by the High Court. The Special Deputy Collector, however, felt aggrieved by the concurrent findings namely that of the Reference Court and the High Court, hence, approached the Supreme Court. The Special Deputy Collector contended before the Supreme Court that decree of the Reference Court had attained finality so far as compensation payable for the land was concerned, and the review order merely modified the compensation for trees, hence according to him, Chakali Linga could not have claimed higher solatium on compensation payable in respect of the land. It is in such context, the Supreme Court reiterating the settled principle of law and referring to the decision in **Sushil Kumar Sen Vs. State of Bihar**⁶ and **Kunhayammed & Ors.** (supra) held that the law is well settled that the effect of allowing an application for review of a decree is to vacate the decree passed. It was held that the decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one. Applying such principles of law, the Court repelled the contention of the Special Deputy Collector and dismissed the appeals, upholding Chakali Linga's contention. In my opinion, this decision is squarely applicable to the facts of the present case, to accept the petitioners' contention that the original award of the Reference Court dated 15 February 1984 had merged with the modified award dated 5 September 1994.

6 (1975)1 SCC 774

18. In the context of merger, another decision of the Supreme Court in **DSR Steel (Private) Ltd. Vs. State of Rajasthan & Ors.**⁷ needs to be noted. In this decision, the Supreme Court held that when a Court makes an order allowing a review petition, it results into the decree/orders under review being reversed or modified. The modified order then become a composite order whereby the Court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. It was held that it is only the decree so vacated, reversed or modified becomes the decree that is effective for the purposes of a further appeal, if any, maintainable under law. The relevant extract of the said decision reads thus:-

“25.2. The second situation that one can conceive of is where a Court or Tribunal makes an order in a review petition by which the review petition is allowed and the decree/order under review reversed or modified. Such an order shall then be a composite order whereby the Court not only vacates the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made earlier. The decree so vacated reversed or modified is then the decree that is effective for purposes of a further appeal, if any, maintainable under law.” (emphasis supplied)

19. Adverting to the above settled principles of law in their application to the facts of the present case, it becomes abundantly clear that by application of the doctrine of merger, it is the judgment and order of the Reference Court dated 5 September 1994 on the review

application, which would be required to be considered as the new award/decreed on the Land Acquisition Reference in question, which superseded the original judgment and award dated 15 February 1984 rendered by the reference Court. By virtue of sub-section (2) of Section 26 of the Act every award made by the Reference Court is deemed to be a decree and the statement of grounds of every such award a judgment within the meaning of Section 2, Clause (2), and Section 2, Clause (9), respectively of the Code of Civil Procedure, 1908.

20. The principle of merger is thus implicitly recognised by the provisions of Section 26(2) of the Act, whereunder an award of the learned District Judge would be deemed to be a decree and such award would be a judgment within the meaning of Section 2, Clause (2), and Section 2, Clause (9) of the Code of Civil Procedure, 1908. Hence, in the facts of the present case, for the purposes of an application under Section 28A(1) of the Act, it was the review judgment and award dated 5 September 1994 of the Reference Court which was relevant for the petitioners, to take recourse to the beneficial provisions of Section 28A of the Act.

21. In my opinion, the approach of the Collector in rejecting the petitioners' application under Section 28A(1) was thus *ex facie* illegal for more than one reason. Firstly, the Collector proceeded on an

assumption that only the original award on the reference application dated 15 February 1984 was relevant for the petitioners application to be maintainable under Section 28A(1) of the Act. The Collector referring to the date of the original award observes that the provisions of Section 28A(1) were not brought into force when such award was made, he hence held that as the provision is not applicable retrospectively, the petitioners application could not be entertained. The fallacy in such reasoning can be instantly noted, namely, the Collector completely overlooking the legal consequence emerging on the reference Court modifying the original award dated 15 February 1984 by its orders passed on the review application on 5 September 1994. It is not possible to conceive that once the original award itself stood merged in the review award, the original award could still be considered of any relevance and utility without it being read with the modified award, which would be the real award for all relevant purposes even to the original claimants for the benefits accrued to them for receiving compensation under the Act. In any case, in view of the modified award/orders passed by the Reference Court on the review application, no efficacy could be attributed to the original award also by application of the doctrine of merger as discussed above. The Collector, therefore, fell in a patent error in overlooking the legal consequences as brought about by the modified award, for the petitioners to maintain their

applications under Section 28A(1) of the Act.

22. The second ground on which the petitioners' application was rejected by the Collector is on limitation. The Collector held the petitioners application to be time barred when in fact he proceeded to calculate the limitation by referring to the judgment/award of the reference Court on the review application. According to the Collector as the Reference Court passed its order on the reference application on 1 September 1994 (sic 5 September 1994) and as the petitioners' application was filed on 6 January 1995, the same was time barred being filed beyond the prescribed limitation of three months as provided under sub-section (1) of Section 28A. In attributing such reason, the Collector has fell in an apparent error and an illegality inasmuch as the Collector turned a blind eye to proviso below Section 28A(1) which ordains that in computing the period of limitation of three months as prescribed under sub-section (1), the day on which the award was pronounced and the time requisite for obtaining a copy of the award, shall be excluded. As noted above the petitioners had made an application for certified copy of the review award on 28 October 1994, and the review award was kept ready for delivery on 14 December 1994. Thus the period between 28 October 1994 upto 14 December 1994 stood excluded in calculating the limitation, when the petitioners filed their Section 28A application on 6 January 1995. Thus there is

total non-application of mind by the Collector to the legal requirements as stipulated by the proviso to sub-section (1) of section 28A.

23. Apart from the above discussion, the principles of law as laid down by the Supreme Court in interpreting Section 28A(1) needs to be noted. Considering these decisions, what was relevant for applicability of Section 28A(1) was the award made by the reference Court under Part III, after coming into force of Section 28A. A two judge Bench of the Supreme Court in **Babua Ram & Ors.** (supra) held that the period of three months prescribed for making an application for re-determination of compensation under Section 28A should be computed from the date of making of the first award. It was held that limitation begins to run from the date, the award was pronounced by the Court under Section 26. It was thus held that re-determination of compensation can be made only on the basis of the first award that was made after coming into force of Section 28A of the Act. Such view was reiterated by a co-ordinate Bench of the Supreme Court in **Karnail Singh** (supra) which again held that the cause of action for making an application under section 28-A would arise when an award was made by the Civil Court, on a reference under section 18, enhancing the compensation over and above the amount awarded by the Collector in his award under section 11 and that the earliest of the successive awards would furnish the starting period of the limitation of three months as provided in the

proviso to section 28- A(l). Such was held to be the interpretation of the provisions of sub-section (1) of Section 28A. It was reiterated that Section 28A(1) was applicable prospectively with effect from 24 September 1984 and hence, it did not furnish any right to the claimants to make any application after the Act had come into force and when the award of the reference Court was prior to the commencement of the 1984 Amendment Act. The decisions in **Babua Ram & Ors.** (supra) and **Karnail Singh** (supra) were however overruled by a three Judge Bench of the Supreme Court in **Union of India & Anr. Vs. Pradeep Kumari & Ors.** (supra). In such decision, the Supreme Court considering the statement of object and reasons of the 1984 Amendment Act observed that the object underlying the enactment of Section 28A was to remove inequality in the payment of compensation for same or similar quality of land, arising on account of inarticulate and poor people not being able to take advantage of the right of reference to the civil court under Section 18 of the Act. It was observed that parity was sought to be achieved by providing an opportunity to all aggrieved parties whose land is covered by the said notification to seek re-determination once “any of them” had obtained orders for payment of higher compensation from the reference Court under Section 18 of the Act. It was observed that Section 28-A was in the nature of a beneficial provision intended to remove inequality and to give relief to the inarticulate and poor people

who are not able to take advantage of the right of reference to the Civil Court under Section 18 of the Act. Applying the well-settled principles in interpreting beneficial legislations, namely that while construing such legislation, the Court should adopt a construction which advances the legislative policy to extend the benefit, rather than a construction which has the effect of curtailing the benefit the provisions would confer. The Supreme Court accordingly held that the right to make the application under Section 28-A arises from the award of the Court on the basis of which the person making the application is seeking re-determination of the compensation. It was held that there is nothing in sub-section (1) of Section 28-A to indicate that this right is confined in respect of the earliest award that is made by the Court after the coming into force of Section 28-A. It was observed that by construing the expression 'where in an award under this Part' appearing in sub- section (1) of Section 28-A to mean 'where in the first award made by the court under this Part, the word 'first', which is not found in sub-section (1) of Section 28-A, was being read in the said provisions, whereby the amplitude of the said provision was being curtailed so as to restrict the benefit conferred by it. It is for such reason the Court observed that the view taken in **Babua Ram & Ors.** (supra) and **Karnail Singh** (supra) that an application under Section 28A can be made only on the basis of the first award was not correct and accordingly overruled the said decisions. The Court further

clarified that the benefit of Section 28A can be availed on the basis of any one of the award that has been made by the Court after coming into force of Section 28A provided that an application seeking such benefit was made within the prescribed period of three months from the making of the award on the basis of which such redetermination of compensation is sought. The relevant observations of the Court are required to be noted:-

“7. After giving our thoughtful consideration to the aforementioned reasons we are unable to persuade ourselves to take the view that the period of limitation for making an application under Section 28-A of the Act has to be computed from the date of the making of the first award after the coming into force of Section 28-A and any subsequent award has no bearing on the right conferred by Section 28-A.

... ..

9. A perusal of the provisions contained in sub-section (1) of Section 28-A of the Act would show that after an award is made under Part III whereby the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, a right accrues to a person interested in the other land covered by the same notification under sub-section (1) of Section 4 who is also aggrieved by the award of the Collector but who had not made an application to the Collector under Section 18, to move an application before the Collector for re-determination of the amount of compensation payable to him on the basis of the amount of compensation awarded by the court. This application for re-determination of compensation is required to be made within three months from the date of the award of the court. The right to make the application under Section 28-A arises from the award of the court on the basis of which the person making the application is seeking re-determination of the compensation. There is nothing in sub-section (1) of Section 28-A to indicate that this right is confined in respect of the earliest award that is made by the Court after the coming into force of Section 28-A. By construing the expression 'where in an award under this Part' in sub-section (1) of Section 28-A to mean 'where in the first award made by the court under this Part, the word 'first', which is not found in sub-section (1) of Section 28-A, is being read therein and thereby the amplitude of the said provision is being curtailed so as to restrict the benefit conferred by it. In the matter of construction of a beneficent provision it is not permissible by judicial interpretation to read words which are

not there and thereby restrict the scope of the said provision. [See : Jnan Ranjan Sen Gupta v. Arun Kumar Bose, [1975] 2 SCC 526,530.]

10. It is possible to visualise a situation where in the first award that is made by the court after the coming into force of Section 28-A the enhancement in the amount of compensation by the said award is not very significant for the reason that the person who sought the reference was not able to produce adequate evidence in support of his claim and in another reference where the award was made by the court subsequently such evidence is produced before the court and a much higher amount is awarded as compensation in the said award. By restricting the benefit of Section 28-A to the first award that is made by the court after the coming into force of Section 28-A the benefit of higher amount of compensation on the basis of the subsequent award made by the court would be denied to the persons invoking Section 28-A and the benefit of the said provision would be confined to re-determination of compensation on the basis of lesser amount of compensation awarded under the first award that is made after the coming into force of Section 28-A. There is nothing in the wordings of Section 28- A to indicate that the legislature intended to confer such a limited benefit under Section 28-A. Similarly, there may be a situation, as in the present case, where the notification under Section 4(1) of the Act covers lands falling in different villages and a number of references at the instance of persons having lands in different villages were pending in the court on the date of coming into force of Section 28-A and awards in those references are made by the court on different dates. **A person who is entitled to apply under Section 28-A belonging to a particular village may come to know of the first award that is made by the court after the coming into force of Section 28-A in a reference at the instance of a person belonging to another village, after the expiry of the period of three months from the date of the said award but he may come to know of the subsequent award that is made by the court in the reference at the instance of a person belonging to the same village before the expiry of the period of three months from the date of the said award. This is more likely to happen in the case of inarticulate and poor people who cannot be expected to keep track of all the references that were pending in court on the date of coming into force of Section 28-A and may not be in a position to know, in time, about the first award that is made by the court after the coming into force of Section 28-A. By holding that the award referred to in Section 28-A(1) is the first award made after the coming into force of Section 28-A, such persons would be deprived of the benefit extended by Section 28-A. Such a construction would thus result in perpetuating the inequality in the payment of compensation which the legislature wanted to remove by enacting Section 28-A. The object underlying Section 28-A would be better achieved by giving the**

expression "an award" in Section 28-A its natural meaning as meaning the award that is made by the court in Part III of the Act after the coming into force of Section 28-A. If the said expression in Section 28-A(1) is thus construed, a person would be able to seek re-determination of the amount of compensation payable to him provided the following conditions are satisfied :-

(i) An award has been made by the court under Part III after the coming into force of Section 28-A;

(ii) By the said award the amount of compensation in excess of the amount awarded by the Collector under Section 11 has been allowed to the applicant in that reference;

(iii) The person moving the application under Section 28-A is interested in other land covered by the same notification under Section 4(1) to which the said award relates;

(iv) The person moving the application did not make an application to the Collector under Section 18;

(v) The application is moved within three months from the date of the award on the basis of which the re-determination of amount of compensation is sought; and

(vi) Only one application can be moved under Section 28-A for re-determination of compensation by an applicant.

11. Since the cause of action for moving the application for re-determination of compensation under Section 28-A arises from the award on the basis of which re-determination of compensation is sought, the principle that "once the limitation begins to run, it runs in its full course until its running is interdicted by an order of the court" can have no application because the limitation for moving the application under Section 28-A will begin to run only from the date of the award on the basis of which re-determination of compensation is sought.

12. We are, therefore, unable to agree with the view expressed in Babua Ram (supra) and Karnail Singh (supra) that application under Section 28-A for re-determination of compensation can only be made on the basis of the first award that is made after the coming into force of Section 28-A. In our opinion, the benefit of re-determination of amount of compensation under Section 28-A can be availed of on the basis of any one of the awards that has been made by the court after the coming into force of Section 28-A provided the applicant seeking such benefit makes the application under Section 28-A within the prescribed period of three months from the making of the award on the basis of which re-determination is sought. The first contention urged by Shri Goswamy in support of the Review Petitions is, therefore, rejected.

(emphasis supplied)

24. For the aforesaid reasons, Mr.Pawar is not correct in his contention that the petitions involved retrospective application of the provisions of Section 28A of the Act, relying on the decision of the Supreme Court in **Babua Ram & Ors.** (*supra*) as in the present case the modified award itself is dated 5 September 1994 which formed the basis of the petitioners application under section 28A, by virtue of which there was no question of any retrospective application of Section 28A of the Act.

25. Mr.Potnis would also be correct in his contention relying on the decision of the Supreme Court in **Union of India Vs. Raghubir Singh** (*supra*) that the provisions of Section 30 (Transitory provisions) of the 1984 Amendment Act in any case had become applicable even to the pending references.

26. As a sequel to the above decision, the Collector could not have rejected the petitioners application on both the grounds as recorded in the impugned order, namely, of retrospective application of Section 28A, when there was none as also on the second ground of the petitioners application being time barred. The impugned order is manifestly illegal and is liable to be set aside. It is thus clear to me that the applications under Section 28A(1) as filed by the petitioners, were maintainable and they ought to have been processed further as per the requirement of sub-section (2) of the Act.

27. In view of the above deliberation, the petitions need to succeed. They are accordingly allowed in terms of the following order:-

ORDER

(I) The impugned orders passed by the Collector rejecting the petitioners' applications under Section 28A(1) of the Land Acquisition Act, 1894 stand quashed and set aside.

(II) The applications of the petitioners under Section 28A are restored to file of the Collector to be processed further in accordance with the provisions of sub-section (2) of Section 28A of the Act.

(III) As the acquisition itself is of the year 1969, the Collector is directed to complete the inquiry under sub-section (2) of Section 28A of the Act within a period of six months from today and make appropriate award in re-determining compensation payable to the petitioners.

(IV) All contentions of the parties on merits of their respective claim applications are expressly kept open.

(V) Rule is made absolute in the above terms. No costs.

(G.S. KULKARNI, J.)