

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

**WRIT PETITION NO. 10526 OF 2023**

Babanrao s/o Ambadas Kulkarni,  
age: 58 years, Occ: Agriculture,  
R/o Deola, at present Shani Mandir,  
Partur, Tq. Partur, District Jalna.

Petitioner

Versus

01 The State of Maharashtra,  
through Collector, Jalna,  
District Jalna.

02 Deputy Collector Land  
Acquisition, (M. I. W.),  
Partur, Tq. Partur,  
District Jalna.

03 The Executive Engineer,  
Jalna Irrigation Division,  
Near Motibag, Jalna,  
Tq. & District Jalna.

Respondents

Mr. K. B. Jadhav, advocate for the petitioner.  
Mr. A. R. Kale, AGP for Respondents.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &  
ARUN R. PEDNEKER, J.**

**DATE : 24<sup>th</sup> AUGUST, 2023.**

**ORAL ORDER :**

1. These proceedings under Article 226 of the Constitution of India have been instituted by the petitioner

challenging the award dated 02.03.2022, passed by the Sub Divisional Officer-cum-Special Land Acquisition Officer, Partur, District Jalna, whereby the application dated 02.09.2020, made by the petitioner under Section 28-A (3) of the Land Acquisition Act, 1894, has been rejected on the ground that the same was not made by the petitioner within the limitation prescribed under Section 18 (2) of the said Act.

2. The submission of the learned Counsel for the petitioner, while assailing the impugned order passed by the Special Land Acquisition Officer, is that though the award under Section 28A (1) of the Act of 1894 was made on 24.10.2011 and he received the amount in the year 2013, however, he received the interest part of the award in the year 2020. Hence, the application made by the petitioner on 02.09.2020 was not barred by limitation as per the provisions of Section 18(2) of the said Act. It has also been argued by the learned Counsel for the petitioner that the issue relating to limitation is to be considered by the Court and not by the referring authority i.e. the Collector/Deputy Collector/Special Land Acquisition Officer and in this view of

the matter, the order under challenge, dated 02.03.2022, is absolutely unlawful and hence not sustainable.

3. *Per contra*, the learned Additional Government Pleader has opposed the the writ petition and has submitted that any application moved under Section 28-A (3) of the Act can be entertained by the Collector for the purposes of making reference to the Court only in case the person making the application has not accepted the award. It has been argued by him on behalf of the Respondent-State that there is nothing on record of this writ petition to show that the petitioner did not accept the award made under Section 28 of the said Act and hence, the application made by the petitioner under Section 28-A (3) has been rightly rejected by the Collector.

4. The further argument of the learned AGP is that in terms of the provisions contained in sub section (3) of Section 28-A of the Act of 1894, the provisions of Sections 18 to 28 are to be applied so far as to proceedings under Section 28-A (3) of the Act are concerned. Drawing our attention to sub section (2) (a) of Section 18 of the Act, it

has been argued by the learned AGP that no application for making reference to the Court can be made beyond the period of six weeks from the date of Collector's award if the person making or his representative is present before the Collector. He has also submitted that in terms of provisions of Section 18 (2) (b) of the Act, in other cases, application can be made only within six weeks of the receipt of notice from the Collector under Section 12(2) of the Act or within six months from the date of Collector's award, whichever period first expires. It has, thus, been argued that in terms of provisions of the Act, the application made by the petitioner, dated 02.09.2020, was not within the time limit prescribed under the statute and accordingly the same has rightly been rejected.

5. We have heard learned Counsel for the respective parties and have also perused the documents on the record of this writ petition. The Collector's award, in the present case, was made on 12<sup>th</sup> July, 1999. However, the Civil Court enhanced the rate of compensation by means of award dated 10.03.2011, which necessitated the petitioner to move an application under Section 28A (1) of the Act for re-

determination of the amount of compensation on the basis of award of the Court dated 10.03.2011. On the said application, made by the petitioner under Section 28-A (1) of the Act, the amount of compensation was re-determined by means of an award dated 24.10.2011. If the petitioner was aggrieved by the said award dated 24.10.2011 and he did not intend to accept it, an application ought to have been made by him under Section 28-A (3) of the Act for making reference to the Court for determination of the amount by the Court forthwith. Such application was made, admittedly, by the petitioner only on 02.09.2020 and not within the period prescribed in terms of Section 18 (2) (a), (b) of the Act, as discussed above.

6. Section 28-A (3) of the Act is extracted herein below for ready reference:

***28-A. Re-determination of the amount of compensation on the basis of the award of the Court -***

(1) ..... .

(2) ..... .

(3) *Any person who has not accepted the award under sub-section (2) may, by written*

*application to the Collector, require that 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.*

7. A perusal of the aforesaid provisions, clearly shows that in the proceeding, instituted on an application under Section 28-A (3) of the Act, the provisions of Section 18 (2) of the Act, are to be applied. Section 18, which falls in part III of the Act of 1894 under the caption "Reference to Court and procedure thereon" provides that any person, having not accepted the award made by the Collector, may, by written application, require that the matter may be referred by the Collector for determination of the Court. Section 18 (2) also requires that while making an application, the applicant shall state the grounds on which objection to the award made by the Collector is taken. The proviso appended to Section 18 (2) of the Act, in the facts of the present case, assumes importance.

8. Section 18(2) of the Act of 1894 is also extracted herein below for ready reference:

**18. Reference to Court -**

- (1) .....  
 (2) *The application shall state the grounds on which objection to the award is taken :*

*Provided that every such application shall be made,-*

*(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;*

*(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.*

9. From perusal of the proviso (a) and (b) appended to Section 18 (2), it is abundantly clear that in any case, the application is to be moved to the Collector for making reference to the Court within six weeks from the date of Collector's award in case the award was declared in the presence of the party concerned or in the presence of its representative and in other cases, either within six weeks from the date of receipt of notice from the Collector under

Section 12 (2) of the Act or within six months from the date of the Collector's award, whichever is earlier. There is no provision in the Act of 1894 for condoning the delay in making such application to the Collector for making reference to the Court under Section 18 of the Act.

10. Except for making an averment "under protest", in paragraph no.8 of the application dated 02.09.2020, with prayer to the Collector to refer the matter for re-determination of the amount of compensation to the Court, there is no material on record which can show that the award made by the Collector on 24.10.2011 was accepted by the petitioner under some protest. Even if it is presumed that the said award dated 24.10.2011 was accepted by the petitioner under protest, the petitioner cannot be permitted to wriggle out of the limitation in terms of the proviso (a) and (b) appended to Section 18 (2) read with Section 28-A (3) of the Act. Merely because petitioner received the amount of interest in the year 2020, will not entitle him to make an application beyond the prescribed limitation under proviso to Section 18 (2) of the Act, counting limitation from the date of receipt of payment of

interest. It is not the case of the petitioner that he was not aware of the award made by the Collector on 24.10.2011; rather the petitioner admits that he had received the amount of compensation as per the award dated 24.10.2011 in the year 2011 itself.

11. For the reasons aforesaid, when we peruse the impugned order dated 02.03.2020, passed by the SLAO, what we find is that the officer has given adequate reasons in terms of the provisions contained in Section 28-A (3) read with Section 18 (2) of the Act of 1894.

12. For the discussion made and reasons recorded above, we are not satisfied with the submissions of the learned Counsel for the petitioner.

13. Writ Petition lacks merit and stands dismissed accordingly. However, there shall be no order as to costs.

**(ARUN R. PEDNEKER, J.)**

**(CHIEF JUSTICE)**