



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

13 WRIT PETITION NO. 313 OF 2024

KASHINATH JANARDHAN KHAVNE

VERSUS

THE STATE OF MAHARASHTRA THROUGH COLLECTOR
JALNA AND OTHERS

...

Advocate for the Petitioner : Mr. Jadhav Kailas B.
AGP for Respondents 1 to 3/State : Mr. P.K. Lakhotiya

...

CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.

DATE :- 22nd January, 2024

Per Court :-

1. The Petitioner has put forth prayer clause B as
under:-

“B) *By issuing appropriate writ, order or direction in the like nature, impugned order dated 05.06.2023 vide Outward No.2023/ LAQ/ Sec.28-A/ KAVI passed by respondent No.2 may kindly be quashed and set aside and consequently application U/Sec. 28-A of the Land Acquisition Act 1894 filed by petitioner on 03.10.2015 may be treated within period of limitation.*”

2. We have heard the learned Advocates for the
respective sides. There is no dispute as regards the sequence of
events as under:-

(a) The award under Section 18 of the erstwhile Land Acquisition Act, 1894 was delivered in LAR No.1041/2010 on 03.07.2015.

(b) The date on which the award is pronounced, has to be excluded while computing the number of days.

(c) Excluding the above stated date, 28 days in July 2015, 31 days in August 2015, 30 days in September 2015 and 2 days of October, 2015, make the total 91 days.

(d) The Petitioner preferred an application under Section 28-A on 03.10.2015.

(e) 2nd October, 2015 was national holiday. 1st October, 2015 was the 90th day and the proceedings were filed on 03.10.2015.

(f) The proceeding initiated by the Petitioner is, therefore, delayed by one day.

3. In *Assistant Commissioner (CT), LTU, Kakinada and others vs. Glaxo Smith Kline Consumer Health Care Limited*, (2020) 19 SCC 681, the Honourable Supreme Court has held that delay beyond the aggregate period cannot be condoned by exercising power under Article 142. So also, neither Article

226 of the Constitution of India, would not permit the High Court to condone the delay, nor can such delay be condoned by invoking Section 5 of the Limitation Act. When a complete appellate mechanism is provided under the statute prescribing the maximum period of limitation, writ jurisdiction cannot be exercised to undermine the statutory regime.

4. This Court in *Sheshabai @ Subhadrabai w/o Gyanoba Madale vs. The State of Maharashtra and others, 2014(1) Mh.L.J. 317*, (Writ Petition No.52/2022 decided on 17.08.2023 Aurangabad Bench), has taken a view in paragraph Nos.14 to 21 as under:-

“14. *In Vajsibhai Ramabhai Sagar Vs. The State of Gujarat, decided on 12.06.2023, the Division Bench of the Gujarat High Court has relied upon the Supreme Court judgments in paragraph nos. 5.1, 6.0 and 6.1 and has concluded in paragraph Nos. 7.0, 7.1 and 7.2 as under :-*

"[5.1] He would submit that in similar type of case the Division Bench of this Court in the case of Patel Govindbhai Khodidas vs. Special Land Acquisition Officer and Anr. rendered in Special Civil Application No.7677/2017, vide judgment dated 22.08.2017, has considered the case and by condoning the delay C/SCA/2908/2023 ORDER DATED: 12/06/2023 caused in filing application under Section 28A of the Land Acquisition Act, 1894, had granted the said petition. He, therefore, would submit that present petitions be allowed.

[6.0] *On the other hand, learned Assistant Government Pleader Mr. K.M. Antani appearing for the respondents has vehemently opposed the present group of petitions. He would submit that the limitation to file an application under Section 28A of the Land Acquisition Act, 1894 is of three months from the date of publication of award by the concerned Court. In the present case, the award was declared on 09.04.2018 wherein the application was made by the respective petitioners on 10.11.2020, which is beyond the prescribed period of 90 days.*

[6.1] *He would submit that such period cannot be condoned by this Court even in exercise of powers under Article 226 of the Constitution of India. In support of his above submission, learned AGP has relied upon the decision of the Hon'ble Apex Court in the case of State of A.P. and another vs. Marri Venkaiah and others reported in (2003) 7 SCC 280 as well as the decision of the Hon'ble Apex Court in the case of Union of India and others vs. Mangatu Ram and others reported in (1997)6 SCC 59. By relying upon these two decisions, learned AGP would submit that period of limitation cannot be extended and person seeking relief under Section 28A of the Land Acquisition Act, 1894 is supposed to file application within a prescribed period of three months from the date of publication of the award by the reference Court. As far as decision of the Division Bench of this Court in the case of Patel Govindbhai Khodidas (Supra) relied upon by the learned advocate appearing for the petitioners is C/SCA/2908/2023 ORDER DATED: 12/06/2023 concerned, learned AGP would submit that the facts of the said case were not applicable to the present group of petitions. He would submit that the application under*

Section 28A of the Land Acquisition Act, 1894 was filed by the owner of the property through his brother which was rejected on that ground and the application which was filed by the original owner subsequent to the period of limitation, the same was accepted. He, therefore, would submit that the petition be dismissed.

[7.0] *We have heard learned advocates appearing for the respective parties at length. It is an undisputed fact that none of the present petitioners have sought reference under Section 18 of the Land Acquisition Act, 1894. The Reference Court declared the judgment and award only on 09.04.2018.*

[7.1] *As per Section 28A of the Land Acquisition Act, 1894, a written application is required to be submitted for similar compensation under Section 28A of the Land Acquisition Act, 1894 within a period of three months from the date of such award passed by the Court. Section 28A of the Land Acquisition Act, 1894 reads as under:*

"28A. Re-determination of the amount of compensation on the basis of the award of the Court.

*.....
.....*

This provision has been interpreted by the Hon'ble Apex Court in the case of Marri Venkaiah and Others (Supra) wherein it has been specifically held by the Hon'ble Apex Court that a person would be entitled for benefits only if he files application under Section 28A within a period of 90 days. Similar is the ratio laid down by the Hon'ble Apex Court in the case of Mangatu Ram and Others (Supra).

[7.2] *In our considered opinion the Authority has committed no error in rejecting application under Section 28A of the Land Acquisition Act,*

1894. As far as the decision of the Division Bench of this Court in the case of Patel Govindbhai Khodidas (Supra) relied upon by the learned advocate appearing for the petitioners is concerned, it appears from the said judgment that the application in that case was filed within the period of limitation by the original land owner through his brother but the same was rejected on the ground that the person who filed C/SCA/2908/2023 ORDER DATED: 12/06/2023 application under Section 28A Land Acquisition Act, 1894 has not submitted authorization to file the application for and on behalf of the petitioner - original land owner and therefore, the Division Bench entertained the said petition. But, in the present case, the application under Section 28A of the Land Acquisition Act was filed beyond the period of limitation and therefore, said decision of Division Bench cannot be made applicable to the facts of the present case."

15. *The learned Advocate for the Petitioner has placed reliance upon the order passed by the Hon'ble Supreme Court in Karam Chand (supra), wherein it was noted that even though limitation is prescribed, subject to declining the interest for the delayed payment, compensation can be re-determined. We respectfully infer that the said order of the Hon'ble Supreme Court was in the facts and circumstances of the said case keeping in view the order passed by the Hon'ble Supreme Court dated 27.11.2019 in Civil Appeal No.1632/2011 filed by Narayan s/o Dhondu Sarode, Dead, through LR's and others Vs. The Collector, Jalgaon and another, referring to Article 142 of the Constitution of India. It would be advantageous to refer to the following paragraphs of the order delivered in Narayan Dhondu Sarode (supra) as under :-*

"It is relevant to note that the limitation

prescribed for filing application under Section 28A of the Act is 90 days. The 90th day fell on 6th July, 1986 which happened to be a Sunday. The application under Section 28A came to be filed by the appellants herein on 08.07.1986, instead of 07.07.1986. Hence, there was a delay of one day in filing the application.

The High Court in the impugned judgment summarily dismissed the writ petition filed by the appellants. It is held that the SLAO as well as the Collector were justified in rejecting the application under Section 28A in view of the delay of one day, in as much as, there is no provision for condoning such delay.

It is pertinent to note that this Court in the case of Bir Wati and others Vs. Union of India and others [(2017) 16 SCC 548] had by exercising jurisdiction under Article 142 of the Constitution of India, directed the concerned Authority to accept the application under Section 28A of the Land Acquisition Act. This is accounting for the fact that the persons hailing from agricultural background may be unaware of the legal and procedural requirements under the Act.

Hence, having regard to the facts and circumstances of the present case, we exercise our jurisdiction under Article 142 of the Constitution of India and condone the delay / lapse of one day on the part of the appellants in filing the application inasmuch as the appellant would not get the adequate compensation as awarded in similar matters.

Therefore, Collector / concerned appropriate officer is directed to accept the application filed by the appellants under Section 28A of the Land Acquisition Act and determine the appropriate compensation in accordance with Law."

16. *In Bir Wati and Others (supra), it has been*

recorded in paragraph Nos. 13 to 16 as under :-

"13) It is true that one of the requirements to apply to the Collector under Section 28A of the Act is to make an application within three months from the date of the award passed in other cases.

- 14) In this case, three months have already expired and the appellants were not able to make the application within three months or thereafter till date. However, having regard to the peculiar facts and circumstances of the case wherein we find that firstly, the bread earner of the appellants' family namely Jugal Kishore died during the pendency of the proceedings before the Collector long back; secondly, one of the appellants also expired during pendency of this appeal as reported; and thirdly, all the appellants are illiterates and unaware of the proceedings in question for years even after passing of the award and are also unaware of the legal and procedural requirements prescribed in the Act. It is due to these reasons, we are of the view that the appellants are entitled for indulgence.*

- 15) In the light of the foregoing discussion, we are of the view that this is a fit case to allow the appellants to make an application to the concerned Collector under Section 28A of the Act within three months from the date of receipt of this judgment i.e. on or before 17.12.2017 praying therein for payment of compensation to them in the light of the enhanced compensation, if already found awarded to other landowners in these very acquisition proceedings by the reference Court.*

- 16) This indulgence to apply under Section 28A of the Act is granted to the appellants by this Court in exercise of our powers conferred under Article 142 of the Constitution which we do with a view to do complete and substantial justice to the appellants."*

17. *It is, thus, clear from Bir Wati and others (supra), that the bread earner of the Appellant's family had died during the pendency of the proceedings before the Collector. Another male appellant expired during the pendency of the appeal. The surviving appellants were illiterate and were unconnected with the proceedings since the deceased appellants were looking after the said proceedings. It was in these circumstances that the Hon'ble Supreme Court concluded that the indulgence being shown by it was under Article 142 of the Constitution of India with the view to do complete and substantial justice. Similar is the view in Narayan Dhondu Sarode (supra).*
18. *The Petitioner has relied upon the order of this Court delivered at the Nagpur Bench on 19.09.2023 in WP No.4911/2021 (Shantabai Bhagwan Gomate Vs. State of Maharashtra and another) wherein liberty to file an application for condonation of delay was granted by the Court after relying upon the order passed in Karam Chand (supra). The Petitioner relies upon another order passed by this Court at the Nagpur Bench dated 23.11.2022 in WP No.6214/2022 (Dnyandeo Yashwanta Mante Vs. The State of Maharashtra and others). In this order as well, the learned Bench granted liberty to file an application for condonation of delay by relying upon the order passed in Karam Chand (supra).*
19. *With utmost respect to the discretionary orders passed in Shantabai (supra) and Dnyandeo (supra), we find that the judgments delivered by the Hon'ble Supreme Court in Tota Ram (supra), Marri Venkaiah (supra), Popat Govardhane (supra), Narayan Dhondu (supra) and Bir Wati(supra), were not brought to the notice of the learned Bench at Nagpur. Even the view taken at the Nagpur Bench in*

Parasmal s/o Kunjilal Jain Vs. The State of Maharashtra and another [2015(7) ALL MR 320], was not cited.

20. *In the instant case, we find that the Petitioner is from the same village as the co-claimants. Most of the co-claimants approached the Court u/s 18. The Petitioner found it appropriate to stay away from the said proceedings. The LAR Court had delivered a judgment on 21.12.2001 and the Reference Court delivered its judgment on 30.01.2012 enhancing the compensation amount from Rs.610/- Per R to Rs.1754/- Per R for the dry land and Rs.2631/- per R for the irrigated land. When the co-claimants from the same village succeeded in these proceedings and got a substantial rise of almost 300 percent (in so far as the dry lands) and more than 500 percent (in so far as the irrigated lands), it cannot be believed that the Petitioner did not have the knowledge of such a huge rise in compensation granted to the co-claimants from the same village, for a period of 7 years.*
21. *We need to record that the powers available to the Hon'ble Supreme Court under Article 142 of the Constitution, are not available to this Court. The orders in Bir Wati (supra) and Narayan Dhondu Sarode (supra), are under Article 142 since the Hon'ble Supreme Court has concluded that the said orders are being passed under Article 142.”*

5. In view of the above, the Petitioner's claim is belated by one day and the petition cannot be entertained. Hence, **the Writ Petition is dismissed.**