

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 3066 of 2020

PETITIONER: Vidarbha Irrigation Development Corporation, through its Executive Engineer, Khadakpurna Project Division, Deulgaonraja, District Buldhana.

Vs.

- RESPONDENTS** : 1. The Collector, Buldhana, District Buldhana
2. The Sub-Divisional Officer and Land Acquisition Officer, Sindkhedraja, District Buldhana
3. Haribhua s/o Balwanta Shingne, Aged about 65 years, Occupation : Agriculturist, R/o Garkhed, Tq. Deulgaonraja, District Buldhana
4. Sakharam s/o Shamrao Shingne, Aged about 51 years, Occupation : Agriculturist, R/o Garkhed, Tq. Deulgaonraja, District Buldhana

Mr. J.B. Kasat, Counsel for the petitioner

Mr. S.P. Deshpande, Addl. G.P. for respondents No.1 & 2

Mr. R.N. Ghughe, Counsel for the respondents No.3 & 4.

WITH

Writ Petition No. 3068 of 2020

PETITIONER: Vidarbha Irrigation Development Corporation, through its Executive Engineer, Khadakpurna Project Division, Deulgaonraja, District Buldhana.

VS.

RESPONDENTS : 1. The Collector, Buldhana, District Buldhana

2. The Sub-Divisional Officer and Land Acquisition Officer, Sindkhedraja, District Buldhana

3. Dnyaneshwar Rangaraon Dandge, Aged about 55 years, Occupation : Agriculturist, R/o Mandapgaon, Tq. Deulgaonraja, District Buldhana

4. Ruprao Martandrao Deshmukh (Dandge), Aged about 56 years, Occupation : Agriculturist, R/o Mandapgaon, Tq. Deulgaonraja, District Buldhana

Mr. J.B. Kasat, Counsel for the petitioner

Mr. S.P. Deshpande, Addl. G.P. for respondents No.1 & 2

Mr. R.N. Ghughe, Counsel for the respondents No.3 & 4.

CORAM : MANISH PITALE, J.

RESERVED ON : 14.12.2020

PRONOUNCED ON : 06.01.2021

JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for the rival parties.

2. In these two Petitions, the question that arises for consideration is, as to whether the respondents No.3 and 4 in both the Petitions were entitled for consideration of their applications filed before the respondent No.2 under Section 28-A of the Land Acquisition Act, 1894, for re-determination of amount of compensation. The petitioner Vidarbha Irrigation Development Corporation, the acquiring body has raised serious objection to the very maintainability of the said applications filed on behalf of the said respondents (original claimants), on the ground that since they had preferred applications for reference to the Court under Section 18 of the aforesaid Act and they had subsequently withdrawn such applications unconditionally, their applications for re-determination of amount of compensation under Section 28-A of the aforesaid Act were not maintainable. The respondent No.2 in the present case not only entertained the said applications, but also passed orders re-determining the amount of compensation in favour of the said respondent - claimants. No arguments were raised on behalf of the petitioner Corporation on merits of the re-determined amounts.

3. The facts leading up to filing of the present Writ Petitions are that lands belonging to the said claimants were acquired from district Buldhana for certain projects of the petitioner – Corporation. In pursuance of the land acquisition proceedings, final Awards were issued by the respondent No.2 and amount of compensation payable to the aforesaid claimants was determined. There is no dispute about the fact that the aforesaid claimants preferred reference applications under Section 18 of the said Act. The said claimants raised claims of higher quantum of compensation on the basis of contentions raised on their behalf. It is also not disputed that subsequently, the claimants withdrew their reference applications and the reference Court passed specific orders allowing the claimants to withdraw the reference applications, recording that the proceedings stood disposed of as withdrawn unconditionally.

4. Thereafter, the reference Court passed its final judgments and orders in reference applications filed by other claimants, similarly situated like the respondent - claimants herein and granted enhancement of

compensation to a certain extent. There is also no dispute about the fact that such judgments and orders or Awards passed by the reference Court attained finality. The respondent - claimants herein, at this stage, filed applications for re-determination of compensation under Section 28-A of the aforesaid Act, on the basis of the aforesaid Awards passed by the reference Court in the case of similarly situated claimants.

5. Initially, such applications filed by the respondent – claimants stood dismissed by orders passed by the respondent No.2 on the ground that the said respondents had already taken benefit of rehabilitation compensation under Government schemes. The respondent – claimants challenged the said orders before this Court. The Writ Petitions were allowed and this Court held that the respondent - claimants could not be deprived consideration of their applications under Section 28-A of the said Act in accordance with law, only on the ground that they had received rehabilitation compensation under the Government schemes. Accordingly, the matters were sent back to the respondent No.2 for consideration afresh. Thereafter,

the respondent No.2 considered the applications of the respondents – claimants and passed orders in their favour. These orders were in turn challenged by the petitioner – Corporation on the ground that it was not granted proper opportunity of hearing, despite the fact that the financial burden of payment of compensation was on the petitioner – Corporation. The Writ Petitions filed by the petitioner – Corporation were allowed and the matter was again sent back to the respondent No.2 for consideration on merits.

6. The respondent No.2 then considered the contentions of the rival parties and passed the impugned orders / Awards under Section 28-A of the aforesaid Act. The petitioner – Corporation has filed the instant Writ Petitions, challenging the said orders / Awards passed by the respondent No.2, principally on the ground that the applications filed by the respondent – claimants under Section 28-A of the aforesaid Act were not maintainable, as they had admittedly preferred reference applications under Section 18 of the said Act, which they had unconditionally withdrawn. On this basis, it was submitted that the impugned orders / Awards stood

vitiated and the same were rendered without jurisdiction by the respondent No.2.

7. Mr. J.B. Kasat, learned counsel appearing for the petitioner – Corporation in both these Writ Petitions submitted that a plain reading of Section 28-A of the aforesaid Act would show that the respondent – claimants would have been entitled to maintain the applications under the said provision before the respondent No.2, only if they had not preferred reference applications under Section 18 of the aforesaid Act. According to the learned counsel for the petitioner – Corporation, having preferred reference applications under Section 18 of the said Act, the respondent – claimants had dis-entitled themselves to file applications under Section 28-A of the said Act for re-determination of the amount of compensation.

8. The learned counsel for the petitioner – Corporation submitted that Section 28-A of the said Act was introduced only with the intention of assisting poor and ignorant claimants to seek compensation at par with those claimants who had approached the reference

Court under Section 18 of the said Act and the amount of compensation had been enhanced in such cases. According to the learned counsel for the petitioner – Corporation, the Hon’ble Supreme Court had interpreted the said provision to the effect that once a reference application was made under Section 18 of the said Act, the claimants were not entitled to file applications under Section 28-A thereof. It was submitted that benefit of the said provision was indeed given to those claimants whose applications under Section 18 of the said Act did not receive consideration of the concerned authority, for the reason that such applications were not entertained on the ground of delay. It was submitted that the position of law in respect of claimants whose applications under Section 18 of the said Act were not considered on merits due to technical reasons like delay, could not be equated with the case of the respondent – claimants before this Court. The only fact which the Court was required to ascertain was, as to whether the respondent – claimants had indeed made an application before the reference Court under Section 18 of the said Act and if so, they were not entitled to claim re-determination of compensation under Section 28-A of

the said Act. The learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in the cases of **Mewa Ram (Deceased) By His LRs and others Vs. State of Haryana Through the Land Acquisition Collector, Gurgaon (1986) 4 SCC 151; Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others (1991) 1 SCC 174; State of Orissa and Others Vs. Chitrasen Bhoi (2009) 17 SCC 74 and Kendriya Karmachari Sehkari Grah Nirman Samiti Limited, Noida VS. State of U.P. Vs. State of Uttar Pradesh and Another (2009) 1 SCC 754.**

9. Per contra, Mr. R.N. Ghughe, the learned counsel appearing for the respondent – claimants submitted that there was no substance in the contentions raised on behalf of the petitioner – Corporation because the position of law as clarified by the Hon'ble Supreme Court and this Court in various judgments, emphasized that claimants could maintain their applications under Section 28-A of the said Act, even if they had filed reference applications under Section 18 of the said Act, as long as the reference applications were not considered and decided on merits.

It was submitted that in the present case, the respondent – claimants had filed applications under Section 18 of the said Act, but, the said applications were withdrawn and, therefore, there was absence of consideration and determination on merits of the contentions raised on behalf of the respondent – claimants. It was submitted that even if the reference applications had been withdrawn by the respondent – claimants unconditionally, that would still not create a bar on their approaching the competent authority under Section 28-A of the said Act. It was submitted that no evidence was led by any of the parties before the reference Court and there was no determination of the contentions of the respondent – claimants on merits by the reference Court, thereby indicating that the position of law was clearly in favour of the respondent – claimants.

10. On this basis, it was contended that merely because the respondent – claimants had preferred reference applications under Section 18 of the Act and subsequently withdrawn the same unconditionally, ought not to lead to a bar against them from filing applications under Section 28-A of the said Act for re-

determination of compensation. It was further emphasized that when applications were moved under Section 28-A of the Act, the respondent – claimants could claim enhancement of compensation limited only to the amount granted to other similarly situated claimants in whose cases Awards had been passed by the reference Court, which had attained finality. The learned counsel appearing for the respondent – claimants relied upon judgments of the Hon’ble Supreme Court in the cases of **Union of India and Another Vs. Pradeep Kumari and Others** (1995) 2 SCC 736; **Union of India and Another Vs. Hansoli Devi and Others** (2002) 7 SCC 273; **V. Ramkrishna Rao Vs. Singareni Collieries Company Limited and Another** (2010) 10 SCC 650 and **Narendra and others Vs. State of Uttar Pradesh and others** (2017) 9 SCC 426, as also judgments of this Court in the cases of **Punja s/o Narayan Polade deceased through LRs Vs. State of Maharashtra and another** 2005(4) Mh.L.J. 621; **Sk. Allauddin s/o Sk. Jilani Vs. The State of Maharashtra & Ors.** 2015(3) ALL M.R. 354 and **Dagu Ganpat Kathe and others Vs. Special Land Acquisition Officer, Nashik and others** 2004 (4) Mh.L.J. 989.

11. Heard learned counsel for the rival parties and perused the material on record, including the judgments on which the learned counsel representing the rival parties have placed reliance.

12. Before considering as to whether the respondent – claimants, in the facts of the present cases, could have maintained their applications before the respondent No.2 under Section 28-A of the Act, it would be appropriate to first analyze the position of law laid down in the aforesaid judgments, particularly in the context of Section 18 and under Section 28-A of the Act.

13. In the judgments on which reliance has been placed by the learned counsel for the petitioner – Corporation, it is mentioned that application under Section 28-A of the Act can be moved by those claimants, who had not applied for reference under Section 18 of the said Act. In the case of **Mewa Ram and others Vs. State of Haryana** (supra), the Hon'ble Supreme Court referred to the objects and reasons of the Amending Act, whereby Section 28-A of the Act was inserted in the Act. By referring to the said objects and

reasons, it was emphasized on the part of the petitioner - Corporation before this Court that the said provision was meant for inarticulate and poor people, who could not move the reference Court under Section 18 of the Act, as compared to affluent land owners and it was to remove inequality between the claimants that the said provision was inserted. It was submitted that when the respondent - claimants in the present case had moved the reference Court under Section 18 of the Act, to permit them to maintain their applications under Section 28-A of the Act, would go against the very objects and reasons of insertion of the said provision.

14. In the case of **Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda Vs. Union of India and others** (supra), it was again emphasized that Section 28-A of the said Act was a provision available to those who had failed to make a reference applications under Section 18 of the said Act. In the case of **Kendriya Karmachari Sehkari Grah Nirman Samiti Limited, Noida Vs. State of Uttar Pradesh and Another** (supra), the Hon'ble Supreme Court again placed emphasis on the objects and reasons for insertion of Section 28-A of the

said Act, stating that it was meant for “little Indians”, who could not move reference applications under Section 18 of the said Act, due to poverty and ignorance. In the case of **State of Orissa and Others Vs. Chitrasen Bhoi** (supra), the Hon’ble Supreme Court reiterated that a person, who preferred an application under Section 18 of the Act cannot maintain an application under Section 28-A of the Act. The learned counsel for the petitioner – Corporation placed much emphasis on the said judgments while contending that the impugned orders deserved to be set aside.

15. On the other hand, a perusal of the judgments on which reliance was placed by the learned counsel for the respondent – claimants shows that the Hon’ble Supreme Court and following the law laid down, this Court, have emphasized on the fact that mere filing of applications under Section 18 of the Act, ought not to deprive land owners like the respondent – claimants herein, to maintain applications under Section 28-A of the said Act, particularly when the reference applications stood rejected for technical reasons or when such reference applications did not run their full course

and they were never answered on merits by the reference Court.

16. In the Constitution Bench judgment in the case of **Union of India and Another Vs. Hansoli Devi and Others** (supra), the Hon'ble Supreme Court considered the question as to whether a claimant whose application under Section 18 of the said Act was dismissed on the ground of delay or any another technical ground, was entitled to maintain an application under Section 28-A of the Act. While answering the question in favour of the claimants, the Hon'ble Supreme Court in paragraph 9 held as follows:

“It is no doubt true that the object of Section 28-A of the Act was to confer a right of making a reference, (*sic* on one) who might have not made a reference earlier under Section 18 and, therefore, ordinarily when a person makes a reference under Section 18 but that was dismissed on the ground of delay, he would not get the right of Section 28-A of the Land Acquisition Act when some other person makes a reference and the reference is answered. But Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression “had not made an application to the Collector under Section 18” in Section 28-A of the Act. The aforesaid expression would mean that if the landowner has made an application for reference under Section 18 and that reference is entertained and answered. In other words, it may not be permissible for a landowner to make

a reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a higher amount. In fact, in *Pradeep Kumari Case* the three learned Judges, while enumerating the conditions to be satisfied, whereafter an application under Section 28-A can be moved, had categorically stated (SCC p. 743, para 10) “the person moving the application did not make an application to the Collector under Section 18”. The expression “did not make an application”, as observed by this Court would mean, did not make an effective application which had been entertained by making the reference and the reference was answered. When an application under Section 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application under Section 28-A cannot be denied. We, accordingly answer Question 1(a) by holding that the dismissal of an application seeking reference under Section 18 on the ground of delay would tantamount to not filing an application within the meaning of Section 28-A of the Land Acquisition Act, 1894.”

17. Thus, the Constitution Bench of the Hon’ble Supreme Court in the above quoted judgment, has placed emphasis on the fact that even if a reference application is moved under Section 18 of the said Act, unless it is entertained and answered, there would be no bar for the claimant to move an application under Section 28-A of the Act.

18. The aforesaid judgment of the Constitution Bench of the Hon'ble Supreme Court had taken into consideration the earlier judgment of a three Judge Bench of the Court in the case of **Union of India and Another Vs. Pradeep Kumari and Others** (supra), wherein, it was recorded that one of the conditions for maintaining an application under Section 28-A of the said Act was that such a claimant had not moved the reference Court under Section 18 of the said Act.

19. In the case of **V. Ramkrishna Rao Vs. Singareni Collieries Company Limited and Another** (supra), the Hon'ble Supreme Court held that insertion of Section 28-A of the said Act represented statutory embodiment of the doctrine of equality in matters relating to acquisition of land. It was further held that the said provision represented the determination of the legislature to ensure that the goal of equity enshrined in the preamble of the Constitution and Articles 38, 39 and 46 thereof was translated into reality. It was also noted in the said judgment that when a claimant moved an application under Section 28-A of the said Act, he could never get compensation higher than the one

payable to those who had sought reference under Section 18 of the Act.

20. In the case of **Narendra and others Vs. State of Uttar Pradesh and others** (supra), the Hon'ble Supreme Court emphasized that the whole purpose of the aforesaid Act was to pay fair and just compensation to the claimants. It was emphasized that a purposive interpretation of the provisions of the said Act was necessary to subserve the ends of justice, particularly when the cases of vulnerable groups were decided.

21. A Division Bench of this Court in the case of **Dagu Ganpat Kathe and others Vs. Special Land Acquisition Officer, Nashik and others** (supra) followed the dictum laid down in the above-mentioned Constitution Bench judgment of the Hon'ble Supreme Court in the case **Union of India and Another Vs. Hansoli Devi and Others** (supra), by holding that when a reference application under Section 18 of the Act filed by a claimant was dismissed on the ground of limitation, such a claimant could certainly maintain an application under Section 28-A of the Act. In the case of

Punja s/o Narayan Polade deceased through Lrs Vs. State of Maharashtra and another (supra), this Court categorically held that the bar of maintaining an application under Section 28-A of the said Act on the ground that a reference application under Section 18 thereof had been filed, would operate only when such a reference application had been effectively decided on the touch stone of the procedure prescribed under Sections 20, 21, 23 and 24 of the said Act, leading to an Award under Section 26 thereof. It was emphasized that the Award was in the form of a decree and that it was a formal expression of an adjudication conclusively determining the rights of the parties with regard to all or any of the matters in controversy. It was laid down that in the absence of an Award as understood under Section 26 of the Act, there could be no bar for the claimant to maintain an application under Section 28-A of the Act. In the said case, the reference application stood rejected on the ground that the father of the petitioner before the Court had failed to lead evidence in support of his claim. Even in such a situation, it was held that application under Section 28-A of the said Act was maintainable.

22. In the case of **Sk. Allauddin s/o Sk. Jilani Vs. The State of Maharashtra** (supra), the reference Court framed points on merits along with a point on the question of limitation. Upon considering the material on record, the reference Court in that case held that the reference application was barred by limitation and yet, it considered the entire evidence on record and rendered findings on the points pertaining to the merits of the reference also. Even in such a situation, although the reference Court had dealt with the matter on merits and recorded its findings thereon, this Court held that the application under Section 28-A of the said Act moved by the claimant was maintainable.

23. Thus, perusal of the judgments on which reliance has been placed by the learned counsel appearing for the rival parties would show that ordinarily when an application under Section 18 of the said Act is moved by a claimant, it could be a bar for such a claimant to move an application under Section 28-A of the said Act. But, at the same time, mere filing of a reference application under Section 18 of the said

Act cannot be said to be a bar under all circumstances for such a claimant to resort to the remedy of Section 28-A of the said Act. It is only when the reference application moved under Section 18 of the said Act runs its full course and stands effectively decided in the form of rendering of Award on merits under Section 26 of the said Act by the reference Court, that the claimants in such a situation, would be barred from moving an application under Section 28-A of the said Act. It cannot be said that merely because a reference application is moved by the claimant under Section 18 of the said Act, such a claimant cannot move an application under Section 28-A thereof at all. It is necessary that such a reference application is effectively answered by the reference Court, to dis-entitle such a claimant from moving an application under Section 28-A of the said Act.

24. Applying the aforesaid position of law to the facts of the present case, it becomes clear that there is no substance in the contentions raised on behalf of the petitioner - Corporation before this Court. There is no dispute about the fact that the respondent – claimants

did move reference applications under Section 18 of the said Act. But, it is also an admitted position that they unconditionally withdrew the said applications without any determination on merits of such reference applications and the claims made therein. The stage of leading evidence and consideration of factors to be applied under Sections 23 and 24 of the said Act for determination of compensation was never reached in the facts and circumstances of the present, thereby showing that the claims of the respondent – claimants were not considered and decided on merits and there were no Awards rendered under Section 26 of the said Act. These admitted facts clearly show that the respondent – claimants in the present case were certainly entitled to maintain their applications for re-determination of compensation under Section 28-A of the said Act. There can be no doubt about the fact that the limited relief the respondent – claimants could claim under Section 28-A of the said Act was grant of compensation at par with similarly situated claimants whose reference applications had been decided on merits by the reference Court.

25. In view of the above, this Court finds that there is no merit in the contentions raised on behalf of the petitioner-Corporation. Accordingly, the Writ Petitions are dismissed. There shall be no order as to costs. Rule is discharged.

JUDGE

MP Deshpande