

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8843 OF 2017
WITH WP/8844/2017 WITH WP/8845/2017 WITH WP/8846/2017
WITH WP/8847/2017

GODAVARI MARATHWADA IRRIGATION DEVELOPMENT
CORPORATION THROUGH THE EXECUTIVE ENGINEER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.S.G.Bhalerao, Advocate for the petitioner.
Mr.S.N.Morampalle, AGP for respondent Nos. 1 and 2.
Mr.V.D.Hon, Sr.Counsel i/b Mr.N.R.Jamdhade, Advocate for respondent
Nos. 3 to 6 in WP No.8843/2017 and for respondent Nos. 3 to 12 in
other writ petitions.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 18, 2022

PER COURT :

1. Heard learned Advocate Mr.Bhalerao for the petitioner and the
learned Senior Advocate Mr.Hon, appearing for the claimants in the five
writ petitions which are listed before this Court at Item No.921.

The learned Advocate for the petitioner has invited my attention
to a decision of the Apex Court in case of **New Okhla Industrial
Development Authority (NOIDA) Vs. Yunus and others in Civil Appeal
No.901/2022 dated 03/02/2022**, where the question which arose for

determination before the Apex Court is, whether the award passed by the Lokadalat u/s 20 of the Legal Services Authorities Act, 1987 can form a basis for re-determination of compensation as contemplated u/s 28-A of the Land Acquisition Act, 1894. The High Court had taken a view that such an award passed by the Lokadalat can form a foundation for exercising powers u/s 28-A of the Act.

2. Taking a note of the cleavage of opinion expressed by different High Courts on the said point and also on the consideration of the scheme of the Enactment under which the Lokadalats are created to discharge the function, a conclusion reached at is expressed in the following words :-

"48. An Award passed under Section 19 of the 1987 Act is a product of compromise. Sans compromise, the Lok Adalat loses jurisdiction. The matter goes back to the Court for adjudication. Pursuant to the compromise and the terms being reduced to writing with the approval of the parties it assumes the garb of an Award which in turn is again deemed to be a decree without anything more. We would think that it may not be legislative intention to treat such an award passed under Section 19 of the 1987 Act to be equivalent to an award of the Court which is defined in the Act as already noted by us and made under Part III of the Act. An award of

the Court in Section 28A is also treated as a decree. Such an Award becomes executable. It is also appealable. Part III of the Act contains a definite scheme which necessarily involves adjudication by the Court and arriving at the compensation. It is this which can form the basis for any others pressing claim under the same notification by invoking Section 28A. We cannot be entirely oblivious to the prospect of an 'unholy' compromise in a matter of this nature forming the basis for re-determination as a matter of right given under Section 28A.

49. We would, therefore, approve the view taken by the Bombay High Court in Umadevi Rajkumar Jeure (supra) and the learned single Judge of the Karnataka High Court in Vasudave (supra) and hold that an Award passed under Section (20) of the 1987 Act by the Lok Adalat cannot be the basis for invoking Section 28A.

50. As far as the argument of the respondents that the award dated 12.3.2016 can be treated as the order of the Court within the meaning of Section 18 of the Act read with Section 28A of the Act, we are of the view such an argument cannot be accepted. Unlike in the facts of the case decided by the Andhra Pradesh High Court reported in 2003 SCC ONLINE AP 21 (supra) which has been distinguished by the Bombay High Court in Umadevi (supra) on the score that in the case from Andhra Pradesh, the Reference Court has passed an award

based on a compromise arrived at between the parties before the Lok Adalat, in this case, the award dated 12.3.2016 is the award passed by the Lok Adalat. This is clear from the judgment of the High Court, the case of the parties before it and the terms of the award dated 12.3.2016. In other words, this is a case whereas as noted in the impugned judgment LAR 6 of 2006 (Fateh Mohammaed v. State of U.P) was referred to the Lok Adalat, that is the Additional District and Sessions Judge/FTC No.2, Gautam Buddh Nagar, U.P. Thus, the proceedings dated 12.3.2016 which is relied on by the respondents is indeed an award which is passed under Section 20 of the 1987 Act though it may appear to be an order. In other words, the Additional District & Sessions Judge was acting as Lok Adalat. This is so even if the decision of the High Court in Mangu Ram was relied upon by the parties and it is also referred to in the award. He was not disposing of the case as 'the Court' within the meaning of Act. It also cannot be treated as an award of the Court within the meaning of Section 20 and 21 of the '1987 Act.'

3. The ratio flowing from the authoritative pronouncements of the Apex Court has settled the position of Law to the effect that an award which is passed u/s 20 of the Legal Services Authorities Act, though it may appear to be an order, cannot be treated as an award of the Court within the meaning of Section 20 and 21 of the Act of 1987 and an

application u/s 28-A of the Land Acquisition Act cannot be maintained on the basis of an award passed by the Lokadalat u/s 20 of the Legal Services Authorities Act.

4. The learned Advocate for the petitioner relying upon the aforesaid authoritative pronouncement, submit that if the impugned order passed by the Deputy Collector dated 28/06/2016 is perused, its basis is the award passed by the Lokadalat on 29/11/2009 under which a compromise has been reached and the compensation awarded has been enhanced to 2,10,000/- per hectre that is Rs.2,100/- per acre. The said award of the Lokadalat dated 29/11/2009 is the basis of enhancing the compensation in favour of the claimants, at the hands of the Deputy Collector in the impugned judgment.

The learned Advocate for the petitioner is justified in submitting that in the wake of the Law being clarified by the Apex court in case of New Okhla (supra), the award passed by the Lokadalat, which record a compromise between the parties, can no more be sustained as a basis for passing an order u/s 28-A of the Act.

5. The learned Senior Counsel is in agreement with his submission,

on reading of the authoritative pronouncement of the Apex Court in case of New Okhla (supra).

The learned Senior Counsel Mr.Hon would however submit that this shall not preclude the claimants from staking their claim on the basis of other orders passed in reference u/s 18 of the Act, if they are available and he has instructions to make a statement that there are various such orders , from which the claimants can reap benefit.

Reserving the aforesaid liberty in favour of the claimants who stake their claim on the basis of such orders, the impugned order deserve to be quashed and set aside since its sole base is the award passed by the Lokadalat, which as per the authoritative pronouncement of the Hon'ble Apex Court is no more an order, which would be taken into account for re-determining of the compensation u/s 28-A of the Land Acquisition Act.

6. Reserving the said liberty in the claimants to approach the Collector, seeking enhancement of the compensation on the basis of the orders enhancing the compensation in respect of other claimants passed u/s 8 by instituting reference proceedings, the claimants are entitled to derive benefit from the said order and the Collector is directed to

adjudicate their claim if so preferred by taking into consideration the objection of limitation which is likely to be raised and the same being considered in the wake of the fact that when the Collector decided the application filed by the claimants u/s 28-A and which order is now quashed and set aside, was filed within the period of limitation, provided it fall within the period of limitation prescribed.

The Collector shall adopt a liberal approach when the claimants approach him on setting aside the impugned order passed by him and by placing reliance on some other orders in respect of the claimants who have been already awarded the compensation u/s 18 and on the basis of which, the claimants seek to invoke the power vested in the Collector u/s 28-A of the L.A. Act.

7. The learned Advocate for the Acquiring Body has invited my attention to an order passed by the Division Bench of this Court on 20/09/2019 in Contempt Petition filed by the claimants who are respondents in the writ petition, when the claimants prayed for withdrawal of the amount deposited by the Acquiring Body in the Court on 20/09/2019. The order dated 20/09/2019, specifically record as under :-

"4. Be that as it may, as the statement made on behalf of the learned counsel for the applicants that the chart placed on record alongwith the application reflects the names of applicants, the area acquired etc. and is admitted by learned counsel for the Acquiring body, in our opinion the ends of justice would be met by permitting the applicants to withdraw the amount of their respective shares from the amount deposited in this Court to the tune of Rs.6,62,97,822/-. An affidavit-in-reply is filed on behalf of respondent No.3- District Collector, Aurangabad. Copy of the Award under Section 28-A of the Land Acquisition Act is placed on record as a part of Annexure R-1. Thus, it would be appropriate to transfer the amount of Rs.6,62,97,822/- deposited in this Court by respondent No.5 to the District Collector, Aurangabad and the District Collector, Aurangabad to disburse the respective share of the applicants strictly as per the copy of Award under Section 28-A of the Land Acquisition Act showing the names of the applicants, their area etc.

5. The amount so disbursed by the Collector would be subject to final outcome of the writ petitions filed in this Court at the instance of Acquiring Body. The applicants will submit undertakings individually to the Collector to the above effect and also to make a statement in the undertakings that in case the Writ Petitions filed by the Acquiring Body are allowed, the applicants will have to return the amount back to the Acquiring Body with the interest at the rate of Rs.9% per annum. We further make it clear that the District Collector, Aurangabad to undertake this exercise of disbursing the amount to the applicants as early as

possible and not later than two weeks from the date of this order. The District Collector, Aurangabad may authorise and depute any Officer, not below the rank of Deputy Collector (SLAO) to complete this exercise as per the directions of this Court."

8. The learned Advocate for the Acquiring Body submit that the disbursement of the amount by the Collector was directed, subject to the undertaking of the claimants that they will return the amount back to the Acquiring Body with interest @ 9% p.a. if the petition filed by the Acquiring Body succeeds.

In the wake of the said undertaking, since the writ petition filed by the Acquiring Body is allowed with the aforesaid observations, it is incumbent on the claimants to bring back the amount before the Collector as per the undertaking. The Collector shall ensure the compliance of the said order before it entertain the applications filed by the individual claimants in light of the liberty granted above.

(BHARATI H. DANGRE, J.)