

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO. 431 OF 2022

APPELLANT:

(On R.A.)
Ori. Claimant

Namdeo Banduji Mahure,
Aged about 68 years, Occu: Agriculturist,
Resident of Arni, Taluka Arni,
District-Yavatmal.

..V E R S U S...

RESPONDENTS

(On R.A.)
Ori. Respondent

- 1] The State of Maharashtra,
through its Collector, Yavatmal,
District Yavatmal.
- 2] The Land Acquisition Officer
-cum-Sub Divisional Officer,
Yavatmal.
- 3] The Chief Engineer,
Public Works Department, Yavatmal,
District Yavatmal.

Mr M.M.Agnihotri, advocate with Mr Parth Sagdeo, Advocate for
the appellant.

Mr Mangesh Kadu, AGP for the respondent Nos. 1 to 3.

CORAM : URMILA JOSHI-PHALKE, J. .

DATE OF RESERVE : 14/02/2023

DATE OF DECISION : 13/03/2023

ORAL JUDGMENT :

1. By this appeal, the appellant has challenged the
judgment and award dated 25-02-2022 passed by the Civil Judge

Senior Division, Darwha in LAC No.128/2018.

2. The appellant is the owner of land survey No. 28/1, out of which land admeasuring 0.51 R of Mouza Arni, District Yavatmal, has been acquired by the respondent No.1-State for the purpose of Arni Bye-pass road. In view of that on 02/07/1998, the respondents had issued notification under Section 4 of the Land Acquisition Act, 1984 (for short 'the Act of 1894'). The Special Land Acquisition Officer has passed an Award on 05/08/2000, thereby assessing the market value of the land @ Rs.150 per sq.ft. The appellant had accepted the amount under protest.

3. It is contended by the appellant that, due to financial constraint, the appellant had not filed any reference. However, other land owners have filed their references under Section 18 of the Act of 1894. The Reference Court, Darwha, had decided Land Acquisition Case No. 2073/2004 by which the reference Court was pleased to fix the market price of the land @ of Rs. 250 per sq.ft. after deduction of 35% towards the development costs along with statutory benefits. The State has not challenged the said judgment passed by the Civil Court. In some other references, the reference Court has granted rate @ Rs. 150 per.sqft in some cases @ Rs. 250/- per sq.ft. after deduction of 35% towards development costs.

4. As the appellant had not filed the reference under Section 18 of the said Act after passing of the award in LAC No. 2073/2004, and on relying upon the said judgment, the appellant has filed reference on 06/11/2015 under Section 28-A of the Act of

1894, claiming compensation @ Rs. 250 per sq.ft. along with statutory benefits before the Land Acquisition Officer. As per the directions of the Land Acquisition Officer, the appellant had also filed documents and affidavit. On 27/06/2016, the Collector had called upon the appellant to file necessary documents, accordingly, the appellant had sought time upto 25/08/2016. On 25/08/2016, the appellant had filed his affidavit and 7/12 extract. On 07/09/2016, the appellant had filed written notes and certified copy of the judgment of the reference Court in LAC No. 2073/2004. On 11/11/2016, the Land Acquisition Officer has passed an award and referred to the District Collector for approval. On 05/10/2017, the Land Acquisition Officer had forwarded a letter to the office of the Collector demanding the amount. On 29/12/2017, the Collector Office, Yavatmal had placed the proposed Award for approval. As there was no communication from the office of the Land Acquisition Officer, the application was filed by the appellant with the office, but he could not get any information. On 03/05/2018, the appellant had preferred the reference under Section 28-A. The said reference was forwarded to the reference Court for determination, the reference Court held that it is not disputed that the land of the claimant from survey No.28/1 admeasuring 0.51 R is acquired by the Government.

5. It is also not in dispute that the Civil Judge, Senior Division, Darwha, granted compensation vide reference No. 2073/2004 @ Rs. 250 per sqft. and appellant has claimed the compensation @ Rs. 250/- per sq.ft. However, the Land Acquisition

Officer had awarded compensation @ Rs. 150 per sq.ft. The appellant has adduced the evidence before the learned reference Court and stated on oath that, his land was acquired by the Government. He had claimed the compensation under Section 28-A in view of judgment passed in Land Acquisition Case No.2073/2004. The reference Court has further held that the land of the appellant and the land involved in the land reference No. 2073/2004 was acquired under the same notification and from the same village. Therefore, the appellant is entitled to receive the compensation @ Rs.250 per sq.ft. However, the reference Court has dismissed the claim of the appellant as it is not filed within the limitation.

6. Being aggrieved and dissatisfied with the said judgment and award, the present appeal is preferred by the appellant on the ground that the appellant had specifically stated that he has not received any information from the office of the respondent, in respect of passing of the award. As he had not received any notice from the respondent/Land Acquisition Officer, he had filed the application on 03/05/2018. In such circumstances, the evidence of the appellant which has gone unchallenged which ought to have been accepted by the reference Judge, even the respondents have not filed any document like acknowledgment of service of notice, to show that the said award was communicated to the appellant. In absence of any such material on record, the referral Judge ought to have accepted the contention of the appellant that he filed the reference after passing of the award. It is the further contention of

the appellant that the award is passed by the Collector under Section 28-A (2) of the Act of 1984. It is incumbent for the Collector to issue notice of his award under Section 28-A(2) of the Act of 1984. Thus, the reference filed by the appellant is within time. The judgment and order of the reference Court regarding dismissal is wrong and illegal and liable to be set aside.

7. Heard learned advocate Mr M.M. Agnihotri for the appellant. He submitted that application is filed by the appellant under section 28-A. He had filed the claim affidavit on 25/08/2016 and submitted written notes on 07/09/2016. The Land Acquisition Officer has passed the award dated 11/11/2016 and granted compensation @ Rs. 150 per sq.ft. The proposed award was finalized on 17/07/2017, till 06/12/2017 there was no confirmation of the award. On 06/04/2018, the appellant moved to the Collector and filed an application on 03/05/2018 under Section 28-A(3) read with Section 18 of the Act of 1984 and claimed compensation @ Rs. 250 per sq.ft. The respondents have not adduced any evidence to show that the award of the Collector was communicated to the appellant. Burden on the appellant has been discharged by him, whereas the respondent/State has not discharged its onus. Thus, the observations of the reference Court that the reference is not filed within limitation, the same would deserve to be set aside.

8. In support of his contention, he placed reliance on *Raja Harish Chandra Raj Singh vs Deputy Land Acquisition Officer and*

*another*¹, *Madan and another vs State of Maharashtra*², *Bhagwan Das and others vs State of U.P. and others*³, *Babu Ram and others vs State of U.P. and others*⁴, *State of Maharashtra and another vs Keru Baban Avhad*⁵, *Krishnabai Padu Govari (since dead) vs. State of Maharashtra and another*⁶ and *Nanak v Noida and another*⁷. On the basis of these catena of decisions, he has submitted that the land reference filed by the appellant is within limitation.

9. On the other hand, learned AGP Mr. M.A. Kadu, submitted that the reference Court has rightly held that, the reference is not within limitation. The burden is on the appellant to prove that the reference filed by him is within the limitation which is not discharged by him. The judgment of the learned trial Court observed that on 17/07/2017, final award was prepared by the Collector and therefore, appellant ought to have filed the reference within six months, which is not filed and hence the reference is not within the limitation.

10. After hearing both the sides and perusal of the evidence on record, the following points arise for my consideration.

a) Whether the reference of the claimant is within limitation?

b) Whether the claimant has made out the case that he is entitled for the compensation @ Rs. 250 sq.ft ?

1 (1962) 1 SCR 676.

2 (2014) 2 SCC 720

3 (2010) 3 SCC 545

4 (1995) 2 SCC 689

5 2008(6) Mh.L.J.766

6 2012(3)Mh.L.J.32.

7 (2019) 17 SCC 522

11. It is not in dispute that the appellant is the owner of land survey No. 28/1 out of which the land admeasuring 0.51 R of Mouza Arni, District Yavatmal, has been acquired by the respondent No.1 for the purpose of Arni Bye-pass road. The respondents had issued a notification under Section 4 of the Act of 1984. On 2/07/1998, the Land Acquisition Officer had passed an award and assessed the market value of the land @ Rs. 150/-Per Sq.ft. Accordingly, the Land Acquisition Officer has passed the award on 05/08/2000. Admittedly, the present appellant had not filed any reference under Section 18 of the Act of 1984. However, other land owners have filed the reference, out of which the reference Court Darwha, had decided the LAC No. 2073/2004, by which the Civil Court was pleased to fix the market price of the land @ Rs. 250/- per sq.ft., after deduction of 35% towards development cost and further direction to pay the statutory benefits.

12. Admittedly, the State has not challenged the said judgment passed by the Civil Court. In some other reference, the Courts have granted @ Rs. 150/- per sq.ft and in some cases @ Rs. 250/- per sq.ft., after deduction of 35% towards development cost. On relying upon the said judgment, the appellant had filed reference under Section 28-A, on 06/11/2005, claiming compensation @ Rs. 250/- per sq.ft. along with statutory benefits before the Land Acquisition Officer. As per the directions of the Collector, the appellant had filed documents of affidavit. It is not denied by the respondents that the Collector had called upon the appellant to file necessary documents and the appellant had sought

time upto 25/08/2016.

13. It is also not denied that on 25/08/2016, the appellant had filed his affidavit and 7/12 extract. Undisputedly, on 11/11/2016, the Land Acquisition Officer has passed the award and referred to District Collector for approval. Undisputedly, on 29/12/2017 the Collector Office, Yavatmal had placed the proposed award for approval.

14. In light of the above admitted position, it is the contention of the appellant that till 06/04/2018, he had not received communication from the office of Land Acquisition Officer and therefore, he applied to the Collector, but he could not get any information from the Collector Office. As no communication was made to him from the respondents, he had preferred reference under Section 18 read with Section 28-A(3) of the Act of 1894. inter-alia, claiming enhancement of the compensation @ Rs. 250/- per sq.ft. He has claimed the compensation @ Rs. 250/- per sq.ft, in view of the judgment passed by the learned Reference Court in land reference No. 2073/2004.

15. The said reference was objected by the respondents on the ground that, in land reference No. 2073/2004 the land was having non-agricultural potential and the said land was converted into non-agricultural use and therefore, the amount of compensation was enhanced @ Rs. 250/- per sq.ft. However, the claimant i.e. appellant is not entitled to claim compensation @ Rs. 250/- per sq.ft. It is submitted by the respondents that, respondent

No.2 has considered the application filed by the appellant under Section 28-A of the Act of 1984, and also considered the judgment of the Civil Court passed in LAC No. 2073/2004 and granted compensation @ Rs. 150/- per sq.ft. considering the potential of the land.

16. As per the contention of the respondents, information about passing of the award had been given to the appellant therefore, respondent No.2 made application to the Collector, Yavatmal for arrangement of fund for payment of compensation. Therefore, the objection raised by the appellant that he was not communicated about passing of the award is not legal and proper. Further the demand of the appellant is not legal and proper and therefore, the reference filed by the appellant is not within the period of limitation.

17. The claimant had adduced evidence and reiterated the contention. It is specifically stated on affidavit by the claimant that he has not received any notice about the award of the Collector. For the first time, he received the information on 17/07/2017, but the copy of the award was never communicated to him. After receipt of knowledge, he approached to the Collector Office and he received the certified copy of the award on 12/04/2018. Thus, his reference is within the limitation. He has cross-examined at length. During his cross-examination, nothing is elicited to show that the notice was issued to the appellant and he had received the said notice, even there is no suggestion by the respondents to the appellant that he

had received the notice. The certified copy of the award is filed on record which shows that the copy was received by the appellant on 17/04/2018. Exhibit-28 is the application filed by the appellant before the Land Acquisition Officer contending that he is receiving the amount of compensation under the protest, the said letter is of dated 06/04/2018. As per the contention of the said application, he has received the compensation amount on 05/04/2018, vide cheque bearing no. SBI 778160. The State has not adduced any evidence to rebut the evidence of the appellant.

18. On the basis of evidence, it is the contention of the claimant that as no notice was issued to him after obtaining the certified copy, he had filed the reference and hence his reference is within the limitation.

19. The question regarding, whether the reference is within the limitation or not, the learned trial Court discussed in para-22 of the judgment. Wherein it is stated that the respondent No.2 has passed the award bearing No. 6/28-A/2016-17 Arni dated 17/07/2017. The claimant has adduced the evidence stated that no notice was issued to him regarding passing of the said award. It is further mentioned by the Court in para-22 that after perusal of the written statement of the respondent Nos. 1 to 3, they nowhere stated that notice of the said award was issued to the appellant, they have also not produced any document on record to show that the notice of the award was issued to the appellant. It is observed by the reference Court that within six months from the declaration of the

award claimant has not referred the reference petition within six months from 17/07/2017, hence, it is not within limitation and dismissed by the reference Court.

20. Regarding the entitlement, the reference Court has observed that the land of the appellant bearing No.27/1 admeasuring 0.51 R was acquired by the Government for Arni Bypass road vide Award No. 1/47-1997-98. The reference Court further observed that the learned Civil Judge, Senior Division Darwha had passed award in Land Reference No.2073/2004 and awarded the compensation @ Rs. 250/- per sq.ft., but the Land Acquisition Officer has awarded the compensation to the appellant @ Rs. 150 per sq.ft. The claimant/appellant has filed an application under Section 28-A which was numbered as 6/28-A/2016-17/Arni.

21. It is further observed that in the reference filed by the appellant under Section 28-A, the respondents/Land Acquisition Officer passed the award and awarded the compensation @ Rs.150/- per sq.ft. and not awarded as per the judgment of the reference Court passed in Land Reference No.2073/2004. It is further observed by the Reference Court that, the certified copy of the judgment passed in Land Reference No. 2073/2004 was filed on record. The land involved in the land reference no. 2073/2004 and the appellant's land is acquired by the same notification and from the same village. However, the Land Acquisition Officer had not considered the same and awarded the compensation @ Rs. 150/-. It is observed by the learned reference Court that the land in land

reference No. 2057/2004 and land of the claimant/appellant is from the same Gat number. The reference Court has awarded the compensation @ Rs. 150/- per sq.ft. in land reference no. 2057/2004. It was challenged before this Court in First Appeal No. 840/2016. Wherein, this Court has awarded the compensation @ Rs.275/- per sq.ft. Thus, on the ground of parity, the present appellant is also entitled to receive the compensation @ Rs. 275/- per sq.ft. The entitlement of the compensation @ Rs. 275/- is assessed by the reference Court, on the basis of evidence adduced and on the basis of judgment delivered by this Court in First Appeal No. 840/2016, but the reference of the appellant was dismissed on the ground of limitation.

22. Before entering into the aspect of limitation, it is necessary to refer to the relevant Sections 18 and 28-A of the Land Acquisition Act, 1894, which reads thus:-

“18. Reference to Court. -(1) *Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.*

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

Provided that every such application shall be made-

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

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

“Section 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.]”

23. The issue regarding the limitation was dealt by the

Hon'ble Apex Court in the various decisions. The learned advocate Mr M.M. Agnihotri has placed reliance on *Raja Harish Chandra Raj Singh Vs Deputy Land Acquisition Officer and another (supra)*, wherein the Hon'ble Apex Court has dealt with the various provisions of Land Acquisition Act. It is held by the Hon'ble Apex Court that part-3 of the Land Acquisition Act, 1894 deals with the reference Court and procedure thereon opens with Section 18.

Section 18(1) provides that;-

"Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the him for the determination of the Court inter-alia, whether amount of compensation is adequate or not ?"

24. Under the said provision the appellant made an application from which the present appeal arises. Section 18(2) of the said Act requires that the application shall state grounds on which the objection to the award is taken. These grounds have been stated by the appellant in this application. The proviso to Section 18 deals with the scope of limitation that every such application shall be made -

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

(b) In other cases, within six weeks of the receipt of the notice from the Collector under Section 12(2), or within six months from the date of the Collector's award, whichever

first expires.

25. While dealing with the questions, the Hon'ble Apex Court in *Raja Harish Chandra Raj Singh Vs Deputy Land Acquisition Officer and another (supra)*, para-5 of the judgment held that, it is relevant to bear in mind the legal character of the award made by the Collector under Section 12. In a sense, it is a decision of the Collector reached by him after holding an inquiry as prescribed by the Act. It is a decision, inter alia, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer Section 18 gives him the statutory, right of having the question determined by Court, and it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case, it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance. In *Ezra v. The Secretary of State*⁸. It has been held that "the meaning to be attached to the word "award" under Section- 11 and its nature and effect must be arrived at not from the

8 (1903) ILR 30 Cal 605-36 at p.86

mere use of the same expression in both instances but from the examination of the provisions of the law relating to the Collector's proceedings culminating in the award. The considerations to which we have referred satisfy us that the Collector acts in the matter of the inquiry and the valuation of the land only as an agent of the Government and not as a judicial officer; and that consequently, although the Government is bound by this proceedings, the persons interested are not concluded by his finding regarding the value of the land or the compensation to be awarded." Then the High Court has added that such tender once made is binding on the Government and the Government cannot require that the value fixed by its own officer acting on its behalf should be open to question at its own instance before the Civil Court.

26. It is further held by the Hon'ble Apex Court that, if the award made by the Collector is in law offer shall not be made more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concern. That is the normal requirement under the contract law and its applicability while passing award under the Act cannot be reasonably excluded.

27. In para-6 of the said judgment, it is further held that, there is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of valuation of the property sought to be acquired, it is clear that the said decision ultimately affects the rights of the

owner of the property and in that sense, like all decisions which affect the persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly, if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair-play and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known to him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way.

28. In another judgment *Madan and another V/s State of Maharashtra (supra)*, wherein also the reference of judgment of *Harish Chandra Raj Singh* is given in para-9 and held that the date of the award used in proviso (b) to Section 18(2) of the Act must be understood to mean the date when the award is either communicated to the party or is known by him either actually or constructively.

29. In the case of *Bagwan Das and others vs State of Uttar Pradesh and others (supra)*, by referring the judgment of the *State of Punjab Vs Qaisar Jehan Begum⁹* and *Harish Chandra Raj Singh Vs Land Acquisition Officer¹⁰* held that, it seems clear to us that the ratio of the decision in *Harish Chandra Case* is that the party affected by the award must know it, actually or constructively, and the period of six months will run from the date of that knowledge.

30. In the case of *Babua Ram and others vs State of U.P. and others*, also in para-10 Hon'ble Apex Court, while considering the limitation under Section 28-A in para-10 held that in *Raja Harish Chandra Raj Singh Vs Deputy Land Acquisition Officer (supra)*, the Dy. Collector on making an award on 19/03/1950, did not give notice of award to the appellant. On 13/01/1953, on coming to know on making the appellant made an application made an application on 24/02/1953 under Section 18 requesting the Collector to refer the matter for determination by the Court. That application was dismissed as barred by limitation. In dealing with question of limitation, this Court held that the decision of the

⁹ AIR 1963 SC 1604

¹⁰ AIR 1961 SC 1500

Collector under Section 11 is in respect of the amount of compensation which should be paid to the person interested in the property acquired. Legally such award cannot be treated as a decision. It is in law an offer or a tender of the compensation determined by the Collector to the owner of a property acquired. If the owner accepts the offer, no further proceeding is required to be pursued. The amount is paid and compensation proceedings come to an end. If, however, the owner does not accept the offer, Section-18 gives him the statutory right of having the question determined by the Court and it is the amount of compensation which the Court may determine that would point both the owner and the Collector. The Collector does not determine the amount with legal authority but if the Court determines the amount judicially, the acquisition proceedings would be concluded. The award, therefore, was considered as a tender or offer made by the Collector on behalf of the Government to the owner of the property for acceptance. Although the Government is bound by the proceedings of the Collector, the persons interested are not concluded by the findings in the award. Therefore, he makes the offer binding on the Government as well as on the owner of the property. Communication of the award is required to be done if he is not present at the time of the making of the award or none represented them. Service of notice of award is made mandatory. Therefore, this Court held that, the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office; it must involve the consideration of the question as to when it was known to the party concerned

either actually or constructive. The date of the award should be construed in that perspective. The knowledge of the party affected by the decision of the Collector, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. The communication of the award to the party concerned, actually or constructively, is therefore, necessary. If the award is pronounced in the presence of the party whose rights are affected by, it can be said to be made when pronounced. If the date for pronouncement of the award is communicated to the party, whose rights are affected by it. It can be said to be made when pronounced, if the date for the pronouncement of the award is communicated to the party, whose rights are affected by it, it can be said to be made when pronounced. If the date of the pronouncement of the award is communicated to the party and it is accordingly communicated pronounced on the date previously announced, the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. If the party is represented, the party is presumed to have the knowledge of the date. In other cases, the communication to the party is necessary. Knowledge of the party affected by the award either actual or constructive is essential to satisfy the requirements of fairness and principles of natural justice. The legal position enunciated in *Harish Chander's* case being the law under Article 141 and the legislature being presumptively aware of this legal position, has altered the law by enacting Section 28A by the Amendment Act.

31. While interpreting the Sub Section (1) of Section 28-A, the Hon'ble Apex Court further held that Section 28-A would indicate that wherein an award under this part, (Part III consists of Section 18 to 28), 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 lands 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 writing make an application to the Collector within three months from the date of the award of the Court requiring that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the Court. The proviso gives a right to exclude the time taken from the day on which the award was pronounced and the time required to obtain a copy of the award in computation of three months within which the application for re-determination has be made in writing to the Collector under Sub-section (1) of Section 28-A. Sub-section (2) thereof enjoins the Collector to issue notice to all the persons interested, i.e. the applicant, the State and the beneficiary, if any, to give them reasonable opportunity of being heard in the inquiry conducted thereon and to make the award determining the amount of compensation payable to the applicants under Sub-section (1). Sub-section (3) of Section 28-A gives a right to the applicant either to accept the award or to accept the compensation under protest. In the latter case he has been given a right under Sub-section (3) to make a written application to the Collector to refer the matter for

determination under Section 18 to the Court. The provisions of Sections 18 to 28, as far as may be, apply to such references. Thus, Section 28-A is a complete Code in itself providing substantive right to an interested owner who received compensation under Section 18 without protest for higher compensation, and remedy has been provided to make a written application within the prescribed period.

32. This Court also in the case of *Krishnabai Padu Govari vs State of Maharashtra (supra)* has dealt with the issue regarding period of limitation for filing application for reference under Section 28-A (3). This Court has held that the period of limitation for filing application under Section (3) of Section 28-A will be six weeks from the date of receipt of the notice from the Collector under sub-section (2) of Section 12 or six months from the date of Collector's Award, whichever period shall expire earlier.

33. As far as Section 28-A is concerned, it is true that Sub-Section-1 thereof provides for re-determination of the amount of compensation on the basis of an award by a reference Court in reference under Section 18 in respect of another land acquired under the same notification under Section 4 (1) of the said Act. However, Sub-section (2) of Section 28-A makes a clear provision that after conducting an inquiry and after giving a reasonable opportunity of being heard to the persons interested, the Collector is required to make an award determining the amount of compensation payable to the applicant.

34. In the decision of the Hon'ble Apex Court in the case of

*Babua Ram vs. State of U.P.*¹¹, it is held that the award of the Collector under sub-section (2) of Section 28-A though as (sic at) a post-Section 11 stage, nonetheless, the award under Section 28-A(2) is award and partakes the same character as an offer and not a decision. Therefore, if the applicants accept the award, the award becomes complete and acceptance brings the proceedings under Section 28-A(3), the award made under Section 28-A(2) is at large subject to the decision by the Court by Application under Section 18 to 26 as is envisaged in Section 28-A(3).

35. This Court in the case *Krishnabai Padu Govari referred (supra)* in para-10 observed that as provided in sub-section (3) of Section 28-A, the provisions of Sections 18 to 28 are applicable to a Reference Application under Sub Section 3 of Section 28(A) as far as the same may apply. As the Award under Sub-Section 2 of Section 28A is on par with an Award under Section 11, the Reference in Section 18 to the Award will have to be also read as a Reference under Sub-Section 2 of Section 28(A). Therefore, the period of limitation provided in Section 18 will apply to an application for reference under Sub-Section (3) of Section 28.

36. It is further held in which para-11 that as pointed out earlier, clause (b) of proviso of Sub Section 2 of Section 18 provides that if the Applicant in the Reference is not present and is not represented before the Collector, at the time of making an Award under Section 11, the period of limitation is six weeks from the date of service of notice under Sub Section 2 of Section 12 or a period of

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six months from the date of the Award, whichever is earlier.

37. It is further held that, the argument is that there is no provision under Section 28(A) which requires that a notice of the Award under Sub Section 2 of Section 28(A) should be issued to the persons interested as contemplated by Sub-Section 2 of Section 12 of the said Act. As held by the Hon'ble Apex Court, the Award under Sub Section 2 of Section 28(A) partakes the character of an Award under Section 11. The effect of Sub Section 2 of Section 28(A) is that a fresh Award is required to be made after taking into consideration an Award of the Reference Court under Section 18 of the said Act. Thus, on the basis of an Application under Sub-Section 1 of Section 28 (A), an inquiry is required to be held as contemplated by Sub-Section 2 of Section 28(A) which is on par with an inquiry under Sub-Section (1) of Section 11 and an Award which is in the nature of an offer is required to be made. Thus, it follows that the requirement of Sub Section 2 of Section 12 of the said Act of immediately issuing notice of the Award will also apply to an Award under Sub Section 2 of Section 28A. Therefore, as far as the limitation for filing Application under Sub-Section 3 of Section 28A is concerned, the period of limitation will be six weeks from the date of receipt of the notice from the Collector under Sub Section 2 of Section 12 or six months from the date of Collector's Award, whichever period shall expire earlier.

38. Thus, in view of the catena of the decisions, it is clear that after inquiry before making an award under Section 28-A, the notice to the person interested is mandatory. Hence, in the present

case also, the starting point of limitation will be the date of receipt of notice of making an award and it can not be postponed till the date on which the copy of the award is received by the claimants. Admittedly, in the present case, no notice is given to the appellant after the award was prepared on 29/12/2017.

39. The reference Court has also observed in the judgment that no evidence is adduced by the respondents to show that any notice was issued to the appellants after award was prepared. It is apparent from the evidence on record that as no notice was received by the claimant about the passing of the award, he approached to the Collector Office and obtained certified copy which is received by him on 12/04/2018 and thereafter, he filed the reference petition on 3/5/2018. Since the notice was not issued with the copy of the award to the appellant, the appellant filed application for certified copy. A reference filed thereafter within six weeks is within limitation. In the present case, absolutely no evidence is produced on record to the effect that notice was issued to the appellant along with copy of the award.

40. On the other hand, the evidence of the appellant shows that as he has not received the information, he approached to the Collector Office and applied for the certified copy on 10/04/2018. He received the certified copy on 12/04/2018 and immediately thereafter, on 03/05/2018, he filed reference. There is no denial about the facts on record.

41. In such a situation, it is necessary to see that the reference filed before the Court was within the period of limitation.

Thus, the appellant was not having any notice and therefore, he could not effectively make the reference without the copy of the award and only on receipt of certified copy of the award, he could assail his right of reference. It has to be held that reference filed before the Reference Court was not barred by the limitation. The impugned judgment and order of the learned Reference Court dismissing the reference on the sole ground that it is barred by limitation, cannot be sustained. On this ground, the same deserves to be quashed and set aside.

42. So far as the entitlement of the appellant is concerned, there is no dispute that the appellant is the owner of the survey No. 28/1, admeasuring 0.51 R. There is no dispute that his land was acquired by the Government for the project of Arni Bye-pass road. It is also not in dispute that the appellant had filed an application under Section 28-A on the basis of the judgment passed in LAC No. 2073/2004, wherein the rate of compensation was fixed @ Rs. 250/- Per Sq.ft. It is also not in dispute that, the reference Petition No. 2057/2004 filed by the Aashish Nilawar and the land of the present appellant is from the same Gat number. The said Aashish Nilawar had filed the reference petition No. 2057/2004, wherein the reference Court has awarded the compensation @ Rs. 150/- per hectare. Therefore, the said Aashish Nilawar preferred an appeal bearing No.840/2016. Wherein, this Court has awarded the compensation @ Rs. 275/- per sq.ft.. The appellant has filed on record the copy of the judgment of appeal No.840/2016 for perusal. Thus, considering that the land of the present appellant is also from

the same Gat number, for which this Court has granted the compensation @ Rs. 275/- per sq.ft. In view of that of the ground of parity, appellant is also entitled to receive compensation at the rate of Rs. 275/- per sq.ft. Therefore, I pass the following order:-

a) In the light of aforesaid discussion, the judgment passed by the learned Civil Judge, Senior Division, Darwha (Reference Court) in LAC No. 128/2018, dated 25/02/2022 is quashed and set aside by holding that the reference is within limitation.

b) On the ground of parity, it is held that the appellant is entitled for compensation @ Rs. 275/- per sq.ft. along with all the statutory benefits. There would be no deduction of the amounts towards the development charges.

c) The compensation be disbursed after requisite Court fees is paid by the claimant, if not already paid.

d) The respondents to deposit the compensation amount within a period of three months from today, after which, the claimants would be at liberty to withdraw the same in terms of this judgment.

JUDGE