

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4621 OF 2021

Sameer Ashok Kadlag & Ors ..Petitioners

Versus

The Collector Pune & Ors ..Respondents

WITH

WRIT PETITION NO.6738 OF 2023

Maharashtra Krishna Valley
Development Corporation Ltd ..Petitioner

Versus

State of Maharashtra & Ors ..Respondents

W. P. No.4621/2021

***Mr.Shriram Kulkarni, with Pranjal M. Khataavkar,
Sangita R. Fernandez, Sujay S. Palshikar,
Advocates for the Petitioners.***

***Mrs. Chaitrali Deshmukh, Advocates for Respondent
Nos.3 & 3A.***

***Mrs. M. S. Bane, AGP, for the State/Respondent Nos.1, 2
& 4.***

W. P. N.6738/2023

***Mrs. Chaitrali Deshmukh, Advocates for the
Petitioner.***

Mrs. M. S. Bane, AGP, for Respondent Nos.1 to 3.

***Mr. Shriram Kulkarni, with Pranjal M. Khataavkar,
Sangita R. Fernandez, Sujay S. Palshikar, Advocates for
Respondent Nos.4 to 26.***

**CORAM : B. P. COLABAWALLA, J &
M. M. SATHAYE, JJ.
DATE : JUNE 27, 2023**

P.C.

1. Rule. With the consent of parties, rule made returnable forthwith and heard finally.

2. Writ Petition No.4621 of 2021 is filed by the Petitioners seeking an appropriate writ, order or direction to Respondent No.3 (Maharashtra Krishna Valley Development Corporation – the Acquiring Body) to forthwith deposit the money with Respondent No.2 as per the letter dated 15th January 2019 (Exhibit-I to the Petition), along with all statutory benefits and interest till the date of disbursement. The other prayer in Writ Petition No.4621 of 2021 is to direct Respondent No.2 to forthwith disburse the payment as determined by the Award at Exhibit-G to the Petition with immediate effect along with all statutory benefits

and interest till the date of disbursement, to the respective Petitioners. Writ Petition (ST) No.96926 of 2020 (Registered No.6738 of 2023) is filed by the Maharashtra Krishna Valley Development Corporation Ltd (the Acquiring Body) inter alia to quash and set aside the Award dated 15th January 2019. This Award was passed under Section 28-A of the Land Acquisition Act, 1894 (for short “***the Act***” or the “***said Act***”) in favour of the Petitioners in Writ Petition No.4621 of 2021. For the sake of convenience, the Petitioners in Writ Petition No.4621 of 2021 are hereinafter referred to as “***the Petitioners***” and the Petitioner in Writ Petition (ST) No.96926 of 2020 (Registered No.6738 of 2023) is hereinafter referred to as “***the Acquiring Body***”.

3. We have noticed that the reliefs sought in both these Writ Petitions are diametrically opposite to each other. In other words, if one Petition succeeds, the other must fail. In these circumstances, we have decided to take up Writ Petition (ST) No.96926 of 2020 (Registered No.6738 of 2023) first, because if the Acquiring Body is able to establish that the Award passed on 15th January, 2019 under Section 28-A of the Act deserves to be quashed and set aside, there would be no question of granting any relief to the Petitioners in Writ Petition No.4621 of 2021.

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4. The only ground on which the Acquiring Body seeks quashing of the Award dated 15th January 2019 is on the issue of limitation. To put it in a nutshell, it is the argument of the Acquiring Body that there is no evidence that the Petitioners [in Writ Petition No.4621 of 2021] filed their applications under Section 28-A of the Act within a period of three months from the date of the order passed by the Reference Court under Section 18 of the Act. If this be the case, then no Award could have been passed in their favour under Section 28-A, is the argument.

5. Before we proceed to examine whether this contention of the Acquiring Body is correct or otherwise, it would be apposite to reproduce Section 28-A of the Act, which reads thus:-

“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.

- (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 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)

6. What sub-section (1) of Section 28-A stipulates is that where in an Award passed 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 three 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, under Section 28-A(1), a person whose land is covered by the same Notification under Section 4 (1), though he hasn't made any application to the Collector under Section 18 [for a reference to the Court] from the Award passed in its favour, may make an application for re-determination of the amount of Compensation awarded to him, within three months from the date of the order passed by the Reference Court under Section 18. The proviso to Section 28-A(1) also sets out how the time of three months is to be calculated.

7. The argument of the Acquiring Body is that the application [under Section 28-A(1)] in the present case was filed beyond the period of three months as stipulated under Section 28-A, and therefore, the application filed by the Petitioners was barred by the law of limitation.

8. To test whether this argument is factually correct, it would be necessary to set out the sequence of events. Originally, an Award was passed by the SLAO under Section 11 of the Act on 27th March, 1989. From this Award, an application for a Reference under Section 18 of the Act was made by some of the parties, to the Collector. The Collector referred the Reference to the Court being

Land Reference No.45 of 1993 in the Court of the District Judge at Pune. This Reference [under Section 18 of the Act], was finally decided on 23rd June, 2016. According to the Petitioners [in Writ Petition No.4621 of 2021], they applied for a certified copy of the Award [passed in the Land Reference], on 13th July 2016 and the certified copy was ready on 6th October, 2016. Therefore, the time between 13th July 2016 and 6th October, 2016 will have to be excluded (both dates inclusive) for the purposes of calculating the period of limitation of three months as contemplated under Section 28-A of the Act. The applications filed by the Petitioners [in Writ Petition No.4621 of 2021] before the SLAO under Section 28-A were on 9th December, 2016. This is evidenced from the stamp put by the office of the SLAO which clearly indicates that the applications filed by the Petitioners were on 9th December, 2016. If we were to take these dates into consideration, it is undisputed on both sides that the applications filed by the Petitioners in Writ Petition No.4621 of 2021 [under Section 28-A] are within limitation.

9. However, the learned counsel appearing for the Acquiring Body, submitted that the Petitioners' applications were filed before the SLAO [under Section 28-A] on 9th December, 2016

but there is no document to show that the Petitioner had applied for certified copy of Award on 23rd June, 2016 and received the certified copy on 21st October, 2016 and filed applications within limitation. In support of this contention, the learned counsel appearing on behalf of the Acquiring Body, brought our attention to page Nos.124 and 125 of Writ Petition No.6738 of 2023, and submitted that in response to the letter to the District Judge, Pune dated 31st August, 2019, it was informed that the application filed by the Petitioner for certified copy and date on which certified copies are received, are destroyed by the District Court as per Rule 544 (8) (1) of the Civil Manual.

10. We have heard the learned counsel on this limited aspect. We are afraid we are unable to accept the aforesaid contention for more than one reason. Firstly, the Petitioners have produced an acknowledgment of the office of the SLAO [pages 141 of Writ Petition No.6738 of 2023] which clearly indicates that the applications of the Petitioners were filed on 9th December, 2016. There is clearly a stamp of the inward Clerk of the office of the SLAO evidencing that the applications filed by the Petitioners [in Writ Petition No.4621 of 2021] were on 9th December, 2016. This apart, even in the Award passed under Section 28-A (dated 15th

January 2019), and which is impugned by the Acquiring Body, it is clearly stated that the applications were filed by the Petitioners on 9th December, 2016. The argument of the Acquiring Body that there is no document to show when Petitioners applied for certified copies and when they received it, is not correct because in the impugned Award itself, in paragraph 4 [page 117 of Writ Petition No. 6738 of 2023] it is stated that the Petitioners applied for certified copies on 13.07.2016, and it was ready on 06.10.2016. As already stated earlier, if we take these dates into consideration, the applications filed by the Petitioners in Writ Petition No. 4621 of 2021 are within limitation. In these circumstances, we are of the view that the Acquiring Body is not correct when it seeks to challenge the Award passed by the SLAO on the ground that the applications filed by the Petitioners were barred by the law of limitation as contemplated under Section 28-A of the Act.

11. In fact, the learned AGP appearing for the State has also not disputed the fact that the applications filed by the Petitioners under Section 28-A were on 9th December, 2016. She has also relied upon the Award passed under Section 28-A of the Act to show that the applications filed by the Petitioners were on 9th December, 2016. Considering the above facts and

circumstances, we find that there is no merit in the contentions canvassed by the Acquiring Body that the applications filed by the Petitioners under Section 28-A before the SLAO were barred by the law of limitation.

12. Before parting, it would only be fair to deal with the decision of a learned Single Judge of this Court (Aurangabad Bench) relied upon by the Acquiring Body in the case of **Executive Engineer, Jalna Minor Irrigation Division, Jalna v/s the State of Maharashtra & Ors.** [Writ Petition No.5754 of 2016 along with the other connected matters decided on 18th December 2017].

13. We have carefully gone through this decision relied upon by the Acquiring Body. After going through this decision, we find that the same is wholly inapplicable to the facts of the present case. In the case before the learned Single Judge, it was a case of fraud and there was absolutely no proof as to when the 32 applications were filed by the Claimants under Section 28-A of the Act. In fact, the learned Judge noted that either the inward registers had gone missing, or they were being purposely withheld from the Court. In these circumstances, the learned Judge, after

relying upon several decisions of the Hon'ble Supreme Court, directed the District Collector, Jalna to submit his investigation report [as directed in paragraphs 12 and 13 in the said order] to the learned Registrar (Judicial) of this Court on or before 30th June, 2018. We find that the factual matrix before us is wholly different. In the facts of the present case, it is not even the case of the Acquiring Body that there is any fraud or fabrication of any nature whatsoever. To be fair to the learned counsel appearing on behalf of the Acquiring Body, such an argument has not even been canvassed before us. In these circumstances, we find that the decision relied upon in the case of ***Executive Engineer, Jalna Minor Irrigation Division, Jalna (supra)*** is wholly misplaced.

14. In view of the foregoing discussion, we find no merit in Writ Petition No.6738 of 2023 (filed by the Acquiring Body). Accordingly, rule is discharged and Writ Petition No.6738 of 2023 is dismissed.

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15. Since Writ Petition No.6738 of 2023 (filed by the Acquiring Body) is dismissed, we find that the reliefs sought for in

Writ Petition No.4621 of 2021 deserve to be granted. We say this because now, since the challenge to the Award passed under Section 28-A is repelled by this Court, the Acquiring Body would have to deposit the compensation as determined by the Award dated 15th January 2019. Since over four years have elapsed since the communication dated 15th January 2019 was issued by Respondent No.2 to Respondent No.3, Respondent No.2 (in Writ Petition No. 4621 of 2021) shall issue a fresh letter to the Acquiring Body to deposit the money together with interest as per the Award, within a period of four weeks from today. The Acquiring Body shall thereafter deposit with Respondent No.2, the aforesaid amount within a period of 12 weeks from the date of receipt of the letter from Respondent No.2. It is made clear that the 2nd Respondent shall calculate interest taking into consideration even the period that we have granted to the Acquiring Body for making the deposit with the 2nd Respondent. In other words, interest will also be calculated for a period of 16 weeks from today. Once the aforesaid deposit is made, Respondent No.2, shall, within a period of one week from the date of deposit, disburse the payment to the Petitioners in Writ Petition No.4621 of 2021 as determined by the Award dated 15th January 2019 (Exhibit-G to Writ Petition No.4621 of 2021). Rule is

accordingly made absolute in the aforesaid terms and Writ Petition No.4621 of 2021 is disposed of in terms thereof.

16. 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.

[M. M. SATHAYE, J.]

[B. P. COLABAWALLA, J].