

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO. 6595 of 2013**

Ramesh s/o Bapurao Nikhade,  
Aged about 66 years,  
Occupation-Agriculturist,  
R/o. Turakmari, Post Satgaon, Tah. Hingna,  
District Nagpur.

..... **PETITIONER**

**...V E R S U S...**

1. State of Maharashtra,  
Through Collector, Nagpur.
2. Maharashtra Industrial Development Corporation,  
Lendra Park, Ramdaspath, Canal Road,  
Nagpur, through its Area Manager.
3. Special Land Acquisition Officer (General)  
Office of Collector, Nagpur.
4. Shri Sacchidanand Shikshan Sanstha,  
through its President-Dr. Baban Bauraoji Taywade,  
R/o.94/6, Ujwal Nagar, Wardha Road,  
Nagpur.
5. M/s. Manorama Construction,  
through its Proprietor-Smt. Rutuja Ramesh Tupkar,  
At 15/1, Hasanbag Road, Nandanwan,  
Nagpur-440 009.
6. Lokmat Karmachari Gruh Nirman Sahakari  
Sanstha Maryadit, through its President  
Lokmat Bhavan, Ramdaspath,  
Nagpur.

Petition is  
dismissed  
against R.No.5  
vide Registrar(J)  
order dated  
18.11.2015.

7. M/s. Sunil Hi-tech Engineers & Manufacturers  
Pvt. Ltd., through its Area Manager,  
Having office at 97, East High Court Road,  
Ramdaspath, Nagpur-440 010. .... **RESPONDENTS**

with  
**WRIT PETITION NO.6360 OF 2013**

Dilipkumar s/o Bapurao Nikhade,  
Aged about 50 years,  
Occupation-Agriculturist,  
R/o. Turakmari, Post Satgaon, Tah. Hingna,  
District Nagpur.

..... **PETITIONER**

**...VERSUS...**

1. State of Maharashtra,  
Through Collector, Nagpur.
2. Maharashtra Industrial Development Corporation,  
Lendra Park, Ramdaspath, Canal Road,  
Nagpur, through its Area Manager.
3. Special Land Acquisition Officer (General)  
Office of Collector, Nagpur.
4. Shri Sacchidanand Shikshan Sanstha,  
through its President-Dr. Baban Bauraoji Taywade,  
R/o.94/6, Ujwal Nagar, Wardha Road,  
Nagpur.
5. M/s. Manorama Construction,  
through its Proprietor-Smt. Rutuja Ramesh Tupkar,  
At 15/1, Hasanbag Road, Nandanwan,  
Nagpur-440 009.
6. Lokmat Karmachari Gruh Nirman Sahakari  
Sanstha Maryadit, through its President  
Lokmat Bhavan, Ramdaspath, Nagpur.

Petition is  
dismissed  
against R.No.5  
vide Regr.(J)  
order dated  
18.11.2015.

7. M/s. Sunil Hi-tech Engineers & Manufacturers  
Pvt. Ltd., through its Area Manager,  
Having office at 97, East High Court Road,  
Ramdaspath, Nagpur-440 010. .... **RESPONDENTS**

with  
**WRIT PETITION NO.6127 OF 2014**

1. Bapurao s/o Dasruji Nikhade (Dead),  
**Through Legal Representatives namely-**
- i Smt. Bainabai w/o Bapurao Nikhade,  
Aged about 75 years, Occupation-Nil.
  - ii Shri Uttamrao s/o Bapurao Nikhade,  
Aged about 58 years, Occupation-Agriculturist.
  - iii Shri Ramesh s/o Bapurao Nikhade,  
Aged about 56 years, Occupation-Agriculturist.
  - iv. Shri Ashok s/o Bapurao Nikhade,  
Aged about 65 years, Occupation-Agriculturist.
  - v. Shri Dilip s/o Bapurao Nikhade,  
Aged about 65 years, Occupation-Agriculturist.  
All are R/o Turakmari, PO. Butibori,  
Tahsil Hingna & District Nagpur.
  - vi. Sau.Kusum w/o Bhaskar Girhe (Dead)  
**through LRs.**
  - i) Rajnish Bhaskarrao Girhe,  
Aged about 46 years, Occupation-Private Business,
  - ii) Dinesh Bhaskarrao Girhe,  
Aged 43 years. Occupation-Private Business.
  - iii) Balraj Bhaskarrao Girhe,  
Aged about 43 years, Occupation-Private Business.  
  
All R/o. Bhagatsingh Ward, Gayatri Nagar,  
Multai, District Baitul (MP)
  - vii) Sau Nisha Baburao Nighot,  
Aged about 48 years, Occupation Nil,

R/o. Mozari (Gurukunj), Tq. Tiwsa,  
District Amravati.

**PETITIONERS**

**...V E R S U S...**

Petition is  
dismissed  
against  
R.Nos. 4 to 7  
vide Regr.(J)  
order dated  
18.12.2015.

1. State of Maharashtra,  
Through Collector, Nagpur.
2. Maharashtra Industrial Development Corporation,  
Lendra Park, Ramdaspath, Canal Road,  
Nagpur, through its Area Manager.
3. Special Land Acquisition Officer (General)  
Office of Collector, Nagpur.
4. Shri Sacchidanand Shikshan Sanstha,  
through its President-Dr. Baban Bauraoji Taywade,  
R/o.94/6, Ujwal Nagar, Wardha Road,  
Nagpur.
5. M/s. Manorama Construction,  
through its Proprietor-Smt. Rutuja Ramesh Tupkar,  
At 15/1, Hasanbag Road, Nandanwan,  
Nagpur-440 009.
6. Lokmat Karmachari Gruh Nirman Sahakari  
Sanstha Maryadit, through its President  
Lokmat Bhavan, Ramdaspath, Nagpur.
7. M/s. Sunil Hi-tech Engineers & Manufacturers  
Pvt. Ltd.  
Having office at 97, East High Court Road,  
Ramdaspath, Nagpur-440 010.

..... **RESPONDENTS**

with

**FIRST APPEAL NO.751 OF 1996**

Maharashtra Industrial Development Corporation  
through its Chief Executive Officer,  
9, Canal Road, Ramdaspath, Nagpur.  
Tahsil and District Nagpur

.... **APPELLANT**

**VERSUS**

1. The State of Maharashtra,  
Through its Special Land Acquisition Officer (General).  
Nagpur.
2. The Collector, Nagpur.
3. Chandrabhaga Co-operative Society Limited,  
Registration No.DRM/HSG/1058/84,  
Having its Registered Address at 97,  
Mahakalkar Corner, Ridge Road,  
Raghuji Nagar, Nagpur through its  
Chairman-Ajay Madhukarrao Mahakalkar. .... **RESPONDENTS**

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Shri R.G.Kavimandan, Advocate for petitioners in all Writ Petitions and respondent no.3 in F.A.No.751/1996.

Mrs. S.S.Jachak, Assistant Government Pleader for respondent nos. 1 & 3. in all Writ Petitions and for respondent nos. 1 and 2 in F.A.No.751/1996.

Shri M.M.Agnihotri, Advocate for respondent no.2 in all writ petitions and for appellant in F.A.No.751/1996

Shri P.B.Patil, Advocate for respondent no.4 in Writ Petition No.6595/2013 and Writ Petition No.6360/2013.

Shri A.S.Deshpande, Advocate for respondent no.6 in Writ Petition No.6595/13 and Writ Petition No.6360/2013.

Shri Yash Maheshwari, Advocate with Shri S.V.Bhutada, Advocate for respondent no.7 in Writ Petition No.6595/13 and Writ Petition No.6360/2013.

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**CORAM :- A.S.CHANDURKAR AND M.W. CHANDWANI, JJ.**

**ARGUMENTS WERE HEARD ON 11/10/2022**

**JUDGMENT IS PRONOUNCED ON 23/12/2022**

**ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)**

In Writ Petition Nos. 6595 & 6360 of 2013 & 6127 of 2014 a common challenge is raised to the award passed by the Special Land Acquisition Officer,

Nagpur dated 26<sup>th</sup> March,1992 granting compensation towards acquisition of various lands from village Turakmari, Taluka Hingna, District Nagpur. According to the petitioners, since the said award dated 26<sup>th</sup> March,1992 was not signed by the Special Land Acquisition Officer, it has no force in the law and is thus void. In the alternate, enhancement in the amount of compensation determined in the said award is sought by urging that determination of the amount of compensation by the Reference Court makes such adjudication final in view of Section 34(2) of the Maharashtra Industrial Development Act, 1961 (for short, the Act of 1961) and no appeal therefrom is maintainable. The petitioners thus seek to invoke Articles 226 and 227 of the Constitution of India for enhancement in the amount of compensation from what has been granted by the Reference Court.

First Appeal No.751 of 1996 has been preferred by the Maharashtra Industrial Development Corporation (for short, the MIDC) challenging the judgment and decree passed in L.A.C. No.11 of 1993 dated 25<sup>th</sup> September, 1996. When the said appeal was being heard by learned Single Judge, the claimant-respondent no.3 raised an objection to the maintainability of the appeal under Section 96 of the Code of Civil Procedure, 1908 (for short, the Code) by urging that the claim before the Reference Court was valued at Rs.50 Lakhs and as per pecuniary jurisdiction conferred on the District Court, the appeal filed under Section 96 of the Code would lie before the District Court and not this Court. Since the admission of the aforesaid writ petitions was brought to the notice of the learned Single Judge, it was directed by the order dated 13<sup>th</sup> October, 2016

that the First Appeal be heard alongwith these writ petitions. It is in this manner that the present proceedings have been heard and are being decided together.

2. For the sake of convenience, the facts in Writ Petition No.6595 of 2013 are being referred to. Field bearing Survey No.67 admeasuring 3 Hectares 24 Ares situated at Mouza Turakmari was the subject matter of acquisition under the provisions of the Act 1961. Notification under Section 31(1) of the Act of 1961 was published on 17<sup>th</sup> October 1988 and notice under Section 32(2) of the Act of 1961 came to be issued on 16<sup>th</sup> December, 1988. The petitioner-land owner raised his objection to the said notice on 16<sup>th</sup> January, 1989. Thereafter on 22<sup>nd</sup> February, 1989, Notification under Section 32(1) of the Act of 1961 came to be issued. Since the objections raised by various land owners were turned down, that adjudication was the subject matter of challenge in Writ Petition No.559 of 1991 alongwith other writ petitions. The Division Bench by its judgment dated 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> October, 1991 dismissed all the writ petitions paving the way of passing of the final award. On 26<sup>th</sup> March, 1992 the Special Land Acquisition Officer passed his award. The land owner thereafter filed reference proceedings under Section 34 of the Act of 1961 seeking enhancement in the amount of compensation. The parties led evidence before the Reference Court and ultimately on 31<sup>st</sup> December, 2012 the reference proceedings were decided by directing enhancement in the amount of compensation from what was determined by the Special Land Acquisition Officer. The record indicates that the MIDC being

aggrieved by the said judgment has preferred First Appeal No.822 of 2014 (*Maharashtra Industrial Development Corporation, Nagpur vs. Ramesh Bapuraoji Nikhade and others*) which is stated to be pending.

3. According to the land owner on 2<sup>nd</sup> March, 2010 he got information of the fact that the award dated 26<sup>th</sup> March, 1992 had not been signed by the Special Land Acquisition Officer. This fact was sought to be raised before the Reference Court. According to the land owner, he expected that the said aspect would be taken into consideration and the proceedings would be again remanded to the Special Land Acquisition Officer for passing a fresh award. However, since cognizance of the said aspect was not taken by the Reference Court, the land owner has sought to challenge the award as passed to be void for not being signed by the Special Land Acquisition Officer.

4. Shri R.G.Kavimandan, learned counsel for the petitioner-land owner raised two fold contentions:

(a) The award passed by the Special Land Acquisition Officer not having been signed, it was a nullity in the eyes of law and thus had no legal effect. Since the award itself was not signed, it could not be said to be a complete award so as to result in divesting the land owner of his land pursuant to such acquisition. The notice of the award was not served on the petitioner as required by law and therefore there was no occasion for the petitioner to have knowledge of the fact that the award was not signed. Referring to the

decision in *Kaliyappan vs. State of Kerala [AIR 1989 SC 239]*, it was submitted that the notice of the award was required to be served on the land owner and the same was mandatory. Knowledge of the fact that the award was not signed was received only on 2<sup>nd</sup> March, 2010 when the aforesaid information was provided in response to the demand for supply of certified copy of the said award. After getting such knowledge, the challenge to the award was being raised. In absence of any valid award being passed, the rights of the land owner could not be taken away and he could not be deprived of his land.

(b) No appeal challenging the judgment of the Reference Court under Section 34(1) of the Act of 1961 was maintainable in view of the provisions of Section 34(2) of the Act of 1961 which made the decision of the Court on reference under Section 34(1) final. There was no reference made to Part VIII of the Land Acquisition Act, 1894 (for short, the Act of 1894) in Section 34(1) of the Act of 1961. Consequently the applicability of Section 54 of the Act of 1894 which was in Part VIII of the Act of 1894 stood excluded and thus the decision of the Reference Court was treated to be final. Since the Act of 1961 was a special statute and the remedy of appeal having been taken away by Section 34(2) thereof, no appeal challenging the judgment of the Reference Court was maintainable. Hence a writ petition under Articles 226 and 227 of the Constitution of India was the only remedy available for an aggrieved party to challenge the

adjudication by the Reference Court. It was submitted that the earlier decisions of the Division Bench of this Court in *State of Maharashtra and another vs. Chandrakant @ Pomaji Vasudev Somshetti (since deceased by LRs) and others* [1991 Mh.L.J. 392] and *State of Maharashtra and another vs. Keru Baban Avhad* [2008(6) Mh.L.J. 766] holding an appeal to be maintainable could not be said to be laying down correct law. On this premise, it was submitted that the writ petitions were maintainable for raising challenge to the judgment of the Reference Court. The learned counsel relied upon the decisions in *Deep Chand and others Vs. Land Acquisition Officer and others* [AIR 1994 SC 1901], *Fuerst Day Lawson Ltd. vs. Jindal Exports Ltd.* [AIR 11 SC 2649], *South Asia Industries (P) Ltd. vs. S.B.Sarup Singh and others* [AIR 1965 SC 1442] and *Gajanan Devidas Wankhare and another vs. Mohammad Jamil Mohammad Amad and another* [2017(1) Mh.L.J. 660] in that regard.

Without prejudice to the aforesaid, it was submitted that if it is held that an appeal under Section 34(2) of the Act of 1961 read with Section 96 of the Code was maintainable, then such appeal would lie before the Court based on the valuation of the claim. In other words, subject to pecuniary jurisdiction such appeal could be entertained by the concerned Court which could either be the District Court or this Court. In support of this submission, the learned counsel placed reliance on the decision in *Aundal Ammal vs. Sadasivan Pillai* [AIR 1987 SC 203]. It was thus submitted that the prayers made in the writ petitions were

liable to be granted.

5. Shri M.M.Agnihotri, learned counsel appearing for the MIDC opposed the aforesaid submissions. In reply to contention (a), it was submitted that such challenge should not be permitted to be raised at the behest of the land owner for the reason that the same was highly belated. Despite getting knowledge of the fact on 2<sup>nd</sup> March, 2010 that the award was not signed, no steps were taken by the land owner to immediately challenge the award. The land owner in fact acquiesced to the said position and continued prosecution of the reference proceedings. As a result of passage of time in raising challenge to the award various third-party rights had been created. The land acquired was located in a five star industrial zone and had been allotted to various allottees including the respondent nos. 4 to 7. The rights acquired in their favour could not be now disturbed. The writ petitions were filed only on 10<sup>th</sup> September, 2013 and thereafter without giving any explanation for the delay in raising such challenge.

It was then submitted that non-signing of the award by the Special Land Acquisition Officer would not vitiate the same for the reason that the award was only an offer made to the land owner indicating the compensation being awarded for acquiring the lands. The learned counsel placed reliance on the decision in *Special Land Acquisition Officer vs. Trustees of the Will of A.H.Wadia [1956(58) BLR 766]* to substantiate his submissions. The vesting of the land in the MIDC had taken place on the publication of notice under Section 32(1) of the

Act of 1961 as stipulated by Section 32(4) of the Act of 1961. The land having vested in the MIDC nothing much would turn on the fact that the award was not signed. An alternate award could always be passed by the Special Land Acquisition Officer. In that regard the learned counsel placed reliance on the decision in *M.Nagabhushana vs. State of Karnataka and ors.* [**AIR 2011 SC 1113**].

As regards contention (b), it was submitted that maintainability of an appeal for challenging the judgment of the Reference Court was an issue that was decided by this Court as far back as on 7<sup>th</sup> December, 1990 in the case of *Chandrakant Somshetti* (supra). The said decision was considered and followed by another Division Bench in *Keru Baban Avhad* (supra). The submissions made herein had been considered by the Courts and it was categorically held that an appeal against the judgment of the Reference Court was maintainable under Section 96 of the Code. The land owner had not demonstrated as to how the aforesaid two decisions did not consider the said question correctly. It was thus submitted that the judgment of the Reference Court could be challenged by filing an appeal under Section 96 of the Code.

On the aspect of pecuniary jurisdiction to entertain such appeal it was submitted that an appeal under Section 96 of the Code challenging the judgment of the Reference Court would lie only before this Court and not on the basis of pecuniary jurisdiction of the District Court. Reference in that regard was made to Section 7 of the Maharashtra Civil Courts Act, 1869 by urging that the said provisions were applicable only to suits and appeals arising therefrom. That

analogy could not be applied to a judgment delivered by the Court while deciding reference proceedings. It was thus submitted that the contentions raised by the land owner had no merit and the same were liable to be turned down. The learned counsel placed reliance on the decisions in *Behari Kunj Sahkari Awas Samiti & another vs. State of U.P. & others* [(1997) 7 SCC 37] and *State of Orissa and others vs. Commissioner of Land Records and Settlement, Cuttack and others* [(1998) 7 SCC 162] to substantiate his submissions.

6. The contentions raised by the learned counsel for the land owner were also opposed by the learned counsel appearing for the allottees of the land. While supporting the submissions made on behalf of the MIDC, Shri P.B.Patil, learned counsel appearing for the respondent no.4 referred to provisions of Section 12 A of the Act of 1894 to urge that an award as passed could always be corrected by having resort to the said provisions. Since the land in question had already vested in the MIDC, the right of the land owner to seek its restoration did not arise. The land was allotted to the respondent no.4 for the purpose connected to its activities. The learned counsel referred to the decision in *Ajodhya Bhagat and others vs. The State of Bihar and others* [(1974) 2 SCC 501] to urge that as the land owner was guilty of delay and laches in raising challenge to the passing of the award, no relief could be granted to him.

Shri A.S.Deshpande, learned counsel appearing for the respondent no.6 also supported the submissions made on behalf of the MIDC. He submitted

that the land was allotted for setting up residential accommodation for its employees engaged in the industry run by the said respondent.

Shri Yash Maheshwari, learned counsel appearing for the respondent no.7 in addition, referred to the decision in *Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. vs. Allahabad Vikas Pradhikaran and another* [**AIR 2003 SC 2302**] to urge that the jurisdiction of the Reference Court was limited and it was required to decide only the aspect of sufficiency of compensation and not any other matter that was not referred to it. The learned counsel submitted that the land in question had been allotted to the respondent no.7 for a purpose that was related to its industrial activity.

Ms. S.S.Jachak, learned Assistant Government Pleader for the respondent nos. 1 and 3 referred to the affidavit in reply filed on record and opposed the aforesaid submissions. She submitted that non-signing of the award was not at all fatal to the acquisition of the land in question and the land owner was not entitled to the relief as prayed for based on such contention. The land owner having thereafter filed reference, he was precluded from challenging the award on that count. The allotment of land in favour of the respondent nos. 4 to 7 was in accordance with law and such allotment was not liable to be re-opened at the behest of the petitioners.

7. We have heard the learned counsel for the parties at length and we have perused the documents placed on record. We have also given due

consideration to the rival submissions.

Insofar as the challenge raised to the maintainability of the writ petitions on the ground that the adjudication of the reference proceedings under Section 34(2) of the Act of 1961 had been given finality and the remedy of appeal was not provided, we find that this challenge cannot succeed. Two decisions of the Division Benches of this Court in *Chandrakant Somshetti* and *Keru Baban Avhad* (supra) have in clear terms held that the decision of the Court under Section 34(2) of the Act of 1961 is in the nature of a decree under the Code and it is subject to appeal as under Section 54 of the Act of 1894 read with Section 96 of the Code to this Court. We may only refer to the following observations initially in the decision in *Chandrakant Somshetti* (supra). In paragraph 6 it has been observed as under:

*“6. Reference is required to be made to sub-section (2) of Section 34 which provides that the decision of the Court on such reference, and subject only to such decision, the decision of the Collector determining the amount of the compensation shall be final. It was suggested that sub-section (2) of Section 34 makes the decision of the District Court on reference final and, therefore, appeal is not permissible against the said decision. It is not possible to accede to the submission. The State Legislature by substituting sub-section (1) of Section 34 of the Act made its intention clear that the provisions of part III of the Land Acquisition Act shall mutatis mutandis apply to the proceedings of reference to the District Court under sub-section (1) of Section 34. The State Legislature was fully conscious that the decision of the Court would be a decree under the Code of Civil Procedure and the grounds for the award a judgment under the Code. Once the award becomes a decree and the grounds become a judgment, then such*

*award or judgment would be appealable under Section 96 of the Code of Civil Procedure, if delivered by a District Court and under clause 15 of the Letters Patent, if delivered by a single Judge of the High Court. The reference under sub-section (1) of Section 34 of the Act is to be made to the "Court" as defined in the Land Acquisition Act and that means a principal Civil Court of original jurisdiction. In our judgment, the expression "decision of the Court" under sub-section (2) of Section 34 of the Act cannot be restricted only to the principal Civil Court of original jurisdiction, but extended to the decision of the Court in accordance with the hierarchy of Courts. The appeal against the decree or judgment of the principal Civil Court of original jurisdiction is nothing but a continuation of proceedings commenced by reference to the original Court. The appeal being continuity of the original proceedings, the expression "decision of the Court" on such reference under sub-section (2) of Section 34 brings within its sweep not only the decision of the District Court but also the decision of the High Court in appeal and further the decision of the Supreme Court. The State Legislature in its wisdom retained the provisions of sub-section (2) of Section 34 after substituting sub-section (1) and thereby made it clear that the expression "decision of the Court" on such reference should not be construed in an artificial manner so as to prevent either the claimant or the State Government from filing an appeal to the High Court. In our judgment, sub-section (2) only provides that the decision of the Court on such reference whether by the trial Court or by the appellate Court or by the Supreme Court shall be conclusive and shall not be questioned in any other forum by filing any other proceedings. This construction would subserve the intent of the Legislature and would advance the cause of justice. We are conscious that the right to an appeal is a creation of statute, but on a plain reading of the provisions of sub-section (2) of Section 26 of the Land Acquisition Act and the provisions of Section 34 of the Act, it is clear that the decision of the District Court is subject to an appeal to the High Court and further to the Supreme Court.*

*Accordingly, we hold that the impugned judgment of the Assistant Judge is open to an appeal and the writ petitions filed by the State Government and the claimants are not maintainable. Mr. Sawant, learned counsel appearing for the Government, and Mr. Abhyankar, Mr. Bhonsale and other counsel appearing on behalf of various claimants, seek permission to convert the writ petitions into appeals. Permission granted on the counsel giving an undertaking to pay the requisite Court-fees within a period of four weeks from today. Mr. Mengane, learned counsel appearing for the petitioner in Writ Petition No. 1023 of 1984 sought permission to withdraw the petition and that permission being granted, conversion is not sought in that matter.”*

This very question was considered by another Division Bench in *Keru Baban Avhad* (supra). After referring to the decision of *Chandrakant Somshetti* (supra), it was held in paragraphs 9 and 11 as under:

*“9. It cannot be disputed that the order and judgment made under Section 34 of the Act would be a decree under the Code of Civil Procedure and as such, would be appealable. The concept of finality stated in Section 34 has to be given a limited meaning. These provisions are incapable of wiping out a remedy of appeal against the decree under the provisions of Section 96 of the Civil Procedure Code. Even the judgment of the Supreme Court in the case of Maruti Udyog Ltd. (supra) does not lay down any principle or a statement of law that appeal against such orders is impermissible. In fact, as far as this court is concerned, this question is no more res integra and has been squarely answered by Division Bench of this court in the case of State of Maharashtra and anr v. Chandrakant @ Pomaji Vasudev Somshetti (since deceased by LRs) and others”*

*“11. In view of the above enunciated principle of law which leaves no doubt that the appeal is maintainable in the normal course under the provisions of the Civil Procedure Code and we*

*have no hesitation in rejecting the contentions raised by the respondents.”*

8. From the aforesaid two decisions, it becomes crystal clear that this Court has held that the adjudication by the Court under Section 34(2) of the Act of 1961 is in the nature of a decree passed under the Code and is subject to appeal before this Court. We do not find any reason whatsoever to take a different view of the matter. It has not been demonstrated as to how the legal position interpreted and laid down in the aforesaid two decisions requires re-consideration. We are in complete agreement with the aforesaid conclusions. Hence the challenge as raised in that regard is liable to be turned down. It is held that a writ petition under Articles 226 and 227 of the Constitution of India for challenging an award passed by the Court under Section 34(2) of the Act of 1961 is not maintainable as such adjudication is subject to appeal under Section 96 of the Code before this Court. Enhancement in the amount of compensation cannot be sought by preferring such a writ petition.

9. Coming to the challenge based on the submission that the award dated 26<sup>th</sup> March, 1992 was not signed by the Special Land Acquisition Officer, it is seen that undisputedly the petitioner got knowledge of the same on 2<sup>nd</sup> March, 2010. This fact is evident from the deposition of the land owner in the reference proceedings. The said communication is at Exhibit 50 of the reference proceedings. According to the land owner this aspect was sought to be raised in

the reference proceedings but no cognizance thereof was taken. We however find that the learned counsel for the respondent no.7 is justified in placing reliance on the decision in *Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd.*(supra) wherein it has been held in clear terms that the Reference Court cannot widen the scope of its jurisdiction or decide matters that are not referred to it. In reference proceedings the Court is concerned only with the quantum of compensation determined by the Special Land Acquisition Officer. Therefore, there was no justification on the part of the land owner to raise this aspect in the reference proceedings. It is further seen that despite getting knowledge of this fact on 2<sup>nd</sup> March, 2010, Writ Petition Nos.6595 of 2013 and 6360 of 2013 have been filed on 10<sup>th</sup> September, 2013 while Writ Petition No.6127 of 2014 has been filed on 29<sup>th</sup> September, 2014 wherein challenge to the award on this ground has been raised. There is no explanation for the time taken to raise such challenge after a lapse of almost three years despite being made aware of the fact that the award was not signed. Yet another factor that cannot be ignored is that in the meanwhile, the MIDC had allotted the lands acquired by it to various beneficiaries who are respondent nos. 4 to 7. These allottees have undertaken various activities pursuant to such allotment and their rights have crystallised in view of such allotment. The time taken to raise such challenge would therefore have a material bearing in the facts of the case. The learned counsel for the respondent no.6 is justified in seeking to derive support from the decision of the Hon'ble Supreme Court in *Ajodhya Bhagat and others* (supra) wherein challenge to the

acquisition of land was not entertained on the ground that the appellants therein were found to be guilty of delay and laches in raising such challenge before the High Court. The High Court had refused to exercise discretion in favour of the said appellants.

Not only did the land owner not take immediate steps to challenge the award on the ground that it was not signed, he on the contrary permitted the reference proceedings to proceed and thereafter also accepted portion of the enhanced compensation by moving an application for withdrawing part of the amount of compensation deposited by the MIDC. It is thus clear that the land owner by his conduct has acquiesced to the aforesaid position. Hence, for aforesaid reasons, we are not inclined to examine the contention that the award dated 26<sup>th</sup> March, 1992 is liable to be set aside on the ground that it was not signed by the Special Land Acquisition Officer.

10. Coming to the aspect of the forum where an appeal challenging the judgment passed by the Reference Court would lie, we find that the decisions of the Division Benches in *Chandrakant Somshetti* and *Keru Baban Avhad* (supra) have considered this aspect too and have clearly held that on an award being passed by the Court under Section 34(1) of the Act of 1961 the same has the character of a decree and it becomes appealable under Section 96 of the Code. The discussion in that regard has been made in paragraph 6 of the decision in *Chandrakant Somshetti* (supra) and we respectfully agree with the same. It is

clear from the aforesaid decision that the judgment of the Reference Court is made subject to appeal before the High Court and further to the Hon'ble Supreme Court. There is no question of such appeal being filed by considering the valuation therein in the context of pecuniary jurisdiction. It is therefore held that such appeal would lie before this Court and hence First Appeal No.751 of 1996 has been rightly filed in this Court.

11. Thus, as a result of aforesaid discussion, it is held that:

(a) A Writ Petition filed under Articles 226 and 227 of the Constitution of India challenging the judgment of the Reference Court under Section 34(1) of the Act of 1961 would not be maintainable and the remedy of filing an appeal under Section 34(1) read with Section 96 of the Code before the High Court is provided.

(b) The challenge to the award dated 26<sup>th</sup> March, 1992 on the ground that the said award was not signed is not permitted to be raised in the present writ petitions as that challenge has been raised belatedly and it suffers from unexplained delay and laches.

(c) Since the challenge to the judgment of the Reference Court is not entertained on merits, the petitioner is permitted to seek enhancement in the amount of compensation, if so advised, by preferring an appeal under Section 34(1) of the Act of 1961 read with Section 96 of the Code. In this regard, it is noted that Writ Petition No.6595 of 2013 and Writ Petition No.6360 of 2013 were

filed on 10<sup>th</sup> September 2013 and Writ Petition No.6127 of 2014 was filed on 29<sup>th</sup> September 2014. If within a period of four weeks from today, the land owners prefer an appeal seeking enhancement in the amount of compensation as determined by the Reference Court, the period spent in prosecution of these writ petitions from 10<sup>th</sup> September, 2013 and 29<sup>th</sup> September, 2014 respectively till expiry of the period of four weeks from the date of the judgment shall be excluded on principles analogous to Section 14 of the Limitation Act, 1963 while seeking condonation of delay.

It is made clear that since the judgment of the Reference Court is dated 31<sup>st</sup> December, 2012 and the writ petitions were filed on 10<sup>th</sup> September, 2013 and 29<sup>th</sup> September 2014 respectively, the Court would consider the said aspect while adjudicating the prayer for grant of interest on enhanced amount of compensation, if any. The points raised for seeking enhancement in the amount of compensation are kept open.

(d) Writ Petition Nos.6595 of 2013, Writ Petition No. 6360 of 2013 and 6127 of 2014 stand dismissed. Rule stands discharged.

(e) First Appeal No.751 of 1996 be placed before the learned Single Judge for its adjudication on merits. The parties shall bear their own costs.

(M.W.CHANDWANI, J.)

(A.S.CHANDURKAR, J.)