

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

WRIT PETITION NO.2743 OF 2023

**MADHAV PRALHAD PATE
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE COLLECTOR
AND OTHERS**

....

Mr. S. B. Madde, Advocate for petitioner
Mr. S. K. Tambe, AGP for respondent - State

....

**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 12.06.2023.

PER COURT :-

1. We have heard the learned Advocate for the Petitioner. Apparently, the petitioner preferred the proceedings under Section 28-A of the Land Acquisition Act, 1894 after moving the authorities for obtaining a certified copy, after four years of the award. The contention is that the period for obtaining a copy of the award shall be excluded.

2. The learned A.G.P. points out that the petitioner applied for certified copy of the award on 26.09.2022, when the date of the award is 11.06.2018. All other co-claimants have preferred the proceedings under Section 28-A of the Land Acquisition Act within limitation.

3. We find that even if the case of the petitioner is given the due advantage of the proviso to Section 28-A(1) by excluding the period consumed for obtaining a copy of the award, yet the proceedings under Section 28-A are hopelessly barred. From the date of the award till the date of the application, more than four years have lapsed.

4. The petitioner has relied upon a judgment delivered by this Court in ***Maharashtra Krishna Valley Development Corporation Vs The State of Maharashtra and others - 2015(3) Mh.L.J.***, more particularly upon paragraph 11 which reads as under:-

“11. The object of 28-A seems to be to help a person interested, who for the various reasons was unable to file an application for Reference under section 18 of the said Act. The object seems to be to pay the compensation to the person interested to which in law he was entitled by way of an award under section 11 of the said Act. The object is to pay compensation to him to which he was legitimately entitled to on the date of passing an award under section 11

of the said Act. If sub-section (2) and (3) of section 28-A are read together, it appears that an Award under sub-section (2) is on par an Award under section 11 of the said Act insofar as the provisions of reference under section 18 of the said Act are concerned. Once an Award under sub-section (2) of section 28-A is made, it replaces an Award under section 11 for all purposes as it becomes an offer of the Appropriate Government.”

5. There can be no contest in view of the law laid down in Maharashtra Krishna Valley (supra). However, the issue before us is altogether different.

6. The petitioners relies upon the judgment delivered by the Hon'ble Supreme Court in ***Raja Harish Chandra Raj Singh Vs. The Deputy Deputy Land Acquisition Officer and another - 1961 A.I.R. 1961 SC 1500*** to contend that the date of the award must be actually known to a person or he must have the knowledge constructively. In short, he must get knowledge of the award either actually or constructively.

7. We have perused the pleadings set out by the petitioner, more particularly in paragraph Nos. 5 and 6. In paragraph 5 it is contended that co-claimants had moved reference case under Section 18 of the Land Acquisition Act within limitation. There is no dispute that many co-claimants are from the same village of the petitioner. In

paragraph 6, vague and ambiguous contentions are put forth by stating, *“the petitioner inadvertently not file Land reference u/s 18 before the competent court. Therefore, the petitioner have no knowledge about passing of impugned order”*. It is further stated that, *“some of the claimants have received amount of compensation of the acquired land. Thereafter the petitioner has communicated to his advocate and got the legal advice for further proceed. But due to weak financial position the applicant could not make an arrangement of funds for Court fees and other expenses and other necessary documents. It is further submitted by the petitioner that, after arrangement of the funds i.e. on September 2022 he has applied for the certified copy of the order. Therefore, there is some delay in filing the present application. Anyhow the petitioner came to know about passing of judgment and award in the same acquisition process, therefore, on 26.09.2022 the petitioner has applied for certified copy and same is received on 26.09.2022.”*

8. It is apparent from the pleadings that the petitioner has conveniently not pleaded as regards what did he do ever since the award was delivered on 11.06.2018, till 26.09.2022. The conduct of the Petitioner that he has a weak financial position and could not

collect funds without adverting to or setting forth any pleadings about such delay, cannot be countenanced. The petitioner concedes that, there is no judicial pronouncement as regards the delay caused in filing the proceeding under Section 28-A. In fact, Section 28-A is a remedy available to the litigant who has not been able to avail of any remedy under Section 18. Nevertheless, some explanation is necessary to indicate as to why the petitioner could not prefer the proceedings within four years, so as to condone the delay.

9. In view of the above, we do not find that the impugned order could be termed as being perverse or erroneous. **This petition, being devoid of merits, is therefore, dismissed.**

[Y. G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]

SMS