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

**WRIT PETITION NO. 9572 OF 2023**

Laxmibai Gopalrao Patil Dec Thr His Legal Heirs      ...Petitioners  
And Ors

***Versus***

The State Of Maharashtra Thr The Special Land      ...Respondents  
Acquisition And Ors

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***Mr. Adv. Anil Ahuja a/w Adv. Bhavana Khemani,***  
***Advocates for Petitioner.***

***Ms. M.S. Bane,*** AGP for the State/Respondent No. 1 & 2.

***Mr. Adv. Akshay Kulkarni i/by Ashutosh Kulkarni,***  
***Advocates for Respondent No. 3/CIDCO.***

***Mr. Jitin Rahman,*** Assistant Collector, Nashik is present in  
***Court.***

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**CORAM    : B. P. COLABAWALLA &  
                 M.M. SATHAYE, JJ.**

**DATE        : SEPTEMBER 6, 2023**

**P. C.**

**1.**     Rule. The learned Counsels for the Respondents waive service.  
With the consent of parties, rule made returnable forthwith and heard  
finally.

**2.** In the above Writ Petition, the Petitioners challenge the impugned order dated 26<sup>th</sup> April, 2021, passed by Respondent No. 1. By the impugned order the application filed by the Petitioners seeking compensation under the provisions of Section 28A of the Land Acquisition Act, 1894 [for short the “**1894 Act**”] was dismissed on the ground that the Petitioners have already filed an application under Section 18 of the 1894 Act, and therefore could not maintain an application under Section 28A of the said Act.

**3.** Under normal circumstances, this would be the correct position in law. As held by the Hon’ble Supreme Court, in ***Scheduled Caste Co-Operative Land Owning Society LTD., Bhatinda v/s. Union of India and ors. (1991) 1 SCC 174***, Section 28A would not apply to a case where the Claimant has sought and secured a reference under Section 18 of the 1894 Act. However, the peculiar facts of this case are very different. In the present case, the Petitioners herein, along with other claimants, being aggrieved by the award passed by the State under the 1894 Act, preferred Land References before the learned Joint District Judge Nashik. These References came to be allowed and compensation payable to the persons who preferred the Land References (including the Petitioners) was enhanced.

4. The State being aggrieved by the order of the Reference Court, preferred First Appeals before this Court. The claimants before the Reference Court (including the Petitioners) also filed First Appeals, seeking further enhancement of compensation. The appeals filed by the State and the claimants (including Petitioners) were disposed of by a common Judgment and Order dated 31<sup>st</sup> January, 2008 in the case of ***State of Maharashtra Vs. Sadashiv Ganpat Avhad [reported in 2008 (5) Mh.L.J. 363]***. In this Judgment, the Reference Applications filed by the Petitioners herein were held to be time barred and therefore, to that extent, the State's appeals succeeded. However, taking into consideration the provisions of Section 28A of the 1894 Act, as well as the decision of the *Hon'ble Supreme Court in the case of Union of India and Anr. Vs. Hansoli Devi and Ors., [AIR 2002 SC 3240]* this Court granted liberty to the claimants (including the present Petitioners) whose applications were held to be time barred, to seek compensation in terms of Section 28A of the 1894 Act.

5. Pursuant to this liberty granted by the Division Bench, the Petitioners preferred applications under Section 28A of the 1894 Act, before Respondent No. 1, who by its Order dated 2<sup>nd</sup> January, 2009, *inter alia* held that the applications filed by the Petitioners were time barred as the same were not filed within three months from the decision

given by the Reference Court i.e. from 25<sup>th</sup> October, 1994. This order was also challenged in a bunch of Petitions before this Court. This Court, by its order dated 4<sup>th</sup> March, 2021, set aside the order of Respondent No. 1 and held that the applications under Section 28A had to be filed within three months from 31<sup>st</sup> January, 2008, which was the date on which the Division Bench of this Court in the case of ***State of Maharashtra Vs. Sadashiv Ganpat Avhad*** (*supra*) passed its judgment. Accordingly, the order was set aside, sending back the matter to Respondent No.1 for deciding the applications under Section 28A afresh, keeping in mind the observations passed by this Court on 4<sup>th</sup> March, 2021.

6. Now in the impugned order, Respondent No. 1 has come to the conclusion that the applications filed by the Petitioners under Section 28A are not maintainable and they are not entitled to take benefit of the said Section, because they have earlier filed application/s under Section 18 of the 1894 Act. The same stand is also taken by Respondent No. 1 in the Affidavit-in-reply filed before this Court.

7. Having perused the papers and proceedings in the above Writ Petition and after hearing the learned Counsel appearing on behalf of the Petitioners as well as the learned AGP, we find that this stand is wholly misconceived. Once the applications filed by the Petitioners

under Section 18 of the 1894 Act are held to be time barred, they tantamount to no application being filed in the first place. This has been clearly held by the Hon'ble Supreme Court in ***Hansoli Devi's case (supra)***, the relevant portion of which reads thus :

4. *Before we embark upon an inquiry as to what would be the correct interpretation of Section 28-A, we think it appropriate to bear in mind certain basic principles of interpretation of statute. The rule stated by Tindal, CJ in Sussex Peerage case, (1844) 11 Cl & F.85, still holds the field. The aforesaid rule is to the effect:*

*"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law giver."*

*It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the AIR 1952 SC 369 AIR 1995 SC 2259 : 1995 AIR SCW 1834*

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*statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In Kirkness v. John Hudson & Co. Ltd, [1955] 2 All ER 345, Lord Reid pointed out as to what is the meaning of "ambiguous" and held that "provision is not ambiguous merely because it contains a word which in different context is capable of different meanings and it would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning." It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, CJ in the case of Aswini Kumar Ghose v. Arabinda Bose, [1953] SCR 1, had held*

that it is not a sound principle of construction to brush aside words in a statute as being in apposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In *Quebec Railway, Light Heat and Power Co. v. Vandray*, AIR (1920) PC 181, it had been observed that the Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective. Bearing in mind the aforesaid principle, let us now examine the provisions of the Section 28-A of the Act, to answer the questions referred to us by the Bench of the two learned Judges. It is no doubt true that the object of Section 28-A of the Act was to confer a right of making a reference, who might have not made a reference earlier under Section 18 and, therefore, ordinarily when a person makes a reference under Section 18 but that was dismissed on the ground of delay, he would not get the right of Section 28-A of the Land Acquisition Act when some other person makes a reference and the reference is answered. But the Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression "had not made an application to the Collector under Section 18" in Section 28-A of the Act. The aforesaid expression would mean that if the landowner has made an application for reference under Section 18 and that reference is entertained and answered. In other words, it may not be permissible for a land owner to make a reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a higher amount. In fact in *Pradeep Kumari's case* the three

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*learned Judges, while enumerating the conditions to be satisfied, where after an application under Section 28-A can be moved, had categorically stated -"the person moving the application did not make an application to the Collector under Section 18". The expression "did not make an application", as observed by this Court, would mean, did not make an effective application which had been entertained by making the reference and the reference was answered. When an application under Section 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an*

*application under Section 28-A cannot be denied. We, accordingly answer question No. 1(a) by holding that the dismissal of an application seeking reference under Section 18 on the ground of delay would tantamount to not filing an application within the meaning of Section 28-A of the Land Acquisition Act, 1894.*

5. *So far as question 1(b) is concerned, this is really the same question, as in question 1(a) and, therefore, we reiterate that when an application of a land owner under Section 18 is dismissed on the ground of delay, then the said land owner is entitled to make an application under Section 28-A, if other conditions prescribed therein are fulfilled.*

6. *Coming to the second question for reference the receipt of compensation with or without protest pursuant to the award of the Land Acquisition Collector is of no consequence for the purpose of making a fresh application under Section 28-A. If a person has not filed an application under Section 18 of the Act to make a reference, then irrespective of the fact whether he has received the compensation awarded by the Collectors with or without protest, he would be a person aggrieved within the meaning of Section 28-A and would be entitled to make an application when some other land owner's application for reference is answered by the reference Court. It is apparent on the plain language of the provisions of Section 28-A of the Act. Otherwise, it would amount to adding one more condition, not contemplated or stipulated by the Legislature itself to deny the benefit of substantial right conferred upon the owner.*

8. In fact relying upon this very decision of the Hon'ble Supreme Court, the Division Bench of this Court in the case of ***State of Maharashtra v/s. Sadashiv Ganpat Avhad*** (*supra*) *inter alia* granted liberty to the Petitioners to make an application under Section 28A by holding that the said decision of the Hon'ble Supreme Court protects a right of the person interested in the land, even if he had filed an application under Section 18 of the Act and the same was dismissed as being barred by time. The Division Bench clearly held that since finding that the applications filed by the Claimants (including the Petitioners) as being barred by time is given for the first time in appeal, the right of the Claimants (including the Petitioners) to move the Collector in terms of Section 28A cannot be taken away, subject to the Applicants satisfying the statutory and other requirements of the said Section. The relevant portion of the Division Bench Judgment in ***Sadashiv Ganpat Avhad' case*** (*supra*) reads thus :

*"21. The first and the foremost question that requires consideration by this Court is what is the effect of the applications filed by the claimants being barred by time. We have already discussed this issue at some length that the applications filed under Section 18 of the Act which were barred by time could not have been entertained by the Collector and consequently reference could not have been answered in favour of the claimants. Once the very initiation of the proceedings under Section 18 of the Act was barred in law, no subsequent proceedings could entail to the benefit of either parties. Both the Collector and the Court have no power of either parties. Both the Collector and the Court*

have no power to condone the delay in filing an application under section 18 of the Act. The obvious result thereto would be that the appeals filed by the claimants in such cases would not be maintainable while the appeals of the State in similar cases would have to be accepted as ordered above. The other relevant and pertinent question which would require consideration is that where Section 18 petition is held to be barred by time, can the claimants invoke the provisions of Section 28-A of the Act and, if so, which is the appropriate forum? As far as the first part of this aspect is concerned, it is no more re integra and has been answered in unambiguous terms by the Supreme Court in the case of Union of India and another vs. Hansoli Devei and others, AIR 2002 SC 3240, where the Court after discussing the law on the subject and in the facts of the case where Section 18 petition was filed beyond the prescribed period of limitation held that the claimants could invoke the provisions of Section 28-A for re-determination of compensation to the Collector. It will be useful to refer to the dictum of the Supreme Court in this case.

4. Before we embark upon an inquiry as to what would be the correct interpretation of Section 28-A, we think it appropriate to bear in mind certain basic principles of interpretation of statute. The rule stated by Tindal, CJ in *Sussex Peerage case*, (1844) 11 Cl & F.85, still holds the field. The aforesaid rule is to the effect:

"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law giver."

It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the AIR 1952 SC 369

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statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In *Kirkness v. John Hudson & Co. Ltd*,

*[1955] 2 All ER 345, Lord Reid pointed out as to what is the meaning of 'ambiguous' and held that "provision is not ambiguous merely because it contains a word which in different context is capable of different meanings and it would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning." It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, CJ in the case of Aswini Kumar Ghose v. Arabinda Bose, [1953] SCR 1, had held that it is not a sound principle of construction to brush aside words in a statute as being in apposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In Quebec Railway, Light Heat and Power Co. v. Vandray, AIR (1920) PC 181, it had been observed that the Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective. Bearing in mind the aforesaid principle, let us now examine the provisions of the Section 28-A of the Act, to answer the questions referred to us by the Bench of the two learned Judges. It is no doubt true that the object of Section 28-A of the Act was to confer a right of making a reference, who might*

*have not made a reference earlier under Section 18 and, therefore, ordinarily when a person makes a reference under Section 18 but that was dismissed on the ground of delay, he would not get the right of Section 28-A of the Land Acquisition Act when some other person makes a reference and the reference is answered. But the Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression "had not made an application to the Collector under Section 18" in Section 28-A of the Act. The aforesaid expression would mean that if the land-owner has made an application for reference under Section 18 and that reference is entertained and answered. In other words, it may not be permissible for a land owner to make a reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a higher amount. In fact in Pradeep Kumari's case the three*

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*learned Judges, while enumerating the conditions to be satisfied, where after an application under Section 28-A can be moved, had categorically stated -"the person moving the application did not make an application to the Collector under Section 18". The expression "did not make an application", as observed by this Court, would mean, did not make an effective application which had been entertained by making the reference and the reference was answered. When an application under Section 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an*

*application under Section 28-A cannot be denied. We, accordingly answer question No. 1(a) by holding that the dismissal of an application seeking reference under Section 18 on the ground of delay would tantamount to not filing an application within the meaning of Section 28-A of the Land Acquisition Act, 1894.*

5. *So far as question 1(b) is concerned, this is really the same question, as in question 1(a) and, therefore, we reiterate that when an application of a land owner under Section 18 is dismissed on the ground of delay, then the said land owner is entitled to make an application under Section 28-A, if other conditions prescribed therein are fulfilled.*

6. *Coming to the second question for reference the receipt of compensation with or without protest pursuant to the award of the Land Acquisition Collector is of no consequence for the purpose of making a fresh application under Section 28-A. If a person has not filed an application under Section 18 of the Act to make a reference, then irrespective of the fact whether he has received the compensation awarded by the Collectors with or without protest, he would be a person aggrieved within the meaning of Section 28-A and would be entitled to make an application when some other land owner's application for reference is answered by the reference Court. It is apparent on the plain language of the provisions of Section 28-A of the Act. Otherwise, it would amount to adding one more condition, not contemplated or stipulated by the Legislature itself to deny the benefit of substantial right conferred upon the owner.*

*22. The provisions of Section 28A can be invoked by a person interested in the land, if he had not filed an application under Section 18 of the Act and the Court had enhanced the compensation in relation to the land covered by the said notification as that of the person interested. Such a written application has to be made to the Collector within the specified time. The above dictum of the Supreme Court which is directly applicable to the facts of the present case protects the right of the person interested in the land, even if he had filed an application under Section 18 of the Act and the same was dismissed as being barred by time. Such filing has been construed by the Supreme Court "as if not filed". In the cases in hand we have already held that the applications filed by the claimants under Section 18 of the Act at the time of their filing were barred by time. But this finding could not be recorded because no such objection was raised on behalf of the State and in fact it was overlooked by the learned Reference Court as well. As the finding that these*

applications are being barred by time is for the first time recorded by this Court in appeal, the right of the claimants to move the Collector in terms of Section 28A cannot be taken away, subject to the applicants satisfying the statutory and other requirements of Section 28A of the Act.”  
(emphasis supplied)

**9.** Once this is the authoritative pronouncement of the Hon’ble Supreme Court as well as another Division Bench of this Court, we fail to understand how Respondent No. 1 rejected the applications of the Petitioners (filed under Section 28A of the 1894 Act) on the ground that the Petitioners had earlier filed applications under Section 18 of the said Act and therefore their applications under Section 28A are not maintainable or that they are not entitled to take benefit of the said Section. The Hon’ble Supreme Court as well as another Division Bench of this Court have clearly taken a view that where an application under Section 18 filed by a party is held to be barred by the law of limitation, he would still be entitled to file an application under Section 28A, provided he satisfies all other requirements as set out in the said Section. We find that the conclusion reached by Respondent No. 1 in the impugned Order runs directly contrary to the aforesaid decisions of the Hon’ble Supreme Court and the Division Bench of this Court.

**10.** In that view of the matter, the impugned Order is set aside and we direct the Respondent No. 1 to now decide all the applications filed by the Petitioners as well as 16 other applicants (filed under Section 28A)

on merits, considering the same as maintainable. We would request Respondent No. 1 to dispose of these applications as expeditiously as possible and preferably within a period of 2 months from today.

**11.** We are informed that compensation as per the order of the Reference Court under Section 18 is already paid to the Petitioners. We direct that if any amount is already paid, the same shall obviously be adjusted while determining the compensation payable under Section 28A of the 1894 Act.

**12.** Rule is made absolute in the aforesaid terms. However, no order as to costs.

**13.** 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.]**