

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

WRIT PETITION NO.9060 OF 2021

Sindhubai Maruti Darnule,
Age : 60 years, Occu : Household
R/o Deoni, Taluka Deoni,
Dist. Latur

... **PETITIONER**

VERSUS

- 1] The District Collector,
Collector Office, Latur
- 2] The Special Land Acquisition Officer,
Sub-Divisional Officer, Nilanga.
- 3] The Executive Engineer,
Minor Irrigation Division,
Old Ausa Road, Latur.

... **RESPONDENTS**

...

Mr. A.D. Sonkawade, Advocate for petitioner
Mr. S.B. Yawalkar, AGP for the respondent Nos.1 and 2.
Mr. Prashant S. Shinde Advocate for the respondent No. 3

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AND

WRIT PETITION NO.9084 OF 2021

Babu @ Shivram Sidram Mhetre,
Age : 56 years, Occu : Agriculture
R/o Deoni, Taluka Deoni,
Dist. Latur.

... **PETITIONER**

VERSUS

- 1] The District Collector,
Collector Office, Latur
- 2] The Special Land Acquisition Officer,
Sub-Divisional Officer, Nilanga.
- 3] The Executive Engineer,
Minor Irrigation Division,
Old Ausa Road, Latur.

... **RESPONDENTS**

...

Mr. A.D. Sonkawade, Advocate for petitioner
 Ms. R.P. Gour, AGP for respondent Nos.1 and 2
 Mr. Mahesh C. Swami, AGP for the respondent No.3.

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**CORAM : MANGESH S. PATIL &
 SANDEEP V. MARNE, JJ.**

DATE : 15.09.2022

ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. The learned AGP and the learned advocate for the acquiring bodies waive service. At the joint request of the parties the matters are heard finally at the admission stage.

2. Though the petitioners are different, they are seeking the same relief in similar set of facts and both the petitions can conveniently be disposed of by this common judgment and order.

3. The petitioners are aggrieved by the order passed by the Special Land Acquisition Officer, Nilanga, whereby their applications preferred under Section 28A of the Land Acquisition Act, 1894 (herein after the Act) have been dismissed in following set of facts :

- i) According to the petitioners their respective lands survey Nos.213 and 222 to the extent of 46 Are and 23 Are respectively of Deoni Tq. Deoni, District Latur were acquired for the Devarjan Medium Project Right Canal. An award was declared under Section 11 of the Act and they were awarded compensation @ Rs.55,000/- per hectare.

Though the petitioners had not preferred any reference under Section 18 of the Act, some of the agriculturist from the same award had preferred reference under that provision. The reference court awarded the compensation by the judgment and award dated 20.12.2018 and increased the compensation and made it payable @ Rs.1700/- per sq. foot. The petitioners claiming to be similarly situated preferred applications under Section 28A which have been turned down by the orders under challenge.

- ii) As was cursorily observed while issuing the notices before admission in the order dated 31.08.2021 an issue regarding availability of alternate and efficacious remedy as contemplated under Sub-section 3 of Section 28A of the Act was raised. We have therefore, heard both the sides on the issue of maintainability of writ petitions.

4. The learned advocate Mr. Sonkawade would submit that in view of the peculiar wording of Sub-Section 3 of Section 28A it is only when a Collector passes an award under Sub-Section 2, any person who is not satisfied with the award has to take recourse to the procedure prescribed under Sub-Section 3 of requesting the Collector for making a reference for the determination by the Court and the provisions of Section 18 to 28 would then apply. He would submit that by the impugned order, petitioners' applications under Section 28A have been outrightly rejected and the order has not resulted in passing of any award and consequently there is no question of Petitioners taking steps under Sub-Section 3. He would submit

that while exercising the power under Section 28A the Collector does not have discretionary powers and he is bound to follow the decision of the reference court.

5. Mr. Sonkawade would place reliance on following decisions :

- a. **Shri Bapurao Balkaram Goyekar Vs. The State of Maharashtra & Ors.;**
2017 SCC OnLine Bom 955
- b. **Annasaheb Tulsiram Kharat Vs. State of Maharashtra and Ors.;**
2017(3) Mh.L.J.687
- c. **Shri Dhondiba Ambadas Shinde Vs. The State of Maharashtra & Ors.;**
2016 SCC OnLine Bom 14660
- d. **Dasu Manikrao Shingate Vs. State of Maharashtra and Ors.;**
2001(4)Mh.L.J. 942

6. Per contra, learned AGP and the learned advocates for the acquiring body would submit that though the word ‘award’ has been used in Sub-Section 3 of Section 28A, it would include even the order refusing to pass an award on merits. Hypothetically, the Collector being empowered to reassess the compensation in exercise of the power under Section 28A, rejection of such an application is a just possibility. It cannot be contemplated that the legislature wanted to provide a remedy of reference only if the Collector had chosen to pass the award and not otherwise.

7. We have considered the rival submissions and the papers.

Section 28A of the Act reads as under :

“28A. (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, required 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."

8. Section 28A is a part of Part III of the Act which contains the provisions regarding 'Reference to Court and procedure thereon' and is divided in Sections 18 to 28A. Section 28A was brought into statute book by way of insertion in the year 1984. As can be gathered, this provision takes care of the situations where the court allows reference and awards compensation in excess of the amount awarded by the Collector under Section 11. All the persons who are interested in other lands covered by the same notification under Section 4(1) and who are also aggrieved by the award passed under Section 11 can approach the Collector with a written application even if they have not preferred any reference under Section 18, on the basis of the award passed by the reference court and call upon the Collector to redetermine the amount of compensation in tune with the

award passed by the court.

9. Sub-Section 2 of Section 28A then lays down the steps to be taken by the Collector to whom an application is submitted under Sub-Section 1. He is supposed to conduct an inquiry by giving an opportunity to all the persons interested and of being heard and to make an award redetermining the amount of compensation.

10. The peculiar wording of Sub-Section 3 of Section 28A demonstrates that a person who is not ready to accept the award passed by the Collector under Sub-Section 2 of Section 28A can submit an application to the Collector seeking a reference to be made to the Court for determination of the compensation and thereafter the remaining provisions of Part III of the Act namely Sections 18 to 28 apply to such references as they apply to a reference under Section 18.

11. The whole dispute seems to occur because of the use of the word 'award' in the beginning of Sub-Section 3. The submission of the learned advocate Mr. Sonkawade that it is only if the Collector passes an award under Sub-Section 2 and awards lesser compensation than the one demanded by the person who has submitted an application under Sub-Section 1 that he can take further steps as contemplated under Sub-Section 3 requesting the Collector to make a reference to the court which thereafter is to be decided as if it is a reference under Section 18. He submits that the Collector in the peculiar circumstances in the matter in hand, could not have rejected the application but ought to have passed an award which he had

failed to and consequently the contingency contemplated under Sub-Section 3 does not arise.

12. Though attractive the submission may be, in our considered view, as has been rightly submitted by the learned AGP, Section 28A merely provides an opportunity to the Collector to undertake an exercise and to determine the compensation so that all the persons whose lands have been acquired under the same notification under Section 4(1) get equal treatment and are paid compensation at par, that too even if some of them have not preferred reference under Section 18 at some earlier point of time. But in the case like the one in the matter in hand, it is just possible that in an appropriate case the Collector may reject the applications preferred under Sub-Section 1 of Section 28A. One cannot comprehend that the legislature while providing a remedy to an aggrieved person to request the Collector to make a reference under Sub-Section 3, being not satisfied with the award passed by the Collector under Sub-Section 2, intended that even if the Collector refuses to pass the award under Sub-Section 2 the farmers are left in lurch.

13. Though we are not entering into the merits of the orders passed by the Collector in the matter in hand, *ex facie* he has rejected the applications and refused to enhance the compensation in respect of the petitioners lands by trying to distinguish the award passed by the court in case of an individual named therein by pointing out that the land of that person had obtained a permission of non-agricultural use whereas the

petitioners had failed to demonstrate that even their lands were converted to such non-agricultural use.

14. In view of such peculiar contingency, we need to resort to doctrine of purposive interpretation to meet such a contingency where instead of passing of an award under Section 2 of Section 28A the Collector rejects the application filed under Sub-Section 1 of Section 28A. In our considered view, any person who submits an application under Sub-Section 1 but is aggrieved by the order passed by the Collector thereon, be it an award under Sub-Section 2 or an order merely rejecting the application would have the remedy of resorting to Sub-Section 3 even if the wording of Sub-Section 3 purportedly demonstrates that it is only the ‘award’ which is susceptible to a challenge before the court. In other words, if a person aggrieved by determination of the compensation by the Collector under Sub-Section 2 of Section 28A can call upon the Collector to make a reference to the Court under Section 18, we see no reason why in a situation like the one in the matter in hand, the persons like the petitioners whose application is rejected instead of passing the award by the Collector should not resort to the same remedy of filing an application to the Collector and requesting him to make a reference to the court under Section 18.

15. The decisions cited by learned advocate Mr. Sonkawade are clearly distinguishable.

i. In the matter of **Shri Bapurao Balkaram Goyekar** (supra), apparently the Collector had refused to entertain the application filed under

Sub-Section 1 of 28A on the ground of limitation.

ii. In the matter of **Annasaheb Tulsiram Kharat** (supra) the reference court had rejected the reference on the ground of non-payment of court fees which is not the issue before us.

iii. In case of **Shri Dhondiba Ambadas Shinde** (supra) again, the application of the petitioner filed under Section 28A was rejected on the ground that his earlier application filed under Section 18 was rejected.

iv. In case of **Dasu Manikrao Shingate** (supra) the application filed under Section 28A was rejected merely on the ground of non-filing of a copy of the award of the reference court. We are afraid none of the above citations is relevant.

16. We, therefore, hold that the petitioners have an appropriate alternate remedy of submitting an application under Sub-Section 3 of Section 28A of the Act. We are therefore disposing of the Writ Petitions by keeping open an opportunity to the petitioners to resort to the appropriate remedy as discussed herein above. We have not expressed anything on the merits. Time spent in prosecuting the present writ petitions may be considered in the light of Section 14 of the Limitation Act, 1963.

17. The Rule is accordingly made absolute.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)