

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.52 OF 2022

Sheshabai @ Subhadrabai w/o Gyanoba Madale,
Age-62 years, Occu-Agriculture and Household,
R/o Sakol, Tq.Shirur Anantpal,
District : Latur.

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Principal Secretary,
Revenue and Forests Department,
Mantralaya, Mumbai,
2. The Collector, Latur,
Dist. Latur,
3. The Sub Divisional Officer and
Land Acquisition Officer, Nilanga,
Taluka Nilanga, Dist. Latur,
4. The Executive Engineer,
Latur Medium Project, Latur

-- RESPONDENTS

Mr.M.B.Nandgavale h/f Mr.V.G.Sakolkar, Advocate for the Petitioner.
Mr.V.D.Sapkal, Sr.Advocate, as Amicus Curiae.
Mr.S.B.Yawalkar, AGP for Respondent Nos. 1 to 3.
Mr.S.C.Arora, Advocate for Respondent No.4.

(CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRADE, JJ.)

DATE : AUGUST 17, 2023

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner has put forth prayer clauses B and C as under :-

"B. By a writ of certiorari or any other appropriate writ, order or direction order dt.17.12.2019 passed by the respondent No.3 thereby rejecting application under section 28-A under Land Acquisition Act may kindly be quashed and set aside.

C. By a writ of mandamus or any other appropriate writ, order or direction, application filed by the Petitioner under Section 28-A under Land Acquisition Act may kindly be allowed."

3. The Petitioner has contended that she is the owner and possessor of land Survey No./Gat No.227/5 and 227/9, admeasuring 11 R situated at village Sakol, Tal.Shirur Anantpal, Dist.Latur. The said land was acquired for the Sakol Medium Project on 09.12.1996. A notification u/s 4 of the Land Acquisition Act, 1894, was published on 26.06.1999. The award came to be delivered on 21.12.2001 quantifying the compensation amount of Rs. 610 Per R for the acquired

land. The Petitioner has not filed a reference petition u/s 18. Other co-claimants filed LAR No.115/2006 and by judgment dated 30.01.2012, the LAR Court partly allowed the reference and enhanced the compensation to Rs.1,754/- per R for the Dry land and Rs.2,631/- per R for the irrigated land. The Petitioner claims to have gathered knowledge of the judgment dated 30.01.2012, on 21.09.2019. It is stated that the Petitioner immediately applied for a certified copy of the said judgment. The Petitioner preferred an application u/s 28-A on 29.11.2019. By the impugned order dated 17.12.2019, the application was rejected solely on the ground of delay.

4. The Petitioner has relied upon an order passed by the Hon'ble Supreme Court dated 27.10.2017 in **SLP (Civil) 14700/2015 and Civil Appeal No. 17323/2017 (Karam Chand (dead) by LR's and Another Vs. The State of Himachal Pradesh and another)** to support her contention that delay in filing an application u/s 28-A can be condoned.

5. This matter was heard on 03.07.2023 and 17.07.2023. On 18.07.2023, we passed an order, whose relevant paragraph Nos. 2 to 4 are as under :-

"2. This Court at the Nagpur Bench has delivered orders in **Sanjay Sudam Rathod Vs. The State of Maharashtra, 2022 DGLS (Bom.) 3456**, and **Dnyandeo Yashwant Mante Vs. The State of Maharashtra and others (Writ Petition No.6214 of 2022 decided on 23.11.2022)**, placing reliance on **Karam Chand Vs. State of Himachal Pradesh (Special Leave to Appeal (C) No.14700/2015)**. However, the view taken by the Hon'ble Supreme Court in **Bir Wati and others Vs. Union of India and others, 2017(16) SCC 548**, was not cited.

3. We are of the view that in this matter, it would be appropriate to appoint **Shri Vijay Sapkal**, the learned Senior Advocate, as *Amicus Curiae*. **Shri Sapkal** has graciously agreed to assist the Court.

4. The learned Advocate for the petitioner would prepare a complete compilation of the writ petition paper book, as well as the case law and tender the same to **Shri Sapkal**."

6. The learned Sr.Advocate **Mr.Sapkal** has relied upon the judgment of the Hon'ble Supreme Court delivered in the matter of **Tota Ram Vs. State of Uttar Pradesh and others [(1997) 6 SCC 280]**. By the said judgment, it has been concluded as under :-

"1. This special leave petition arises from the judgment of the High Court of Allahabad, made on November 19, 1996 in Writ Petition No. 12843/94.

2. Admittedly, on reference under Section 18 of the Land Acquisition Act, 1894 (for shorts the "Act"), the reference Court passed its award and decree on May 18, 1990. The petitioner filed an application under

section 28-A of the Act on July 22, 1992 stating that he came to know on 19th July, 1992 that in another reference compensation for the lands had been enhanced rates as he had filed application under proviso to section 28-A reads as under :

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

(1) Whether in an award under this Part, the Court allows to the applicant any amount of awarded by the Collector under Section 11, the persons interested in all the other land covered by he 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 16, by written application to the collector within three months from 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 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, require that the matter be referred by the collector for the determination of the Court and the provisions of Section 18 to 28 shall, so far may be, apply to such reference as they apply to a reference under Section 18."

3. A reading thereof clearly that a person whose land is acquired under a common notification issued under Section 4 (1) of the Act but who failed to avail of the remedy of reference under section 18, is eligible to make a written application within three months from the date of the award of the Court enhancing the compensation. It has been interpreted by this Court that the "court " means Court of Original Civil Jurisdiction to whom reference under section 18 would lie. Admittedly, the award of the reference court having been made on May 18, 1990, the limitation began to run from that date. The proviso to Section 28-A gives a right to the persons to obtain the certified copy of the award and decree and the time taken for obtaining the certified copy of the award and the decree shall be excluded in computing the period of three months. In view of the express language, the question of knowledge does not arise and, therefore, the plea of the petitioner that the limitation of three months begins to start from the date of the knowledge is clearly unsustainable and cannot be accepted in that behalf.

4. The special leave petition is accordingly dismissed."

7. Mr.Sapkal, therefore, submits that this is a clear view taken by the Hon'ble Supreme Court. When a person, whose land is acquired under a common notification issued u/s 4 and who has failed to take recourse to the remedy u/s 18, is eligible to make a written application within 3 months from the date of the award for enhancing the compensation. The Hon'ble Supreme Court, therefore, concluded that, *"it has been interpreted by this Court that the "Court" means the Court of original civil jurisdiction to whom reference u/s 18 would lie. Admittedly, the award of the Reference Court having been made on May 18, 1990, the limitation began to run from that day. The proviso to Section 28A gives a right to the persons to obtain the certified copy of the award and decree and the time taken for obtaining the certified copy of the award and the decree shall be excluded in computing the period of 3 months. In view of the expressing language, the question of knowledge does not arise and, therefore, the plea of the Petitioner that the limitation of 3 months begins to start from the date of the knowledge is clearly unsustainable and cannot be accepted in that behalf."*

8. Mr.Sapkhal has then relied upon a judgment delivered by the Hon'ble Supreme Court in **State of Andhra Pradesh and Another Vs. Marri Venkaiah and others [AIR 2003 SC 2949]**, wherein the Court has relied upon the view taken in **Tota Ram** (supra), in **Union of India Vs. Mangatu Ram [AIR 1997 SC 2704]** and **Jose Antonio Cruz Dox Vs. L.A.O. [AIR 1997 SC 1915]**. He draws our attention to paragraph Nos.2 to 13, which read as under :-

"2. Admittedly, in the present case notification under [Section 4 \(1\)](#) was issued on 16.5.1980 for acquiring land situated in Garedepalli village of Nalgonda District for formation of Command Area Development Ayacut Road under Nagarjunasagar Project. The Land Acquisition Officer passed an award on 15.1.1982. Some of the landowners filed reference application in respect of lands covered by the Award and the Civil Court in OP 36 of 1984, by order dated 29th November, 1984 enhanced the amount of compensation I hereafter, on the basis of the said award, respondents filed application under [Section 28-A](#) of the Act on 27th November, 1989 for enhancement of the compensation. The Land Acquisition Officer by order dated 28th January 1990 dismissed the said application as barred by limitation under [Section 28-A](#) of the Act.

3. That order was challenged by filing writ petitions before the high Court of Andhra Pradesh. The Division Bench of the High Court by its judgment and order dated 24th September, 1993 held that three months period prescribed under [Section 28-A](#) of the Act have to be computed from the date of the knowledge of the passing of the award and not from the date of the award by Civil Court and thereby directed the appellants to entertain the applications filed by the respondents under [Section 28-A](#) of the Act and to deal with them

in accordance with law. The High Court further recommended to the Government to bring suitable amendment and the [Land Acquisition Act](#) authorizing the Land Acquisition Officer or the Collector to send intimation in relation to passing of the award by the Civil Court to the persons interested, who had not sought reference under [Section 18](#) of the Act, to make them know about the said award.

4. That order is challenged by filing these appeals.

5. Learned counsel appearing on behalf of the appellants submitted that the impugned judgment and order passed by the High Court is, on the face of it illegal, erroneous and contrary to specific provisions of [Section 28-A](#) of the Act. He also submitted that the question involved is squarely covered by various decisions rendered by this Court on the said issue .As against this. Learned counsel appearing on behalf the respondents submitted that [Section 28-A](#) is a beneficial legislation so as to give a chance to illiterate and poor land owners whose land is acquired by a common notification and who could not approach the Court for one or other reason by filing reference application.

6. For appreciating the above contention, it would be necessary to refer to the relevant part of [Section 28-A](#) of the Act, which is as under: -

"28-A, Re-determination of the amount of compensation on the basis of the award of the Court.-(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."

7. Plain language of the aforesaid Section would only mean that the period of limitation is three months from the date of the Award of the Court. It is also provided that in computing the period of three months the day on which the award was pronounced and the time requisite for obtaining the copy of the award is to be excluded. Therefore, the aforesaid provision crystallizes that application under Section 28-A is to be filed within three month from the date of the award by the Court by only excluding the time requisite for obtaining copy. Hence, it is difficult to infer further exclusion of time on the ground of acquisition of knowledge by the applicant.

8. Further, the judgment rendered by the High Court is contrary to the decision rendered by this Court in Tota Ram v. State of U.P. and Ors [1997] 6 SCC 280 wherein this Court held that limitation begins to run from the date of the award and as per the proviso the time taken for obtaining the certified copy of the award and the decree is to be excluded in computing the period of three months. The Court held that in view of the express language the question of knowledge does not arise and, therefore, the plea of the petitioner that limitation of three months begins to start from the date of the knowledge is clearly unsustainable and cannot be accepted. Same view is expressed by this Court in Union of India and Ors. v. Mangatu Ram and Ors [1997] 6 SCC 59 and Jose Antonio Cruz Dos R. Rodriguese and Anr. v. Land Acquisition Collector and Anr., [1996] 6 SCC 746.

9. However, the learned counsel for the respondents submitted that Section

28- A is a beneficial provision and that applicants being non parties to the reference proceedings initiated by some other land owners, they would not have any knowledge of the date of the award or its contents, therefore the interpretation given by the High Court to the provisions of [Section 28-A](#) of the Act does not call for any interference, and in any case, the question involved be referred to a larger bench.

10. In our view, with regard to first contention that [Section 28-A](#) is a beneficial provision, there cannot be any dispute. However, the advantage of the benefit, which is conferred, is required to be taken within the stipulated time. A land owner may be poor or illiterate and because of that he might not have filed reference application but that would not mean that he could be negligent in not finding out whether other landowners have filed such applications. Whosoever wants to take advantage of the beneficial legislation has to be vigilant and has to take appropriate action within prescribed time. He must at least be vigilant in making efforts to find out whether other landowner has filed any reference application and if so what is the result. If that is not done then law cannot help him. Admittedly, in the present case, award enhancing the compensation was pronounced by the civil court by order dated 29th November 1984 and applications were filed on 27th November, 1989 i.e. after lapse of 5 years. In such case, as the applicant was having an opportunity of knowing the award and/or he was required to make efforts of knowing about such proceedings, he must be presumed to have had knowledge of the award. If the contention of the learned counsel for the respondents is accepted, it will create total vagueness and uncertainty as landowners can claim that they have come to know of the award after long lapse of time and, therefore, the application even though beyond time may be entertained. If such applications are entertained, there may not be any finality to the award and payment of compensation. Result may be that such proceedings may adversely affect where land is acquired by the Government

for a project, which is to be carried out by local bodies.

11. The learned counsel for the respondents relied upon the decision of this Court in [Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and Anr.](#), [1962] 1 SCR 676, which is approved by three Judge Bench in [State of Punjab v. Mst. Qaisar Jehan Begum and Anr.](#), [1964] 1 SCR 971. In that case the Court interpreted the proviso to [Section 18](#) of the Act and held that clause (a) of proviso was not applicable in the said case because person making application was not present or was not represented before the Collector at the time when he made his award. The Court also held that notice from the Collector under [Section 12\(2\)](#) was also not issued, therefore, that part of clause (b) of the proviso would not be applicable. The Court, therefore, referred to second part of proviso which provide that such application can be made within six months from the date of the Collector's award. In the context of the scheme of [Section 18](#) of the Act, the Court held that the award by the Land Acquisition Officer is an offer of market price by the State for purchase of the property. Hence, for the said offer, knowledge actual or constructive of the party affected by the award was an essential requirement of fair-play and natural justice. Therefore, second part of the proviso must mean the date when either the award was communicated to the party or was known by him either actually or constructively.

12. Aforesaid reasoning would not be applicable for interpretation of [Section 28-A](#) because there is no question of issuing notice to such applicant as he is not party to the reference proceeding before the Court. The award passed by the Court cannot be termed as an offer for market price for purchase of the land. There is no duty cast upon the Court to issue notice to the landowners who have not initiated proceedings for enhancement of compensation by filing reference applications; may be that their lands are acquired by a common notification issued under [Section 4](#) of the Act. As against this, under

Section 18 it is the duty of the Collector to issue notice either under Section 12(2) of the Act at the time of passing of the award or in any case the date to be pronounced before passing of the award and if this is not done then the period prescribed for filing application under Section 18 is six months from the date of the Collector's award.

13. In this view of the matter, we do not think that the judgment rendered by this Court in Tota Ram (supra) requires reconsideration."

[Emphasis supplied]

9. He, therefore, submits that the Hon'ble Supreme Court concluded in Marri Venkaiah (supra) that the judgment delivered in Tota Ram (supra), does not call for any re-consideration.

10. Mr.Sapkal has then relied upon the judgment delivered by the Hon'ble Supreme Court in **Popat Bahiru Govardhane etc. Vs. Special Land Acquisition Officer and another [2013 AIR SCW 6550]** and draws our attention to Paragraph Nos. 5 to 14, which read as under :-

"5. We have considered the rival submissions made by learned counsel for the parties and perused the records.

The sole question for the consideration of the court is whether limitation for filing the application for re-determination of the compensation under Section 28A of the Act would commence from the date of the award or from the date of knowledge of the court's award on the basis of which such application is being filed.

6. *Though, there is nothing on record to substantiate the appellants' claim that they could acquire the knowledge of the Court's award only on 17.7.2006 and immediately took steps to file application for re-determination under [Section 28A](#) of the Act.*

7. *The issue involved herein is no more res-integra. The appellants' case before the High Court as well as before us has been that the limitation would commence from the date of acquisition of knowledge and not from the date of award. Though, Shri Gaurav Agarwal, learned counsel for the appellants, has fairly conceded that there is no occasion for this Court to consider the application of the provisions of the [Limitation Act, 1963](#) (hereinafter called the 'Act 1963') inasmuch as the provisions of [Section 5](#) of the said Act.*

8. *[Section 28A](#) of the Act reads as under:*

"28-A. Re determination of the amount of compensation on the basis of the award of the court.—(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 redetermined 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.”
(Emphasis added)

9. *In Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer & Anr.*, AIR 1961 SC 1500, this Court dealt with the issue of limitation while dealing with an application under [Section 18](#) of the Act, and it was observed therein that unless a party had knowledge of the order, the question of approaching the appropriate forum challenging the order, does not arise. Therefore, it is the date of the knowledge from which the limitation would start. The Court observed :

“.....The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression.....In our opinion, therefore, it would be unreasonable.....where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned...”

10. *This Court in [Union of India & Ors. v. Mangatu Ram & Ors.](#) (supra); and [Tota Ram v. State of U.P. & Ors.](#) (supra), dealt with the issue involved herein and held that as the Land Acquisition Collector is not a court and acts as a quasi judicial authority while making the award, the provisions of the Act 1963 would not apply and, therefore, the application under [Section 28A](#) of the Act, has to be filed within the period of limitation as prescribed under [Section 28A](#) of the Act. The said provisions require that an application for re-determination is to be filed within 3 months from the date of the award of*

the court. The proviso further provides that the period of limitation is to be calculated excluding the date on which the award is made and the time requisite for obtaining the copy of the award.

11. In *State of A.P. & Anr. v. Marri Venkaiah & Ors. (Supra)*, this Court reconsidered the aforesaid judgments including the judgment in *Raja Harish Chandra Raj Singh (supra)* and held that the statute provides limitation of 3 months from the date of award by the court excluding the time required for obtaining the copy from the date of award. It has no relevance so far as the date of acquisition of knowledge by the applicant is concerned. In view of the express language of the statute, the question of knowledge did not arise and, therefore, the plea of the applicants that limitation of 3 months would begin from the date of knowledge, was clearly unsustainable and could not be accepted. The Court also rejected the contention of the applicants that a beneficial legislation should be given a liberal interpretation observing that whosoever wants to take advantage of the beneficial legislation has to be vigilant and has to take appropriate action within time limit prescribed under the statute. Such an applicant must at least be vigilant in making efforts to find out whether the other land owners have filed any reference application and if so, what is the result thereof. If that is not done then the law cannot help him. The ratio of the judgment in Raja Harish Chandra Raj Singh (supra) was held to be non-applicable in case of Section 28- A of the Act. The Court observed:

“.....In that case, the Court interpreted the proviso to *Section 18* of the Act and held that clause (a) of the proviso was not applicable in the said case because the person making the application was not present or was not represented before the Collector at the time when he made his award. The Court also held that notice from the Collector under *Section 12(2)* was also not

issued, therefore, that part of clause (b) of the proviso would not be applicable. The Court, therefore, referred to the second part of the proviso which provides that such application can be made within six months from the date of the Collector's award. In the context of the scheme of [Section 18](#) of the Act, the Court held that the award by the Land Acquisition Officer is an offer of market price by the State for purchase of the property. Hence, for the said offer, knowledge, actual or constructive, of the party affected by the award was an essential requirement of fair play and natural justice. Therefore, the second part of the proviso must mean the date when either the award was communicated to the party or was known by him either actually or constructively.

The aforesaid reasoning would not be applicable for interpretation of [Section 28-A](#) because there is no question of issuing notice to such an applicant as he is not a party to the reference proceeding before the court. The award passed by the court cannot be termed as an offer for market price for purchase of the land. There is no duty cast upon the court to issue notice to the landowners who have not initiated proceedings for enhancement of compensation by filing reference applications;

*may be, that their lands are acquired by a common notification issued under [Section 4](#) of the Act. As against this, under [Section 18](#) it is the duty of the Collector to issue notice either under [Section 12\(2\)](#) of the Act at the time of passing of the award or in any case the date to be pronounced before passing of the award and if this is not done then the period prescribed for filing application under [Section 18](#) is six months from the date of the Collector's award." (Emphasis added) A similar view has been reiterated by this Court in *Des Raj (supra)* and *Chitrasen Bhoi (supra)*.*

12. *In view of above, there is no occasion for us to consider the judgments cited at the bar on behalf of the appellants in support of its case. More so, the said judgments have been delivered by this Court while dealing with the applications under [Section 18](#) of the Act. If there are directly applicable precedents on the issue, the same have to be followed rather than to search for a new interpretation unless it is established that the earlier judgments require reconsideration. The suggestion of reconsideration has specifically been rejected by this Court in Marri Venkaiah (supra).*

13. *It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim “dura lex sed lex” which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute. “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” (See : [The Martin Burn Ltd. v. The Corporation of Calcutta](#), AIR 1966 SC 529; and [Rohitas Kumar & Ors. v. Om Prakash Sharma & Ors.](#), AIR 2013 SC 30).*

In view of the above, we are of the candid view that none of the submissions advanced on behalf of the appellants is tenable.

14. *As the matters are squarely covered by the above referred two judgments, these appeals are devoid of any merit. The cases do not warrant any interference. The appeals are, accordingly, dismissed."*

[Emphasis supplied]

11. Mr.Sapkal, therefore, places heavy reliance on paragraph Nos. 12 and 13 reproduced above and contends that it was concluded in Popat Bahiru (supra) that the view taken in Marri Venkaiah (supra), does not require any re-consideration and that the Law of Limitation may harshly affect a particular party, but has to be applied with all its rigour when the Statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardships or inconvenience to a particular party, but the Court has no choice but to enforce its meaningful effect. The legal maxim "*dura lex sed lex*" stands adopted in such a situation and the Hon'ble Supreme Court has consistently held that inconvenience is not a decisive factor to be considered while interpreting a Statute.

12. Mr.Sapkal has then relied upon the judgment delivered by the Division Bench of this Court at Nagpur in the matter of **Parasmal s/o Kunjilal Jain Vs. The State of Maharashtra and another [2015(7) ALL MR 320]**. He draws our attention to paragraph Nos. 5 to 9, which read thus :-

"5 . A perusal of the provisions of Section 28A of the said Act reveals that the redetermination of the amount of compensation on the basis of

the award of the Court can be sought by making a written application to the Collector within a period of three months from the date of award of the Court. By the proviso to sub section (1) of Section 28A of the Act, only the period that is required for obtaining the copy of the award is excluded. In Popat Gowardhan (supra), it has been held by the Hon'ble Supreme Court relying upon its earlier judgment that an application under Section 28A of the said Act has to be filed within the period of limitation as prescribed under Section 28A of the said Act. As the Land Acquisition Officer was not a Court, the provisions of the Limitation Act would not apply. It was thus, held that the question of limitation for filing an application under Section 28A of the said Act commencing from the date of knowledge of the Courts award would not arise at all. Such application was required to be made within a period of three months from the date of award of the Court.

6. Similarly, this position is also not res integra in view of the decision of the Hon'ble Supreme Court in the case of Totaram Vs. State of UP and others reported in : (1997) 6 SCC 280 wherein it has been held that in view of the express language of Section 28A of the said Act, the question of getting knowledge of the award would not arise. The limitation would commence from the date of the award and only the period for obtaining its certified copy should be excluded. It is thus clear that in view of the clear provisions of Section 28A of the said Act, the aspect of imputing knowledge to a land owner of the award has been excluded. What has been provided is the exclusion of time from the day the award was passed and time for obtaining its certified copy for preferring such application under Section 28A of the Act.

7. In the case of Bhagwandas and others (supra), it has been held that the provisions of the Limitation Act would not apply while making a reference under Section 18(1) of the said Act and hence, there is no question of the Collector condoning the delay where reference is made belatedly. In view of the fact that though under Section 18 of the said Act, a reference can be made within a time stipulated after getting knowledge of the award, such contingency is not applicable to an application for redetermination of compensation under Section 28A of the said Act. In view of the aforesaid judgment, it is clear that such application is required to be preferred within stipulated period of three months as mentioned in Section 28A(1) of the said Act.

8. Perusal of the impugned order dated 28-1-1996 indicates that the respondent No. 2 has entertained the said application and has thereafter recorded a finding that the reason for the delay being caused was not sufficient. On that ground, the aforesaid application came to be dismissed.

9. As held above, there is no question of the provisions of Section 5 of the Limitation Act being applicable for seeking condonation of delay in preferring an application under Section 28A of the said Act. Hence, the application as moved by the petitioner seeking condonation of delay itself was not tenable. As the provisions of Section 5 of the Limitation Act are itself not applicable, there is no question of seeking condonation of delay in filing an application for re-determination of compensation under Section 28A of the said Act. Hence, there is no merit in the writ petition and the same is accordingly dismissed with no order as to costs. Rule discharged."

[Emphasis supplied]

13. He, therefore, submits that the Law laid down in Tota Ram (supra), Marri Venkaiah (supra) and Popat Govardhane (supra), has crystallized and the Division Bench of this Court has relied upon the same and has concluded in paragraph No.9 that there is no question of Section 5 of the Limitation Act being applicable for seeking condonation of delay in preferring an application u/s 28-A of the said Act. An application seeking condonation of delay itself, was not tenable as Section 5 of the Limitation Act was not attracted.

14. In **Vajsibhai Ramabhai Sagar Vs. The State of Gujarat, decided on 12.06.2023**, the Division Bench of the Gujarat High Court has relied upon the Supreme Court judgments in paragraph nos. 5.1, 6.0 and 6.1 and has concluded in paragraph Nos. 7.0, 7.1 and 7.2 as under :-

*"[5.1] He would submit that in similar type of case the Division Bench of this Court in the case of **Patel Govindbhai Khodidas vs. Special Land Acquisition Officer & Anr.** rendered in Special Civil Application No.7677/2017, vide judgment dated 22.08.2017, has considered the case and by condoning the delay C/SCA/2908/2023 ORDER DATED: 12/06/2023 caused in filing application under **Section 28A** of the Land Acquisition Act, 1894, had granted*

the said petition. He, therefore, would submit that present petitions be allowed.

[6.0] On the other hand, learned Assistant Government Pleader Mr. K.M. Antani appearing for the respondents has vehemently opposed the present group of petitions. He would submit that the limitation to file an application under [Section 28A](#) of the Land Acquisition Act, 1894 is of three months from the date of publication of award by the concerned Court. In the present case, the award was declared on 09.04.2018 wherein the application was made by the respective petitioners on 10.11.2020, which is beyond the prescribed period of 90 days.

[6.1] He would submit that such period cannot be condoned by this Court even in exercise of powers under [Article 226](#) of the Constitution of India. In support of his above submission, learned AGP has relied upon the decision of the Hon'ble Apex Court in the case of [State of A.P and Another vs. Marri Venkaiah and Others](#) reported in (2003) 7 SCC 280 as well as the decision of the Hon'ble Apex Court in the case of [Union of India and Others vs. Mangatu Ram and Others](#) reported in (1997)6 SCC 59. By relying upon these two decisions, learned AGP would submit that period of limitation cannot be extended and person seeking relief under [Section 28A](#) of the Land Acquisition Act, 1894 is supposed to file application within a prescribed period of three months from the date of publication of the award by the reference Court. As far as decision of the Division Bench of this Court in the case of Patel Govindbhai Khodidas (Supra) relied upon by the learned advocate appearing for the petitioners is C/SCA/2908/2023 ORDER DATED: 12/06/2023 concerned, learned AGP would submit that the facts of the said case were not applicable to the present group of petitions. He would submit that the application under [Section 28A](#) of the Land Acquisition Act, 1894 was filed by

the owner of the property through his brother which was rejected on that ground and the application which was filed by the original owner subsequent to the period of limitation, the same was accepted. He, therefore, would submit that the petition be dismissed.

[7.0] We have heard learned advocates appearing for the respective parties at length.

It is an undisputed fact that none of the present petitioners have sought reference under [Section 18](#) of the Land Acquisition Act, 1894. The Reference Court declared the judgment and award only on 09.04.2018.

[7.1] As per [Section 28A](#) of the Land Acquisition Act, 1894, a written application is required to be submitted for similar compensation under [Section 28A](#) of the Land Acquisition Act, 1894 within a period of three months from the date of such award passed by the Court. [Section 28A](#) of the Land Acquisition Act, 1894 reads as under:

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

.....

.....

This provision has been interpreted by the Hon'ble Apex Court in the case of Marri Venkaiah and Others (Supra) wherein it has been specifically held by the Hon'ble Apex Court that a person would be entitled for benefits only if he files application under [Section 28A](#) within a period of 90 days. Similar is the ratio laid down by the Hon'ble Apex Court in the case of Mangatu Ram and Others (Supra).

[7.2] In our considered opinion the Authority has committed no error in rejecting application under [Section 28A](#) of the Land Acquisition Act, 1894. As

far as the decision of the Division Bench of this Court in the case of Patel Govindbhai Khodidas (Supra) relied upon by the learned advocate appearing for the petitioners is concerned, it appears from the said judgment that the application in that case was filed within the period of limitation by the original land owner through his brother but the same was rejected on the ground that the person who filed C/SCA/2908/2023 ORDER DATED: 12/06/2023 application under [Section 28A](#) Land Acquisition Act, 1894 has not submitted authorization to file the application for and on behalf of the petitioner - original land owner and therefore, the Division Bench entertained the said petition. But, in the present case, the application under [Section 28A](#) of the Land Acquisition Act was filed beyond the period of limitation and therefore, said decision of Division Bench cannot be made applicable to the facts of the present case."

15. The learned Advocate for the Petitioner has placed reliance upon the order passed by the Hon'ble Supreme Court in Karam Chand (supra), wherein it was noted that even though limitation is prescribed, subject to declining the interest for the delayed payment, compensation can be re-determined. We respectfully infer that the said order of the Hon'ble Supreme Court was in the facts and circumstances of the said case keeping in view **the order passed by the Hon'ble Supreme Court dated 27.11.2019 in Civil Appeal No.1632/2011 filed by Narayan s/o Dhondu Sarode, Dead,through LR's and others Vs. The Collector, Jalgaon and another,** referring to Article 142 of the Constitution of

India. It would be advantageous to refer to the following paragraphs of the order delivered in Narayan Dhondu Sarode (supra) as under :-

"It is relevant to note that the limitation prescribed for filing application under Section 28A of the Act is 90 days. The 90th day fell on 6th July, 1986 which happened to be a Sunday. The application under Section 28A came to be filed by the appellants herein on 08.07.1986, instead of 07.07.1986. Hence, there was a delay of one day in filing the application.

The High Court in the impugned judgment summarily dismissed the writ petition filed by the appellants. It is held that the SLAO as well as the Collector were justified in rejecting the application under Section 28A in view of the delay of one day, in as much as, there is no provision for condoning such delay.

It is pertinent to note that this Court in the case of Bir Wati and others Vs. Union of India and others [(2017) 16 SCC 548] had by exercising jurisdiction under Article 142 of the Constitution of India, directed the concerned Authority to accept the application under Section 28A of the Land Acquisition Act. This is accounting for the fact that the persons hailing from agricultural background may be unaware of the legal and procedural requirements under the Act.

Hence, having regard to the facts and circumstances of the present case, we exercise our jurisdiction under Article 142 of the Constitution of India and condone the delay / lapse of one day on the part of the appellants in filing the application inasmuch as the appellant would not get the adequate compensation as awarded in similar matters.

Therefore, Collector / concerned appropriate officer is directed to

accept the application filed by the appellants under Section 28A of the Land Acquisition Act and determine the appropriate compensation in accordance with Law."

[Emphasis supplied]

16. In *Bir Wati and Others (supra)*, it has been recorded in paragraph Nos. 13 to 16 as under :-

"13) It is true that one of the requirements to apply to the Collector under [Section 28-A](#) of the Act is to make an application within three months from the date of the award passed in other cases.

14) In this case, three months have already expired and the appellants were not able to make the application within three months or thereafter till date. However, having regard to the peculiar facts and circumstances of the case wherein we find that firstly, the bread earner of the appellants' family namely Jugal Kishore died during the pendency of the proceedings before the Collector long back; secondly, one of the appellants also expired during pendency of this appeal as reported; and thirdly, all the appellants are illiterates and unaware of the proceedings in question for years even after passing of the award and are also unaware of the legal and procedural requirements prescribed in the Act. It is due to these reasons, we are of the view that the appellants are entitled for indulgence.

15) In the light of the foregoing discussion, we are of the view that this is a fit case to allow the appellants to make an application to the concerned Collector under [Section 28-A](#) of the Act within three months

from the date of receipt of this judgment i.e. on or before 17.12.2017 praying therein for payment of compensation to them in the light of the enhanced compensation, if already found awarded to other landowners in these very acquisition proceedings by the reference Court.

16) This indulgence to apply under [Section 28-A](#) of the Act is granted to the appellants by this Court in exercise of our powers conferred under [Article 142](#) of the Constitution which we do with a view to do complete and substantial justice to the appellants."

[Emphasis supplied]

17. It is, thus, clear from *Bir Wati and others* (supra), that the bread earner of the Appellant's family had died during the pendency of the proceedings before the Collector. Another male appellant expired during the pendency of the appeal. The surviving appellants were illiterate and were unconnected with the proceedings since the deceased appellants were looking after the said proceedings. It was in these circumstances that the Hon'ble Supreme Court concluded that the indulgence being shown by it was under Article 142 of the Constitution of India with the view to do complete and substantial justice. Similar is the view in *Narayan Dhondu Sarode* (supra).

18. The Petitioner has relied upon the order of this Court

delivered at the Nagpur Bench on 19.09.2023 in **WP No.4911/2021 (Shantabai Bhagwan Gomite Vs. State of Maharashtra and another)** wherein liberty to file an application for condonation of delay was granted by the Court after relying upon the order passed in Karam Chand (supra). The Petitioner relies upon another order passed by this Court at the Nagpur Bench dated 23.11.2022 in WP No.6214/2022 (Dnyandeo Yashwanta Mante Vs. The State of Maharashtra and others). In this order as well, the learned Bench granted liberty to file an application for condonation of delay by relying upon the order passed in Karam Chand (supra).

19. With utmost respect to the discretionary orders passed in Shantabai (supra) and Dnyandeo (supra), we find that the judgments delivered by the Hon'ble Supreme Court in Tota Ram (supra), Marri Venkaiah (supra), Popat Govardhane (supra), Narayan Dhondur (supra) and Bir Wati (supra), were not brought to the notice of the learned Bench at Nagpur. Even the view taken at the Nagpur Bench in **Parasmal s/o Kunjilal Jain Vs. The State of Maharashtra and another [2015(7) ALL MR 320]**, was not cited.

20. In the instant case, we find that the Petitioner is from the same village as the co-claimants. Most of the co-claimants approached the Court u/s 18. The Petitioner found it appropriate to stay away from the said proceedings. The LAR Court had delivered a judgment on 21.12.2001 and the Reference Court delivered its judgment on 30.01.2012 enhancing the compensation amount from Rs.610/- Per R to Rs.1754/- Per R for the dry land and Rs.2631/- per R for the irrigated land. When the co-claimants from the same village succeeded in these proceedings and got a substantial rise of almost 300 percent (in so far as the dry lands) and more than 500 percent (in so far as the irrigated lands), it cannot be believed that the Petitioner did not have the knowledge of such a huge rise in compensation granted to the co-claimants from the same village, for a period of 7 years.

21. We need to record that the powers available to the Hon'ble Supreme Court under Article 142 of the Constitution, are not available to this Court. The orders in *Bir Wati* (supra) and *Narayan Dhondur Sarode* (supra), are under Article 142 since the Hon'ble Supreme Court has concluded that the said orders are being passed under Article 142.

22. Considering the above, we do not find that this petition deserves to be entertained. **The same is, therefore, dismissed.**

23. We are pleased to compliment the learned Amicus Curiae Mr.VD.Sapkal, Senior Advocate for his exemplary assistance to the Court.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)