

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12716 OF 2023

1. Bhausaheb s/o Keru Wale
 2. Vilas @ Balasaheb s/o Prabhu Wale
 3. Karbhari s/o Bhaguji Wale
 4. Ramesh s/o Baburao Wale
- ...Petitioners

Versus

1. The State of Maharashtra
 2. The District Collector, Ahmednagar
 3. The Special Land Acquisition Officer
Now the Sub Divisional Officer,
Sangamner
 4. The Executive Engineer,
Urdhavva Pravara Dharan
Division Sangamner
- ...Respondents

.....
Mr. D. A. Bide, advocate for the petitioners
Mr. D. R. Kale, Government Pleader for respondents
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**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ.
& ARUN R. PEDNEKER, J.**

DATE : 13th OCTOBER, 2023.

P.C. :

1. Heard learned counsel for the petitioners and
learned Government Pleader representing the respondents.

2. By instituting this petition under Article 226 of the Constitution of India, the petitioners have assailed the validity of the order dated 22.07.2022, passed by the Sub Divisional Officer, Sangamner Division, Sangamner, District Ahmednagar, whereby the prayer made by the petitioners to consider application under Section 28A of the Land Acquisition Act, 1894 has been rejected, on the ground of limitation, without hearing the petitioners.

3. The submission of learned counsel for the petitioners is that application under Section 28A of the Act, 1894 was presented after expiry of period of limitation as prescribed in the said provision. Hence, the Sub Divisional Officer refused to entertain the application. It has been argued that in view of various judgments of this Court, including the judgment dated 23.06.2021, passed by the coordinate Bench of this Court, in writ petition No. 6880 of 2021 (**Balasaheb Subhash Matkar and another vs. The State of Maharashtra and others**), application under Section 28A of the Act of 1894 cannot be rejected on the ground of limitation, without hearing the applicants.

4. Opposing the prayer made by learned counsel for the petitioners, learned Government Pleader has submitted that Section 28A of the 1894 Act provides that the Collector can entertain the application only if the same is made within three months from the date of award of the Court and since admittedly in this case, the application was not made within the aforesaid period of limitation the application is rightly dismissed. Thus, his contention is that the order impugned in this petition does not suffer from any illegality so as to call for any interference by this Court and hence, the Writ Petition is liable to be dismissed.

5. We have heard the submissions made by the learned counsel for the parties and have also perused the record available before us on this Writ Petition. The order under Section 18 was passed in respect of the same acquisition proceedings on 04.04.2018, however, the petitioners instead of approaching the Collector under Section 28A within the limitation prescribed under Section 28A of the 1894 Act, made the said application on 02.05.2022, which was beyond three months period as prescribed in the said provision. In similar circumstances,

this Court in the case of **Balasaheb Subhash Matkar** (supra) has held that the competent authority ought to have given opportunity of hearing in order to arrive at a conclusion as to whether their application was within 90 days from the date of knowledge of the judgment / award.

6. The facts of the present case are somewhat similar to the facts in the case of **Balasaheb Subhash Matkar** (supra). Accordingly, the petition is allowed and the impugned order dated 22.07.2022 passed by the Sub Divisional Officer, Sangamner, is hereby quashed. The application preferred by the petitioners under Section 28A of the Land Acquisition Act, 1894 is restored and respondent No. 3 is directed to consider and decide the said application afresh. The fresh decision shall be taken by respondent No.3 within three weeks from the date a certified copy of this order is produced before him.

(ARUN R. PEDNEKER, J.)

(CHIEF JUSTICE)

rlj/