

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

WRIT PETITION NO.7778 OF 2022

1. Shankarrao Pandoji Shendge
(Since Dead) through his Legal
Heirs :
 - 1i) Namdeorao Shankarrao Shendge
Aged about 70 years,
Occu. Cultivator.
 - 1ii) Ramrao Shankarrao Shendge
Aged about 50 years,
Occu. Cultivator.
 - 1iii) Deorao Shankarrao Shendge
Aged about 48 years,
Occu. Cultivator.

All are R/o. At Village Takali,
Post Kurali, Tah. Umarkhed,
District-Yavatmal.
- 2) Bhagwan S/o Pandoji Shendge
(Since Dead) through Legal Heirs :
 - 2i) Anandrao Bhagwan Shendge,
Aged: Adult, Occu. Cultivator,
 - 2ii) Balaji S/o Bhagwan Shendge,
Age: Adult, Occu. Cultivator.
 - 2iii) Gajanan S/o Bhagwan Shendge,
Aged: Adult, Occu. Cultivator.
 - 2iv) Smt.Laxmibai Wd/o Bhagwan Shendge,
Aged: Adult, Occu. Cultivator.

All are R/o. At Rameshwar (Tanda)
Post & Tah. Kalambnuri,

District-Hingoli.

..... **PETITIONERS**

...VERSUS...

- 1) State of Maharashtra, through
the Collector, Yavatmal,
District – Yavatmal.
- 2) The Sub Divisional Officer and
Special Land Acquisition Officer
Upper Painganga Project, Pusad,
District – Yavatmal.

..... **RESPONDENTS**

Mr. S. U. Nemade, Advocate for Petitioners.
Mr. M. K. Pathan, AGP for Respondent/State.
Mr. S. Y. Deopujari, Advocate.

CORAM: **ROHIT B. DEO AND M. W. CHANDWANI, JJ.**

DATE: **13th JULY, 2023.**

ORAL JUDGMENT: (PER ROHIT B. DEO, J.)

The question which falls for determination is, if the Court to which reference is made under Section 18 of the Land Acquisition Act, 1894 (Act) refuses to enhance the compensation, and the compensation is enhanced by the High Court in appeal preferred under Section 54 of the Act, can a land owner covered by the same notification under Section 4 of the Act prefer an application under Section 28-A of the Act seeking enhanced compensation at par with the compensation allowed by the High Court in appeal preferred by the land owner.

2. The backdrop in which the question formulated arises is as set out infra.

2.1 Late Mr. Shankarrao Pandoji Shendge was the owner of field Survey 19/1, admeasuring 4.38 hectares situated at village Ansing, Taluka Umarkhed, District Yavatmal. Late Mr. Bhagwan Pandoji Shendge was the owner of field Survey 19/2, 26/3 and 44/2 admeasuring 9.51 hectares and petitioner 1(i) Mr. Nandearao Shankarrao Shendge was the owner of field Survey 26/2 admeasuring 1.96 hectares and field Survey 44/1 admeasuring 3.05 hectares situated at Mouza – Ansing.

2.2 Mr. Shankarrao Pandoji Shendge died intestate on 12.02.1990 and petitioners 1(i) to 1(iii) are his legal heirs. Mr. Bhagwan Pandoji Shendge also died intestate on 13.08.2016 and petitioners 2(i) to 2(iv) are his legal heirs.

2.3 The land described *supra* (subject land) was proposed to be acquired for the Upper Painganga Project and the notification under Section 4 of the Act was published in the Government Gazette on 09.12.1976. Section 6 notification was published on 14.04.1977 and the proceedings culminated in

Award dated 16.09.1978 where-under compensation at the rate of Rs.2800/- per acre was granted for dry crop land. The subject land was dry crop land.

2.4 The owners of the subject land did not seek reference under Section 18 of the Act. Petitioners state that due to illiteracy and the disadvantages and disabilities from which persons residing in remote rural areas suffer, reference was not sought.

2.5 One Mr. Shankarrao Mhaske whose land was also acquired by the same notification issued under Section 4 of the Act however, sought reference under Section 18 of the Act. The reference L.A.C. 2012/1979 was dismissed by the Reference Court on 15.09.1983.

2.6 Mr. Shankarrao Mhaske assailed the judgment of the Reference Court in First Appeal 32/1985 which was decided by the High Court on 04.11.1996. The High Court enhanced the compensation from Rs.2800/- per acre for dry crop land to Rs.5000/- per acre. The High Court further enhanced the compensation for irrigated land to Rs.20,000/- per hectare.

2.7 In the interregnum, the Act was amended w.e.f. 24.09.1984 and Section 28-A was introduced on the statute book. The owners of the subject land preferred application under Section 28-A of the Act on 25.11.1996 seeking enhanced compensation at par with the compensation enhanced by the High Court in First Appeal 32/1985. Petitioners state that since the application dated 25.11.1996 was not acted upon, the owners of the subject land and other similarly situated land owners submitted several representations *inter alia* representations dated 30.12.2015, 14.03.2016, 03.04.2017 and 17.04.2017. The representations did not evoke any response and the petitioners approached the High Court in Writ Petition 8463/2018 which disposed of the writ petition by directing the first respondent to decide the pending applications preferred under Section 28-A of the Act within stipulated period.

2.8 Petitioners state that the owners of the subject land and other similarly situated land owners appeared before the first respondent on 11.03.2019 and were asked to appear by the first respondent before the second respondent. Accordingly, the owners of the subject land and others attended the office of the second respondent on 14.06.2019 and filed common submission

on record.

2.9 The second respondent passed common order dated 14.06.2019 rejecting the applications preferred under Section 28-A of the Act on the ground that the applications are preferred beyond period of limitation on the premise that the limitation is triggered from the date of the decision of the Reference Court.

2.10 It is the common order dated 14.06.2019 *supra* which is assailed in the present petition.

3. **Submissions:-**

3.1 The learned counsel for the petitioner Mr. Nemade would submit, referring to the provisions of Section 26 of the Act, that the judgment of the Reference Court which dismissed the claim for compensation merged into the judgment of the High Court in First Appeal 32/1985, which partakes the character status of “award”. Referring to the provisions of Section 28-A of the Act Mr. Nemade would submit that the petitioners did prefer the application under Section 28-A of the Act within the period of limitation of 90 days from the date of the decision in the First

Appeal 32/1985. The extension of the submission is that since the Reference Court dismissed the claim for enhanced compensation, there was no cause of action for invoking the provisions of Section 28-A of the Act, and such right was triggered only with the High Court enhancing the compensation in First Appeal 32/1985. Emphasizing on the legislative intent as discernible from the statement of objects and reasons of the amendment Act of 1984 which introduced Section 28-A on the statute book, Mr. Nemade would submit that the right to avail the remedy of reference under Section 18 of the Act was not exercised by the poor and the inarticulate resulting in apparent inequality in payment of compensation to land owners covered by the same notification. Mr. Nemade submits that Section 28-A of the Act is a beneficial legislation and its amplitude cannot be restricted by narrow or pedantic construction. Mr. Nemade would submit that the expression “from the date of the award of the Court” must be necessarily understood as the first decision or award which enhances the compensation, which in the present case is the decision of the High Court in First Appeal 32/1985.

4. The learned AGP Mr. Pathan would submit that while Section 28-A of the Act is indeed a beneficial provision introduced

on the statute book to obliterate the inequality in payment of compensation, which inequality often resulted due to poverty or illiteracy and the attending circumstantial disadvantages and handicaps which land owners hailing from rural areas suffer, if the statutory language is plain, the scope and amplitude of the beneficial provision cannot be expanded by an interpretative exercise which does violence to the language of the statutory provision. Mr. Pathan would submit that the intention of the legislature will have to be ascertained on the touchstone of the words employed in the statutory provision, and unless there is any ambiguity in the words employed in the statutory provision, the Court is precluded from expanding the zone of consideration of the beneficiaries or the scope and amplitude of the statutory provision.

5. Referring to the definition of “Court” in Section 3(d) of the Act, Mr. Pathan submits that the expression “Court” means a Principal Civil Court of original jurisdiction. Mr. Pathan would submit that Section 28-A of the Act comes into play only if in an award under Part III of the Act, the Court enhances the compensation in which situation a person covered by the same notification can seek redetermination notwithstanding that no

application to the Collector under Section 18 of the Act was preferred. Mr. Pathan would emphasize that the written application to the Collector seeking redetermination is required to be made within three months from the date of the award of the Court, which means the Court as defined in Section 3(d) which has rendered an award under Chapter III of the Act.

6. Mr. Pathan would submit that Section 54 of the Act which provides for appeal appears in Part VIII of the Act. The extension of the submission is that the High Court deciding the appeal is not a Court defined under Section 3(d) of the Act nor is the decision in appeal an award under Part III, and the fact that the Reference Court did not enhance the compensation cannot clothe the High Court deciding an appeal under Section 54 of the Act with the character of Court rendering an award under Part III.

7. The learned counsel Mr. Sumant Deopujari has also addressed us on the issue involved. Mr. Deopujari would submit, referring to the provisions of Section 2(2) of the Civil Procedure Code, 1908 (CPC) and the provisions of Sections 54, 53 and 26(2) of the Act that by fiction of law the award of the Civil Court made under Section 26(2) is deemed to be a decree. The judgment of

the Reference Court which dismissed the claim is a decree which has merged with the decree of the High Court in First Appeal 32/1985. Mr. Deopujari would submit that since the judgment of dismissal rendered by the Reference Court merges with the appellate judgment of the High Court, the expression “award rendered under Part III” shall have to be construed as the appellate judgment of the High Court which partakes the character of award under Section 26(2) of the Act. Mr. Deopujari submits that if the compensation is enhanced for the first time in appeal under Section 54 of the Act, the appellate decree shall be to be constructed as an award under Chapter-III of the Act.

8. Mr. Nemade would rely on the decision of the learned Single Judge of this Court in *Sambhaji Vikram Gutal v. Special Land Acquisition Officer, Pune*,¹ the Three Judges Bench decision of the Supreme Court in *Union of India and another v. Pradeep Kumari and others*,² decision of the Supreme Court in *Bharatsing s/o Gulabsingh Jakhad and others v. State of Maharashtra and others*,³ *Union of India v. Munshi Ram (Dead) by LRS. And others*,⁴ while Mr. Pathan would press in service *Ramsingbhai*

1 2022(2) Mh.L.J. 702

2 (1995) 2 SCC 736

3 (2018) 11 SCC 92

4 (2006) 4 SCC 538

(Ramsangbhai) Jerambhai V. State of Gujarat and another,⁵ *Jose Antonio Cruz Dos R. Rodriguese and another v. Land Acquisition Collector and another*⁶ and *Yelamanchi Ranga Rao and others v. State of Orissa and others*⁷.

9. Discussion:-

9.1 In order to appreciate the submissions canvassed, it would be necessary to note the relevant statutory provisions of the Act.

9.2 Sub-section 3(d) read thus:

3(d) the expression "Court" means a principal Civil Court of original jurisdiction, unless the [appropriate Government] has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act.

Plain reading of the definition manifests that the High Court deciding an appeal under Section 54 of the Act is not a 'Court' within the meaning of the definition.

5 (2018) 16 SCC 445

6 (1996) 6 SCC 746

7 AIR 1998 SC 178

9.3 Section 11 deals with inquiry and award by Collector. Section 18 which is the first section in Part III 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 Collector for the determination of the Court, as regards the objection to the measurement of the land or the amount of compensation or the apportionment of the compensation. The Court dealing with the reference is obligated to consider matters for determining compensation, as are stipulated in Section 23 and not to be influenced by the matters which are referred to in Section 24. Section 25 provides that the amount of compensation awarded by the Court shall not be lesser than the amount awarded by the Collector. Section 26 provides that every award under Part III shall be deemed to be decree within the meaning of Section 2(2) and judgment within the meaning of Section 2(9) of the CPC.

9.4 The pivotal provision is Section 28-A which we extract in verbatim:

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.]

9.5 The Central Government introduced Bill dated 30.09.1982 to amend the Act, by *inter alia* introducing on the statute book Section 28-A. The Central Government was alive to the ground reality that many poor and inarticulate owners of acquired land did not, or could not, seek reference under Section 18 of the Act, with the result that while the educated and the affluent land owners received enhanced compensation by virtue of the reference decisions, the land owners covered by the same notification who did not seek reference, received less compensation. The object and reasons of the Bill read thus:

“Considering that the right of reference to the civil Court under Section 18 of the Act is not usually taken advantage by poor and inarticulate and is usually exercised only by the comparatively affluent land owners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested persons, it was proposed to provide an opportunity to all aggrieved parties whose land is covered under the same Notification to seek re-determination of compensation, once any one of them has obtained orders of payment of higher compensation from the reference Court under section 18 of the Act.”

9.6 The 1982 bill culminated in the enactment of the Land Acquisition (Amendment) Act, 1984 which came into effect on 24.09.1984. The statement of the objects and reasons of the amending act state that the legislative intent is to provide an opportunity to all aggrieved parties whose lands were covered under the same notification to seek re-determination of compensation, once any of the interested parties had obtained orders for payment of higher compensation from the Reference Court under Section 18 of the Act. The object was to ensure parity in payment of compensation amongst persons similarly situated.

10. Reference to the decision of the Supreme Court in *Babua Ram v. State of U.P.*⁸ is inevitable. One of the questions considered by the Two Judge Bench was whether the Collector on receipt of application under Section 28-A (1) is bound to re-determine the compensation when the award is pending in appeal before the High Court. *Babua Ram* answers the questions thus:

“39. The next question is whether the Collector/LAO on receipt of the application under sub-section (1) of Section 28-A is bound to redetermine the compensation while the award and decree under Section 26 is pending consideration in the appeal in the High Court or

8 (1995) 2 SCC 689

appellate forum. If he does so, whether award under Section 28-A(2) is illegal? It is settled law that the decree of the trial court gets merged in the decree of the appellate court which alone is executable. The finality of the determination of the compensation is attained with the decree of the appellate forum, be it the High Court or this Court. Take for instance that 'A', 'B' and 'C' are interested persons in the land notified under Section 4(1) and the compensation determined in the award under Section 11. 'A' received the compensation without protest. 'B' and 'C' received the compensation under Section 31 under protest and sought and secured reference under Section 18. The court enhanced the compensation from the Collector's award of Rs 10,000 to Rs 20,000. 'B' did not file appeal under Section 54 while 'C' filed the appeal. The High Court, suppose, further enhances the compensation to Rs 25,000 or reduces the compensation to Rs 15,000 per acre. 'A' is a person aggrieved only to the extent of the excess amount awarded either by the award and decree of the court under Section 26 but he will not get the enhancement of further sum of Rs 5000 granted by the High Court in favour of 'C'. The decree of the High Court is the executable decree made in favour of 'C'. Unless redetermination is kept back till the appeal by the High Court is disposed of, incongruity would emerge. Suppose the State filed appeal in this Court under Article 136 against the High Court decree and this Court confirms the award of the Collector and sets aside the decree of civil court under Section 26 and of the High Court under Section 54. There is nothing left for redetermination. With a view to

save 'A' or 'B' or the State from the consequences of such incongruous situations, the Collector/LAO should stay his hands in the matter of redetermination of compensation till the appeal is finally disposed of and he should redetermine the compensation only on the basis of the final judgment and decree of the appellate forum. Adoption of such course, would not merely avoid the chance element in the claimants getting the amounts of redetermined compensation but also avoids needless burden on public exchequer. As soon as the award of the civil court is carried in appeal, it becomes obligatory for the Collector to keep the application/applications for redetermination of compensation filed within limitation pending, awaiting decision by the appellate forum and to redetermine the compensation on the basis of the final judgment and decree.”

11. In ***Union of India v. Pradeep Kumari*** Three Judge Bench of the Supreme overruled *Babua Ram* to the extent *Babua Ram* held that the period of three months prescribed for application under Section 28-A begins to run from the date of the first award. *Pradeep Kumari* held that compensation under Section 28-A could be availed of on the basis of any one of the awards that has been made by the Court after coming into force of Section 28-A provided that the application is made within the prescribed period of three months from the making of the award on the basis of which redetermination is sought.

In ***Pradeep Kumari*** the Supreme Court enunciated that a person would be able to seek redetermination of the amount of compensation subject to the satisfaction of the following conditions:

- (i) An award has been made by the court under Part III after the coming into force of Section 28-A;*
- (ii) By the said award the amount of compensation in excess of the amount awarded by the Collector under Section 11 has been allowed to the applicant in that reference;*
- (iii) The person moving the application under Section 28-A is interested in other land covered by the same notification under Section 4(1) to which the said award relates;*
- (iv) The person moving the application did not make an application to the Collector under Section 18;*
- (v) The application is moved within three months from the date of the award on the basis of which the re-determination of amount of compensation is sought; and*
- (vi) Only one application can be moved under Section 28-A for re-determination of compensation by an applicant.*

12. In ***Jose Antonio*** the question which arose for determination was whether the period of three months prescribed

for making an application for redetermination of the amount of compensation under Section 28-A begins to run against the applicant from the date of the award under Section 18 of the Act or from the date of the decision of the appeal, if any, preferred against the award.

Analyzing the statutory scheme, the Supreme Court observed that the award referred to in Section 28-A is the award made under the provisions of Part III and in that context, reference to “Court” can only mean the Court to which a reference is made by the Collector under Section 18. It would be apposite to produce the relevant passage in *Jose Antonio*:

3. Before examining the decisions of this Court on which the High Court has placed reliance, we deem it appropriate to first examine the plain language of Section 28-A extracted earlier. Section 28-A was inserted as the last section in Part III entitled “Reference to Court and Procedure thereon” by Act 68 of 1984. Part III begins with Section 18 which provides that if an interested person does not accept the award made by the Collector under Section 11 of the Act, he may, by a written application to the Collector, require that the matter be referred for determination of the court. Section 2(d) defines the expression ‘Court’ to mean the principal civil court of original jurisdiction unless a Special Judicial Officer has been appointed. Therefore, the court referred to under Section 18

can only mean the principal civil court of original jurisdiction. Section 23 then sets out the matters to be taken into consideration in determining the compensation to be awarded for the acquired land, and Section 24 indicates the matters to be omitted from consideration. Section 26 provides that the award shall be in writing signed by the Judge which shall be deemed to be a decree within the meaning of clauses (2) and (9) of Section 2 of the Civil Procedure Code, 1908. Section 27 provides for costs to be awarded and Section 28 provides for payment of interest on excess compensation. We then come to Section 28-A. The first part of the section begins with the words “Where in an award under this part, Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11” which clearly indicate that the legislature was talking of an award made under the provisions of Part III, i.e., an award under Section 11 and therefore, in that context, reference to ‘Court’ can only mean the court to which a reference is made by the Collector under Section 18. This position is further clarified when the section refers to compensation awarded in excess of the amount awarded under Section 11 of the Act. The second part of the section then addresses “the persons interested in all the other land covered by the same notification ... and who are also aggrieved by the award” and permits them to make a written application to the Collector” within three months from the date of the award of the Court” requiring him to redetermine the amount of compensation on the basis of the amount awarded by the Court, notwithstanding the fact that they had not sought a reference under

Section 18 of the Act. Thus, the newly added section seeks to give the same benefit, which a person who had sought a reference and had secured the Court's award for a higher amount of compensation had received, to those who had, on account of ignorance or financial constraints, not sought a reference under Section 18. In the latter part of the section also, reference is to the award under Section 11 and later, to the award of the Reference Court under Section 18 of the Act. Therefore, the court referred to therein is again the court referred to in Section 2(d) of the Act, i.e., the principal civil court of original jurisdiction. The plain language of Section 28-A, therefore, prescribes the three months' period of limitation to be reckoned from the date of the award by the Court disposing of the reference under Section 18, and not the appellate court dealing with the appeal against the award of the Reference Court.

13. In *Ramsinghai (Ramsangbhai) Jerambhai v. State of Gujrat and another* the Supreme Court considered the question whether the application under Section 28-A of the Act seeking redetermination of the compensation can be filed within a period of three months from the date of the judgment of the High Court or Supreme Court in appeal. Answering the question in the negative, the Supreme Court observed thus:

3. It is clear from the opening words of the provision that the redetermination under Section 28-A is available only in respect of an "award"

passed by the “court” under Part III of the Act, comprising Sections 18 to 28-A (both inclusive). The “Court” referred to in Section 28-A of the Act is the Court as defined under Section 3(d) to mean “... a Principal Civil Court of Original Jurisdiction ...”. Thus, the judgment of the appellate court is not within the purview of Section 28-A. It is also to be noted that the appellate courts under Section 54 are under Part VIII of the Act whereas the redetermination is only in respect of the award passed by the Reference Court under Part III of the Act. [See Jose Antonio Cruz Dos R. Rodriguese v. LAO]. In its recent judgment in Bharatsing v. State of Maharashtra, this Court has surveyed the decisions on this issue and reiterated the legal principle.

14. The law of the land as is declared by the Supreme Court in the decisions *supra*, is that the expression “award” in Section 28-A(1) reference to the award made by the Court under Part III of the Act and not to the decisions in appeal under Section 54 which finds place in Part VIII. Mr. Nemade is right in submitting that in the decisions *supra* the Reference Court did enhance the compensation, and the right to claim enhanced compensation stood triggered. Mr. Nemade would further submit that the decisions of the Supreme Court which hold that the application under Section 28-A of the Act seeking redetermination of the compensation must be made within three months from the

date of the award by the Reference Court will have to be understood/construed in the context of the factual matrix that in view of the enhancement by the Reference Court cause of action to claim redetermination arose, and the said decisions would not be relevant in situations where the Reference Court dismisses the claim, with the result that there is no cause of action existing to seek redetermination. Mr. Nemade would submit with some passion, that if Section 28-A is construed holistically, the right to seek redetermination is triggered only when the compensation is enhanced, and if the compensation is enhanced in appeal for the first time, on the principle of merger the judgment and decree in appeal shall have to be construed as award made under Chapter-III of the Act.

15. The submission noted supra is appealing and attractive at the first blush. The difficulty in accepting the submission is however, the principle of interpretation that while a welfare, beneficent or social justice oriented legislation must be liberally construed, the constitutional court is precluded from re-legislating by substituting, adding or altering the words in the statutory provision.

16. The Supreme Court has unequivocally held that the award referred to in sub-section (1) of section 28-A means the award made under Chapter-III by the Court defined under Section 3(d) of the Act, and not the Appellate Court which renders judgment in appeal under Section 54, which provision is included in Part III of the Act. While Mr. Nemade is right in submitting that if the Reference Court under Section 18 dismisses the claim in entirety, with the result that a land owner covered by the same notification has no cause of action to make an application under Section 28-A, and the decision in appeal under Section 54 which for the first time enhanced the compensation is not treated as an award within the meaning of sub-section (1) of Section 28, in a given case the aggrieved person shall be deprived of the remedy to seek parity in payment of compensation, unless the judgment in appeal is treated as an award made under Chapter-III of the Act on the principle of merger. While the resultant situation made indeed be iniquitous and unfortunate, we are not persuaded to clothe the decision in appeal with the character and status of “award” under Chapter III on the principle of merger. While the award of the reference court whether of dismissal of the claim or enhancement of compensation indeed merges into the appellate judgment and decree, the plain language of the statutory provision

precludes us from equating the judgment and decree in appeal with the award under Chapter-III of the Act.

17. Section 28-A is indeed a welfare, beneficent and social justice oriented legislation and must receive liberal construction.

17.1 The principle that welfare, beneficent or social justice oriented legislation must be construed liberally and not in narrow or pedantic manner can however, be invoked only if two interpretations are reasonably permissible, in which situation the interpretation which furthers the beneficial object should be preferred.

17.2 If the language of the statutory provision is plain and admits only of one interpretation, it would be impermissible for the constitutional court to substitute, alter or add any word and to virtually re-legislate. As observed by the Constitution Bench of the Supreme Court in *Steel Authority of India and others v. National Union Water Front Workers and others*⁹, in a case of ambiguity in the language of a beneficial labour legislation, the Courts have to

9 AIR 2001 SC 3527

resolve the quandary in favour of conferment of, rather than denial of, a benefit on the labour, **but without rewriting and / or doing violence to the provisions of the enactment.**

[emphasis supplied]

17.3 In *Shyam Sunder and others v. Ram Kumar and another*¹⁰, the Constitution Bench of the Supreme Court articulates the limitation on the powers of the Court in applying the rule of benevolent or liberal construction thus:

But there are limitations on the powers of the Court, in a sense that Courts in certain situations often refrain themselves to apply rule of benevolent or liberal construction. The judicial precedents have laid down that, ordinarily, where and when the rule of benevolent construction is required to be applied and not to be applied. One of the situations is, when the Court finds that by application of rule of benevolent construction it would be re-legislating a provision of statute either by substituting, adding or altering the words used in the provision of the Act. In such a situation generally Courts have refrained themselves to apply rule of benevolent construction. Under the cover of application of rule of benevolent construction a Court is not entitled to re-legislate a provision of a statute and to do violence with the spirit of the provision of the Act so construed. The second situation is when the

10 AIR 2001 SC 2472

words used in a statute is capable of only one meaning. In such a situation, the courts have been hesitant to apply the rule of benevolent construction. But if it is found that the words used in the statute give rise to more than one meaning, in such circumstances, the Courts are not precluded to apply such rule of construction. The third situation is when there is no ambiguity in a provision of a statute so construed. If the provision of a statute is plain, unambiguous and does not give rise to any doubt, in such circumstances the rule of benevolent construction has no application. However, if it is found that there is a doubt in regard to meaning of a provision or word used in provisions of an enactment it is permissible for Court to apply the rule of benevolent construction to advance the object of the Act.

18. While we do appreciate the predicament of the petitioners and similarly situated land owners, who may conceivably be justified in nurturing deep sense of hurt and resentment since the land owners covered under the same notification whose claim for enhanced compensation is dismissed by the reference may have secured higher compensation in appeal, and the petitioners and other similarly situated land owners may perhaps feel that the refusal to pay the enhanced compensation at par with the enhanced compensation allowed in appeal is unjust and iniquitous, we are fettered by the plain language of the

statutory provision which is authoritatively construed by the Supreme Court in the decisions *supra*.

18.1 Lord Justice Farewell spoke thus in *Latham v. Richard Johnson & Nephew Ltd.* 1911-13 AER.

“We must be careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous Will O’ the Wisp to take as a guide in the search for legal principles.”

In *Teri Oat Estates (P) Ltd. v. U.T., Chandigarh and others*¹¹

the Supreme Court observed thus:-

“We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extra-ordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order, which would be in contravention of a statutory provision.”

¹¹ (2004) 2 SCC 130

Quoting the passages *supra*, in *M/s. Maruti Udyog Limited v. Ram Lal and others*¹² the Supreme Court observed thus:-

44. “While construing a statute, ‘sympathy’ has no role to play. This Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the concerned workmen.”

19. Before we part with the judgment, we may briefly analyze the decisions pressed in service by Mr. Nemade. The decision of the learned Single Judge in *Sambhaji Vikram Gutal v. Special Land Acquisition Officer, Pune* holds that the decision of the Reference Court under Section 18 of the Act merges in the decision in review. The ratio of the said decision of the learned Single Judge does not provide an answer to the issue involved in the present petition. Mr. Nemade relies on *Union of India and another v. Pradeep Kumari and others* which we have already considered. Mr. Nemade has pressed in service *Bharatsing s/o Gulabsingh Jakhad* which holds that an application seeking enhancement of compensation under Section 28-A must be kept pending till the appeal is disposed of. *Union of India v. Munshi*

12 AIR 2005 SC 851

Ram holds that the enhanced compensation to those land owners who had not sought reference under Section 18 must be the same as finally payable to those who had sought such reference, in view of the decision in appeal and not on the basis of decree as originally passed by the Reference Court. However, in *Union of India v. Munshi Ram* the question which fell for determination in the present petition did not arise inasmuch as an application was as a fact preferred under Section 28-A within the period of three months from the date of the Reference Court award. The issue which fell for consideration in *Union of India v. Munshi Ram* was if similarly situated land owners have preferred applications under Section 28-A of the Act, whether the enhanced compensation which is payable is the compensation as originally decreed by the Reference Court or the enhanced compensation allowed in appeal.

20. The decisions pressed in service by Mr. Deopujari explain the doctrine of merger. We have already held that while the award of the Reference Court under Section 18 undoubtedly merges into the appellate decree, in view of the plain language of Section 28-A, we are not in a position to hold that the judgment and decree in appeal must be equated with the award rendered under Chapter III of the Act.

21. In view of the discussion *supra*, we find no error in the order impugned and accordingly the petition is dismissed with no order as to costs.

(M. W. CHANDWANI, J.)

(ROHIT B. DEO, J.)

NSN