

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10028 OF 2022

Bhagirathibai Shivgonda Patil, since deceased
through legal heirs son Mr.Shivgonda Mallikarjun
Patil since deceased through legal heirs

(a) Smt.Kalavati Shivgonda Patil
Age:45, Occu.Housewife
R/o:-At post Soregaon, Taluka-North Solapur,
Solapur-413004.

(b) Mr.Pravin Shivgonda Patil
Age-42, Occu.Farmer,
R/o:-At post Soregaon, Taluka-North Solapur,
Solapur-413004.

(c) Pratibha Jagadish Patil
Age:40, Occu.Housewife,
R/o:-97 Aishwarya Nagar,
Bijapur-586103.

(d) Namrata Choudappa Guja
Age-38, Occu.-Housewife,
R/o:-At post Kalhiparigi
Taluka-Akkalkot, District Solapur.

(e) Pornima Manjunath Patil
Age:34, Occu.Housewife,
Sanskrit colony,
Bijapur-586103.

(f) Mr.Siddharam Shivgonda Patil
Age:32, Occu.Farmer,
At post Soregaon, Taluka-North Solapur,
Dist-Solapur-413004.

.. Petitioners

Versus

1. The State of Maharashtra through the
Secretary Water Resources Department,
Government of Maharashtra, Mantralaya,
Mumbai-400 032.

2. The Special Land Acquisition Officer No.1.
(S.L.A.O.), New Administrative Building,
Collector Compound, Solapur-413001.

3. The Executive Engineer, I.I., Sub-Dn.No.2,
(MKVDC), Solapur-413001.

.. Respondents

**Dr.Ramdas Sabban a/w Pravin Sabban, Shrikant
Kompelli, Arundhati Sabban** Advocates for the Petitioner.

Mr.A.I. Patel, Addl. G.P. a/w M.S. Bane, AGP for State-
Respondent Nos. 1 & 2.

Mr.Vilas Tapkir a/w Mrunmayi Khambete, Advocates for
Respondent No.3.

**CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

RESERVED ON: DECEMBER 05, 2023

PRONOUNCED ON: DECEMBER 22, 2023

JUDGMENT: [PER B. P. COLABAWALLA J.]

1. Rule. Respondents waive service. With the consent of
parties, Rule made returnable forthwith and heard finally.

2. By the present Writ Petition, the Petitioners originally sought a direction that the Respondent Authorities pass an Award under Section 28A of the Land Acquisition Act, 1894 (for short "**the 1894 Act**") as per their application dated 3rd May 2021. However, before the above Petition was filed, Respondent No.2 (SLAO) issued a letter/order dated 20th January 2022 rejecting the Application filed by the Petitioners under Section 28A of the 1894 Act. Therefore, by virtue of an amendment allowed by this Court on 21st December 2022, a prayer was added to quash and set aside the impugned letter/order dated 20th January 2022 issued by Respondent No.2 rejecting the Section 28A Application filed by the Petitioners.

3. The short question that arises in the present Petition is whether the Petitioners, having availed of the opportunity to file a Reference under Section 18 of the 1894 Act, and having secured an order on such Reference, can thereafter ask for re-determination of compensation under Section 28A of the 1894 Act on the basis of an order passed in an appeal arising from some other Land Reference filed by some other landowners in respect of their land covered under a common notification issued under Section 4 of the 1894 Act.

4. The brief facts that give rise to the present Petition are this: The Petitioners' land [along with others land parcels] was notified for acquisition *vide* a notification issued under Section 4 of the 1894 Act dated 3rd October, 1991. The total land of the Petitioners that was to be acquired was totaling 3.66 Hectares situated at the Gat No.67/3B/2/1 at village Pratapnagar, Taluka-North Solapur, District-Solapur [for short "**the said land**"]. This acquisition was for the purposes of the Minor Water Percolation Tank Irrigation Project at Pratapnagar, Solapur [for short the "**said Project**"]. To take this acquisition forward, a Section 6 declaration was also published on 13th August 1992 and a common Award was also declared on 12th September 1994.

5. Since the Petitioners were not satisfied with the compensation determined under the said common Award, a Reference under Section 18 of the 1894 Act was filed by the Petitioners, namely, Land Acquisition Reference No.35 of 1995. The learned District Court, Solapur, by judgment and order dated 31st December 2001, partly allowed the said Land Reference and declared that the Applicants in Land Acquisition Reference No.35 of 1995 are entitled to a sum of Rs.45,027.50/- towards land value, the sum of Rs.13,508.25/- towards 30% solatium and the sum of Rs.15,309.18/- towards special component

at 12% per annum for 34 months, grossly amounting to the sum of Rs.73,844.93/-.

6. Apart from the Land Acquisition Reference filed by the Petitioners, two other landowners under the same common Award also filed Land Acquisition Reference Nos. 34 of 1995 and 37 of 1995. In those Land References, the District Court, Solapur, by judgment and order dated 13th February 2004, granted compensation of Rs.2,65,130/- per hectare for their acquired land on the basis that the same had N.A. potentiality.

7. According to the Petitioners, nearly eleven affected landholders whose lands were situated next to one another, and acquired under the said common Award, secured an order dated 7th April 2011 from the learned 3rd Joint Civil Judge, Senior Division, Solapur, under Section 28A(3) of the 1894 Act, again fixing Rs.2,65,130/- per hectare as the market value for their acquired land. This order was passed on the basis of the judgment and order passed in LAR No.34 of 1995 and LAR No.37 of 1995 referred to earlier.

8. After all this, the Petitioners decided to challenge the order dated 31st December 2001 passed in the Land Reference filed by them, being LAR No.35 of 1995. The Petitioners therefore filed First Appeal (ST) No.26755 of 2011 in this Court. Since there was a delay of 9 years and 183 days, the Petitioners sought condonation of delay by filing Civil Application No.1572 of 2012. This Civil Application No.1572 of 2012 was dismissed by this Court on 4th May 2012 and the SLP from the said order was also dismissed by Hon'ble Supreme Court vide its order dated 6th March 2013. In other words, the First Appeal filed by the Petitioners challenging the order passed on 31st December 2001 (in LAR No.35 of 1995) was not entertained and stood summarily dismissed.

9. It is the case of the Petitioners that thereafter, on the basis of an order passed on 17th February 2021 in First Appeal No.1175 of 2019, this Court granted compensation of Rs.2,65,130/- per hectare for the lands acquired. This order was passed in an Appeal filed by some of the other landowners who had filed LAR No.36 of 1995. It is on this basis that the Petitioners, on the ground of parity, filed an Application under Section 28A before the Competent Authority within 90 days of the order passed by this Court on 17th February 2021. As mentioned earlier, this Application was rejected by the impugned letter/order dated 20th January

2022. The ground on which the Application filed by the Petitioners was rejected by the Competent Authority (Respondent No.2) was that the re-determination of compensation under Section 28A was sought on the basis of an Award passed by the National Lok Adalat, and that therefore, the Section 28A Application of the Petitioners was not maintainable.

10. In this factual backdrop, Dr. Sabban, the learned counsel appearing on behalf of the Petitioners, submitted that the impugned order proceeds on a completely wrong premise. He submitted that Respondent No.2 has proceeded to reject their 28A Application on the basis that the Petitioners were seeking re-determination of compensation under Section 28A on the basis of an Award passed by the Lok Adalat, when in fact, the Petitioners' Section 28A Application was based on the Award passed by this Court, and which is at page 209 of the Petition. It is the High Court [in First Appeal No.1175 of 2019] which took the Consent Terms on record and disposed of the First Appeal. He therefore submitted that it was completely wrong on the part of the Competent Authority (Respondent No.2) to hold that re-determination of compensation [under Section 28A] had been sought on the basis of an Award passed in proceedings before the National Lok Adalat.

11. We have heard Dr. Sabban, the learned counsel appearing on behalf of the Petitioners, on this aspect. We need not go into this aspect at all, as we inquired from Dr. Sabban as to how, once the Petitioners have already filed a Reference under Section 18 and secured an order, can approach Respondent No.2 under Section 28A of the 1894 Act. In answer to this query, Dr. Sabban submitted that in the facts of the present case, the Petitioners had filed a Reference Application [Land Acquisition Reference No.35 of 1995] which was decided by the judgment and order dated 31st December, 2001. Being aggrieved by the order passed by the Reference Court (partly allowing the reference), the Petitioners preferred an Appeal before this Court by filing First Appeal (ST) No.26755 of 2011. As there was a delay, Civil Application No.1572 of 2012 was also filed seeking a condonation of delay of 9 years and 183 days. That came to be rejected not only by this Court but also by the Hon'ble Supreme Court. Once the Appeal was held to be time barred, then Petitioners would be entitled to approach Respondent No.2 under Section 28A of the 1894 Act within three months of the rejection, was the submission. In support of this contention, Dr. Sabban relied upon a decision of the Hon'ble Supreme Court in the case of ***Union of India and Another V/S Hansoli Devi and Others (AIR 2002 SC 3240)*** and a Division Bench judgment of this Court in the case of ***Laxmibai Gopalrao Patil***

(Deceased) through Legal Heirs and Others V/s The State of Maharashtra through The Special Land Acquisition Officer and Others [Writ Petition No.9572 of 2023 decided on 6th September, 2023].

12. We have heard Dr. Sabban on this issue at some length. To understand the argument canvassed by Dr. Sabban, it is necessary to reproduce the provisions of Section 28A of the 1894 Act. It reads thus:-

"28A. 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.

(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, required that the 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."

(Emphasis supplied)

13. Section 28A(1) stipulates that where in an Award under Part III, 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 other land covered by the same notification under Section 4(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 a written application to the Collector, within 3 months from the date of the Award of the Court, require that the amount of compensation payable to them be re-determined on the basis of the amount of compensation awarded by the Court. In other words, what Section 28A(1) stipulates is that if several lands form the subject matter of the same notification under Section 4(1), and some of the landholders had filed a Reference under Section 18 and secured a higher rate of compensation, then all other land holders who have not filed a Reference under Section 18 would also be entitled to have their compensation re-determined on the basis of the amount of compensation awarded by the Reference Court. What Section 28A(1) contemplates is that only a party who has not filed a Reference under Section 18 can

approach the Collector under Section 28A(1). Section 28A(1) cannot be invoked by a party who has approached the Reference Court under Section 18 and secured an order, regardless of whether such party has filed an Appeal therefrom. This is absolutely clear from a plain reading of Section 28A(1).

14. In the view that we take, we are supported by several decisions of the Hon'ble Supreme Court. In the case of **Scheduled Caste Co-operative Land Owning Society Ltd., Bhatinda V/S Union of India & Ors. [(1991) 1 SCC 174]** a three-Judge bench of the Hon'ble Supreme Court categorically held that Section 28A is not applicable where the claimant has sought and secured a reference under Section 18 and has even preferred an appeal to High Court. The relevant portion of this decision reads thus:-

"4. We may first deal with the contention based on the newly added Section 28-A inserted by Amending Act 68 of 1984 with retrospective operation from April 13, 1982. Under this provision where compensation awarded by the Collector under Section 11 is enhanced by the court in reference under Section 18, the persons interested in the acquired land who were not parties to the reference may, by a written application to the Collector made within three months from the date of the award of the court, request the Collector to redetermine the amount of compensation payable to them on the basis of the amount awarded by the court. On receipt of such an application the Collector is expected to conduct an

inquiry and make an award redetermining the amount of compensation payable to the applicants. Any person who does not accept the award so made may, by written application to the Collector, require that the matter be referred for the determination of the court whereupon the provisions of Sections 18 and 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18. It is obvious on a plain reading of sub-section (1) of Section 28-A that it applies only to those claimants who had failed to seek a reference under Section 18 of the Act. The redetermination has to be done by the Collector on the basis of the compensation awarded by the court in the reference under Section 18 of the Act and an application in that behalf has to be made to the Collector within 30 days from the date of the award. Thus only those claimants who had failed to apply for a reference under Section 18 of the Act are conferred this right to apply to the Collector for redetermination and not all those like the petitioners who had not only sought a reference under Section 18 but had also filed an appeal in the High Court against the award made by the reference court. The newly added Section 28-A, therefore, clearly does not apply to a case where the claimant has sought and secured a reference under Section 18 and has even preferred an appeal to the High Court. This view, which we take on a plain reading of Section 28-A finds support from the judgment of this Court in *Mewa Ram v. State of Haryana* [(1986) 4 SCC 151 : (1986) 3 SCR 660] .

6. In *Mewa Ram* [(1986) 4 SCC 151 : (1986) 3 SCR 660] the appellants preferred special leave petitions, though belatedly, to seek enhanced compensation on the basis of this Court's decision in *Paltu Singh v. State of Haryana and Nand Kishore v. State of Haryana* [Civil Appeals Nos. 1251 and 1252 of 1982, decided on April 1, 1982] . Mewa Ram's petition was delayed by 1079 days, Patram's petition was delayed by 1146 days and Ram Swaroop's petition was delayed by 1098 days. This Court observed that since the appellants had allowed the judgment of the High Court to become final they

were evidently satisfied with the enhanced compensation awarded by the High Court and merely because this Court had further enhanced the compensation in the said two cases, it did not furnish a ground for condonation of delay under Section 5 of the Limitation Act. Therefore, in similar circumstances this Court did not condone the delay which was shorter than the delay in this case as the link had snapped since the appellants had acquiesced in the judgment of the High Court and had allowed it to become final. The petitioners herein were satisfied with the amount of Rs 4,00,000 and did not apply to pay the deficit court fee soon after the judgment of the learned Single Judge was rendered in 1981 but did so after a lapse of almost six years in 1987. The Full Bench of the High Court, therefore, rightly held that to permit payment of deficit court fee for recovering enhanced compensation after a lapse of almost six years under its inherent jurisdiction would encourage the practice of not paying the court fee in the hope that as and when the valuation is determined in appeal the jurisdiction of the court can be invoked under Section 151 of the Code and the benefit of enhanced compensation can be reaped by making good the deficit court fee. We think in the facts and circumstances of the case this view taken by the Full Bench of the High Court cannot be assailed.

(Emphasis supplied)

15. Thereafter, the Hon'ble Supreme Court in the case of ***Des Raj (deceased) through LRs & Others V/S Union of India & Another [(2004) 7 SCC 753]*** followed the view taken by the Hon'ble Supreme Court in the case of ***Scheduled Caste Co-operative Land***

Owing Society Ltd., Bhatinda (supra). The relevant portion of this

decision reads thus:-

“Shivaraj V Patil, J. Certain agricultural lands including lands of these appellants were acquired pursuant to the notification dated 23-1-1965 issued under Section 4 of the Land Acquisition Act, 1894 (for short “the Act”). Award was made in March 1969 fixing the compensation @ Rs 2000 per bigha. The appellants and other claimants, not satisfied with the amount of compensation so awarded, sought a reference under Section 18 of the Act. The Additional District Judge i.e. the Reference Court enhanced the compensation @ Rs 2200 per bigha from Rs 2000. The appellants and four other claimants filed appeals before the High Court seeking further enhancement of the compensation amount. The High Court disposed of six appeals including two appeals of these appellants by common judgment on 11-10-1984 fixing the compensation @ Rs 4000 per bigha. These appellants did not pursue the matter any further, if aggrieved by the aforementioned judgment of the High Court. However, Pratap Singh and others, appellants in one of the six appeals before the High Court, approached this Court aggrieved by the aforementioned judgment of the High Court. This Court allowed their Civil Appeal No. 4099 of 1988 by the order dated 22-11-1988 and remanded the case to the High Court with certain observations to redetermine the amount of compensation. The appellants filed review applications long thereafter before the High Court seeking review of the judgment of the High Court dated 11-10-1984 on the ground that Pratap Singh and others whose lands were also acquired under the same notification and who were similarly placed, got higher rate of compensation for the lands acquired along with the statutory benefits, hence the appellants also were entitled to higher amount of compensation; under Section 28-A of the Act, the appellants were also entitled to the amount of compensation at the same rate which was allowed to Pratap Singh and others. The Division Bench of the High Court,

by the impugned judgments dated 22-10-1997, dismissed the review applications. Hence, these appeals.

12. In our view, the appellants are not entitled to claim enhanced compensation pressing into service the provisions of Section 28-A of the Act. The learned counsel for the appellants before the High Court did not press the claim of the appellants on this ground as recorded in the impugned judgments, having not made the applications within the prescribed time. Moreover, benefit of Section 28-A is available only to the parties who had not sought reference under Section 18 of the Act for enhancement of the compensation. This provision is not available to persons who seek reference under Section 18 of the Act for enhancement of the compensation and do not challenge judgment of the Reference Court or the judgment of the High Court thereafter. A Bench of three learned Judges of this Court in *Scheduled Caste Coop. Land Owning Society Ltd. v. Union of India* [(1991) 1 SCC 174] in this regard, in para 4, has held thus: (SCC p. 178)

“4. ... Any person who does not accept the award so made may, by written application to the Collector, require that the matter be referred for the determination of the court whereupon the provisions of Sections 18 and 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18. It is obvious on a plain reading of sub-section (1) of Section 28-A that it applies only to those claimants who had failed to seek a reference under Section 18 of the Act. The redetermination has to be done by the Collector on the basis of the compensation awarded by the court in the reference under Section 18 of the Act and an application in that behalf has to be made to the Collector within 30 days from the date of the award. Thus only those claimants who had failed to apply for a reference under Section 18 of the Act are conferred this right to apply to the Collector for

redetermination and not all those like the petitioners who had not only sought a reference under Section 18 but had also filed an appeal in the High Court against the award made by the Reference Court. The newly added Section 28-A, therefore, clearly does not apply to a case where the claimant has sought and secured a reference under Section 18 and has even preferred an appeal to the High Court. This view, which we take on a plain reading of Section 28-A finds support from the judgment of this Court in *Mewa Ram v. State of Haryana* [(1986) 4 SCC 151 : (1986) 3 SCR 660]."

16. From the aforesaid two decisions of the Hon'ble Supreme Court, it is amply clear that a party who has preferred a Reference under Section 18 and has secured an order thereunder, cannot thereafter file an Application under Section 28A for re-determination of the compensation.

17. As mentioned earlier, Dr. Sabban relied upon the decision of the Hon'ble Supreme Court in the case of **Hansoli Devi (supra)** as well as the decision of a Division Bench of this Court in **Laxmibai Gopalrao Patil (supra)**. We will now deal with the aforesaid two decisions. The issues before the Hon'ble Supreme Court in **Hansoli Devi (supra)** was: (a) whether a dismissal of an application seeking a reference under Section 18 on the ground of delay amounts to "not filing an application"

within the meaning of Section 28A of the 1894 Act; (b) Whether a person whose application under Section 18 of the 1894 Act is dismissed on the ground of delay or any other technical ground, is entitled to maintain an application under Section 28A of the Land Acquisition Act; and (c) Whether a person who has received the compensation without protest pursuant to the Award of the Land Acquisition Collector and has not filed an application seeking reference under Section 18, is "*a person aggrieved*" within the meaning of Section 28A.

18. The Hon'ble Supreme Court whilst deciding these questions *inter-alia* held that once an application filed under Section 18 of the 1894 Act is held to be time barred, the same tantamounts to no application being filed in the first place, and therefore, in such a scenario the concerned person [whose reference under Section 18 is held to be time barred] is entitled to avail the benefit of Section 28A of the 1894 Act. This finding is given on the basis that when a Reference Application under Section 18 is barred by the law of limitation, there is no Application at all that is filed under Section 18 in the eyes of law. We fail to see how this judgment supports the case canvassed by Dr. Sabban. In the facts before us, it is not as if the Reference [under Section 18] filed by the Petitioners herein was held to be time barred. The Reference filed by the Petitioners

was in fact entertained and partly allowed by the judgment and order dated 31st December 2001 [passed by learned District Court, Solapur]. An Appeal filed from the Reference Court was not entertained by the High Court because of the gross delay, and which was also affirmed by the Hon'ble Supreme Court. Once this is the case, it is absolutely clear that the Petitioners cannot avail of the benefit granted under Section 28A of the 1894 Act. This is simply because in the facts of the present case the Reference of the Petitioners was not time barred but the Appeal filed by them from the order of the Reference Court was beyond the period of limitation and the Court declined to condone the delay. This is wholly different from where a Reference is time barred as held in ***Hansoli Devi's*** case. Nowhere does the decision in ***Hansoli Devi*** even remotely suggest that when a Reference is entertained and allowed, and an Appeal therefrom is time barred, the claimant can approach the Collector under Section 28A of the 1894 Act. In fact, such an interpretation would run contrary to the express language of Section 28A of the 1894 Act. Once this is the distinguishing factor, we find that the reliance placed on ***Hansoli Devi (supra)*** is wholly misconceived and misplaced.

19. Similarly, the reliance placed by Dr. Sabban on the decision of this Court in ***Laxmibai Gopalrao Patil (supra)*** is wholly

misplaced. In the facts of that case also, originally the Reference Applications filed by the Petitioners were entertained and the amount of compensation was enhanced. Being aggrieved by the Reference Court order, the State filed Appeals before this Court. In the Appeals filed by the State, this Court held that the References filed by the Petitioners in that case were time barred. It was in that light that the Petitioners were permitted to make Applications under Section 28A. This is for the simple reason because this Court held that since the References [under Section 18] were time barred, in the eyes of law, there were no References at all as contemplated under Section 28A of the 1894 Act. Once again, we fail to see how this judgment supports the case of Dr. Sabban as this was not a case where a Reference was filed, and orders were secured in the Reference, and which orders had become final. To Put differently, akin to how this Court held that there was no Reference at all in the eyes of law since it had been adjudicated that the Reference filed had been time-barred, it is the Appeal filed by the Petitioners challenging the Award passed by the Reference Court that has to be held to not exist in the eyes of law for having been time-barred. It is noteworthy that the Appeal filed by the Petitioners was after a delay of nearly a decade. Once the Petitioners filed their Reference and in fact succeeded and were satisfied with it (not having filed any Appeal for nearly a decade), their

disqualification for making an application under Section 28A had become absolute. Merely because they filed a hopelessly-time-barred Appeal a decade later, it would not follow that a fresh period of three months would come into being, wiping out the ineligibility to file an application under Section 28A. The time-barred Appeal being rejected only means that the Appeal did not exist in the eyes of the law and in fact it would reinforce that the earlier Reference and its outcome, and indeed, the consequential disqualification to file an application under Section 28A was absolute. We therefore find that the reliance placed on the decision of this Court in the case of **Laxmibai Gopalrao Patil (supra)** is also wholly misplaced.

20. Once we have held that the Petitioners could not approach the Collector under Section 28A after filing a Reference under Section 18 and securing an order therein, and which order has attained finality, we do not see any reason to remand the matter back to the Collector to pass a fresh order under Section 28A of the 1894 Act. If we were to do this, it would be an exercise in futility.

21. In view of the foregoing discussion, we find no merit in the above Writ Petition. Rule is accordingly discharged, and the Writ Petition is dismissed. However, there shall be no order as to costs.

22. This order will be digitally signed by the Private Secretary/
Personal Assistant of this Court. All concerned will act on production by
fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.] [B. P. COLABAWALLA, J.]