



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2844 OF 2020

1. Sumanbai w/o Prabhkar Igave,
Age: 55 years, Occupation: Household,
R/o : Sastur, Tq. Lohara,
Dist. Osmanabad. Petitioner

VERSUS

1. The State of Maharashtra,
Through the Collector,
Osmanabad.
2. The Sub-Divisional Officer /
(Land Acquisition Officer)
Omerga, District Osmanabad. Respondents

Appearance :

Mr. R. R. Deshpande h/f Ms. Deshpande Priyanka R., Advocate for the
Petitioner.

Ms. Vaishali S. Choudhari, AGP for Respondent Nos.1 and 2.

**CORAM : R. G. AVACHAT &
NEERAJ P. DHOTE, JJ.**

**Reserved on : 22nd July, 2025
Pronounced on : 31st July, 2025**

JUDGMENT : [PER NEERAJ P. DHOTE, J.]

1. By consent of both the sides, heard finally at the stage of
admission.
2. The Petitioner was the owner of land admeasuring 1 Hectare
1 R bearing Survey No.148/2, situated at Village – Sastur,
Taluka – Omerga, District – Osmanabad (Now Dharashiv). The said land

of the Petitioner came to be acquired for rehabilitation of Village – Sastur. The Respondent No.2 – Land Acquisition Officer (LAO) passed an Award on 22/10/1996 under Section 11 of the Land Acquisition Act, 1894 (hereinafter referred to as ‘the L. A. Act’) and granted the rate of Rs.24,000/- Per Hectare for the land of the Petitioner. Being not satisfied with the amount of compensation granted by Respondent No.2, the Petitioner preferred a Land Acquisition Reference (L.A.R.) No.595/2005 (Old L.A.R No.255/2000), which was referred to the Civil Judge, Senior Division, Omerga (hereinafter referred to as ‘the learned Reference Court’) for compensation @ Rs.20,000/- Per R. The Reference came to be rejected by the learned Reference Court vide Judgment and Order dated 06/01/2009.

3. The Petitioner, being aggrieved by the above referred Judgment and Order passed by the learned Reference Court, preferred the Civil Revision Application (Stamp) No.26654/2011 with Civil Application No.12357/2011 for condonation of Delay before this Court. This Court by order dated 08/12/2011 dismissed the Application for condonation of delay in preferring the Civil Revision Application. The Petitioner approached the Hon’ble Supreme Court of India in Special Leave Petition (Civil) Diary No(s). 31891/2019, which also came to be dismissed on the ground of delay.

4. In the same Land Acquisition Proceedings, the land belonging to one Kusumbai Vishambar Yadav resident of the same Village i.e. Sastur, admeasuring 1 Hectare 66 R. bearing Survey No.128 also came to be acquired. The said Co-villager preferred Land Acquisition Reference No.600/2005 (Old L.A.R. No.262/2000) before the learned Reference Court. The Reference was allowed by the Judgment and Order dated 05/12/2014 and the compensation came to be enhanced in favour of the said Co-villager @ Rs.20/- per sq. ft. The Petitioner, on the basis of the said Award enhancing the compensation in favour of the said Co-villager, filed an Application under Section 28-A of the L. A. Act before Respondent No.1. The Respondent No.1, by order dated 28/12/2018, rejected the Application filed by the Petitioner on the ground that, the Petitioner had preferred the Reference Application under Section 18 of the L. A. Act. Being aggrieved by the decision of Respondent No.1, the Petitioner has approached this Court by way of the present Writ Petition under Article 226 of the Constitution of India.

5. It is submitted by the learned Advocate for the Petitioner that, the Reference Application under Section 18 of the L. A. Act, which was preferred by the Petitioner, was not dismissed on merits. The Civil Revision Application and the S.L.P. were dismissed on the ground of delay. The order of the learned Reference Court merged in the order of this Court and the order of the Hon'ble Supreme Court, and therefore, the

dismissal of the Reference Application was on technical ground. There is no bar under the L. A. Act to file the Application under Section 28-A of the L. A. Act after Section 18 Reference was preferred. Though the Petitioner could not lead evidence, the learned Reference Court should have decided the Reference on merits, on the basis of the documents available on record, which were forwarded by Respondent No.1 to the learned Reference Court under Section 19 of the L. A. Act. As the Petitioner's Reference Application was not decided on merits, the Respondent No.1 ought to have considered and decided the Application filed under Section 28-A of the L. A. Act on merits, instead of dismissing the same on the ground that, the Petitioner had filed Reference Application. He submitted that, the Petitioner is ready to waive the interest for the period prior to filing the Application under Section 28-A of the L. A. Act. In support of his submissions, he relied on the following Judgments :

- (a) **Kawadu s/o Madhav Bansod Vs. State of Maharashtra and Another ; 2004 (2) Mh. L. J.;**
- (b) **Subhash s/o Babulal Rajput Vs. State of Maharashtra and Another; 2012 (2) Mh. L. J.;**
- (c) **Mukund s/o Bhimrao Kalshetti Vs. State of Maharashtra and Another ; 2011 (2) Mh. L. J.;**
- (d) **Union of India and Another Vs. Hansoli Devi And Others with State of Tripura and Another Vs. Roop Chand Das and Another ; (2002) 7 SCC 273 ;**

- (e) **Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat ; AIR 1970 SC 1 ;**
- (f) **Chander Bhan (D) By LRs. & Ors. Vs. Union of India, in Civil Appeal No.225/2005 decided on September 26, 2013 ;**

6. The learned Assistant Government Pleader appearing for the Respondents opposed the Writ Petition. She submitted that, the provision of Section 28-A of the L. A. Act shows that, once the Application under Section 18 of the L. A. Act is filed, such Application for re-determination of the amount of compensation is not maintainable. The operative order of the learned Reference Court shows that, the Award was directed to be prepared. The Respondent No.1 has rightly rejected the Petitioner's Application on the ground that, the remedy of Reference under Section 18 of the L. A. Act was exhausted by the Petitioner. No interference was called in the impugned order. In support of her submissions, she relied on the following Judgments :

- (a) **Mewa Ram (Deceased) By his LRs and Others Vs. State of Haryana Through the Land Acquisition Collector, Gurgaon ; (1986) 4 SCC 151;**
- (b) **Babua Ram and Others Vs. State of U.P. and Another ; (1995) 2 SCC 689 ;**
- (c) **City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Others ; (2009) 1 SCC 168 ;**

7. Almost all the aspects of the matter are undisputed; they are :

- (i) The Petitioner's land situated at Village – Sastur, Taluke – Omerga, District – Osmanabad was acquired by the following due process of law under the provisions of the L. A. Act.

- (ii) The Respondent No.2 passed the Award and granted the compensation @ Rs.24,000/- Per Hectare to the Petitioner.
- (iii) Being not satisfied by the compensation awarded by Respondent No.2, the Petitioner preferred the Application under Section 18 of the L. A. Act for enhance compensation.
- (iv) The said Application under Section 18 of the L. A. Act was referred to the learned Reference Court for determination.
- (v) The Petitioner engaged the services of the Advocate in the Reference Proceedings.
- (vi) The Reference came to be rejected with costs by the learned Reference Court.
- (vii) The Petitioner preferred the Civil Revision Application with the Application for condonation of delay before this Court against rejection of her Reference. The said Application for condonation of delay in preferring the Civil Revision Application came to be dismissed.
- (viii) The Petitioner approached the Hon'ble Supreme Court of India by way of a Special Leave Petition, which also came to be dismissed on the ground of delay.
- (ix) In the meanwhile i.e. before dismissal of the S.L.P. on the ground of delay, Reference No.600/2005 of the Co-villager, whose land was also acquired for the same purpose and in the same Land Acquisition Proceedings, under the same Award, came to be determined by the Judgment and Order dated 05/12/2014, enhancing the compensation @ Rs.20/- per sq. ft.

- (x) The Petitioner filed the Application under Section 28-A of the L. A. Act for re-determination of the amount of compensation on the basis of the said Judgment and Award of the learned Reference Court in the Reference of Co-Villager.
- (xi) The Respondent No.1 rejected the said Application under Section 28-A of the L. A. Act by the impugned order dated 28/12/2018.

8. The only question / issue for consideration before us is whether the impugned order rejecting the Petitioner's Application under Section 28-A of the L. A. Act for having exhausted the remedy of Reference under Section 18 of the L. A. Act requires interference.

9. As per the provisions of Section 18 of the L. A. Act, any person interested, who has not accepted the Award may, by written Application to the Collector, require that the matter be referred for determination of the Court. The said Application shall state the grounds on which objection to the Award was taken. The Section 28-A of the L. A. Act was inserted by the Act 68 of 1984 with effect from 24/09/1984. As per the provisions of this Section, where in an Award under Part – III, the Court allows to the Applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all 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. As per Sub-section (2), on receipt of such Application by the Collector, the Collector is required to 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. Under Sub-section (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 for determination of the Court.

10. In *Kawadu Madhav Bansod (Supra)*, it was the Civil Revision Application against dismissal of Reference under Section 18 of the L. A. Act by the Civil Court for the reason of failure of the Applicant therein to adduce the evidence and it was observed that, such order cannot be taken to be an adjudication and therefore, the same cannot be treated to be an Award and so, the Revision was maintainable. This Court had set aside the order of Civil Court and remanded back the matter for deciding afresh.

11. In *Subhash Babulal Rajput (Supra)*, it was again the Civil Revision Application against rejection of the Reference under Section 18 of the L. A. Act on the ground of failure of the Applicant to lead the

evidence and on relying the Judgment in Kawadu Madhav Bansod (*Supra*), the Civil Revision Application was allowed and the matter was remanded to the Reference Court for fresh determination.

12. In Mukund Bhimrao Kalshetti (*Supra*), it was again the Civil Revision Application against rejection of the Reference under Section 18 of the L. A. Act on the ground of failure of the Applicant to lead the evidence and on relying the Judgment in Kawadu Madhav Bansod (*Supra*), the Civil Revision Application was allowed and the matter was remanded to the Reference Court for fresh determination.

13. In Mewa Ram (*Supra*), it is observed that, *there is no provision in the Act apart from Section 28-A for reopening of an Award which has become final and conclusive. No doubt Section 28-A now provides for the re-determination of the amount of compensation provided the conditions laid down therein are fulfilled. For such re-determination, the forum is the Collector and the Application has to be made before him within thirty days from the date of the Award, and the right is restricted to persons who had not applied for Reference under Section 18 of the Act. If these conditions were satisfied, the Petitioners could have availed of the remedy provided under Section 28-A of the Act. In that event Section 25 would ensure to their benefit. Any other view would lead to disastrous consequences not intended by the legislature.*

14. In Babua Ram and Others (*Supra*), one of the question for consideration was, whether an interested person who sought and secured Reference under Section 18 of the L. A. Act but was either unsuccessful and filed no Appeal or had carried in Appeal but unsuccessful, would be entitled to re-determination when the compensation was enhanced by the Appellate Court. It was held that, the party who sought and secured Reference under Section 18 of the L. A. Act, be the poor or others, and failed before the Civil Court or in Appeal, the right and remedy provided by Section 28-A (1) is not available to him / them. It was further observed that, in other words, the operation of Section 28-A is confined to the Award made in Part - III only and not to the Judgment or Decree of the High Court or the Appellate Court. It was further observed that, denial of the right and remedy to such party under Sub-section 1 of Section 28-A violates Article 14 of the Constitution and the said question was answered in the negative.

15. The above-referred Judgment in Babua Ram and Others (*Supra*) was considered in Union of India and Another Vs. Hansoli Devi and Others (*Supra*), which was decided by the Constitution Bench. The following two (2) questions were referred to the Constitution Bench for consideration and decision ;

“1. (a) Whether dismissal of an Application seeking Reference under Section 18 on the ground of delay amounts to ‘not filing an application’ within the meaning of Section 28-A of the Land Acquisition Act, 1894 ?

(b) Whether a person whose application under Section 18 of the Land Acquisition Act, 1894 is dismissed on the ground of delay or any other technical ground is entitled to maintain an Application under Section 28-A of the Land Acquisition Act ?

2. *Whether a person who has received the compensation without protest pursuant to the Award of the Land Acquisition Collector and has not filed an Application seeking Reference under Section 18 is 'a person aggrieved' within the meaning of Section 28-A ?"*

16. The Constitution Bench observed that, it is no doubt true that the object of Section 28-A of the Act was to confer a right of making a Reference, (*sic on one*) who might have not made a Reference earlier under Section 18 and, therefore, ordinarily when a person makes a Reference under Section 18 but that was dismissed on the ground of delay, he would not get the right of Section 28-A of the Land Acquisition Act when some other person makes a Reference and the Reference is answered. But the Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression "had not made an Application to the Collector under Section 18" in Section 28-A of the Act. The aforesaid expression would mean that if the land-owner has made an Application for Reference under Section 18 and that Reference is entertained and answered. In other words, it may not be permissible for a land owner to make a Reference and get it answered and then subsequently make another Application when some other person gets the Reference answered and obtains higher amount. In fact in *Pradeep Kumari's* case the three learned Judges, while enumerating the conditions to be satisfied,

whereafter an Application under Section 28-A can be moved, had categorically stated (SCC P. 743, para 10) "the person moving the Application did not make an Application to the Collector under Section 18". The expression "did not make an Application", as observed by this Court, would mean, did not make an effective Application which had been entertained by making the Reference and the Reference was answered. When an Application under Section 18 is not entertained on the ground of limitation, the same not fructifying into any Reference, then that would not tantamount to an effective Application and consequently the rights of such Applicant emanating from some other Reference being answered to move an Application under Section 28-A cannot be denied. We, accordingly answer question No. 1(a) by holding that the dismissal of an Application seeking Reference under Section 18 on the ground of delay would tantamount to not filing an Application within the meaning of Section 28-A of the Land Acquisition Act, 1894.

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

17. In the case at hand, the Reference under Section 18 of the L. A. Act preferred by the Petitioner was not decided on merits. The order dated 06/01/2009 of the learned Reference Court rejecting the Reference shows that, as the Petitioner did not enter into the witness box and had not filed the documents such as Award, Award Statement 'E', 7/12 extract and other documents like sale instances, which the Court could have considered and determined the market value at the time of issuing the notification under Section 4 of the L. A. Act. It is observed by the learned Reference Court that, failure to file these documents and non adducing any oral evidence on behalf of the Claimant (Petitioner herein) would show that, reasonable and proper compensation had been granted to her, and therefore, she did not enter into the witness box nor appeared before the Court for about eight (8) years. From this, it is clear that, there was no determination by the Civil Court. The Reference Application of the Petitioner was not adjudicated and decided on merits.

18. The provisions of Section 19 of the L. A. Act requires the Respondent No.1 i.e. Collector, to state the required information, in writing while making the Reference such as ;

- “(a) The situation and extent of the land, with particulars of any trees, buildings or standing crops thereon ;*
- (b) The names of the persons whom he has reason to think interested in such land ;*
- (c) The amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11; (The word "and" omitted by Act 68 of 1984, Section 14 (w.e.f. 24.9.1984).*

*[(cc) the amount paid or deposited under sub-section (3-A) of section 17; and]
[Inserted by Act 68 of 1984, Section 14 (w.e.f. 24.9.1984).];*

- (d) *If the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.”*

It is also not the case that, the learned Reference Court considered the documents made available by Respondent No.1 at the time of forwarding the Reference Application and held that the compensation awarded by the Respondent No.2 was adequate or just and proper. Though in the operative order of the said Judgment in Reference Application, it is mentioned that, the Award be prepared, there was no fructification of the Reference or an executable Award.

19. Considering these aspects in light of the observations made by the Constitution Bench in the above-referred Judgment, the Reference Application came to be rejected and there were no effective steps by either side in deciding the Reference on merits. It can be said, in other words, that, after the Application of Petitioner was referred to the learned Reference Court for determination, it remained undecided on merits. The challenge to the said decision before the Higher Courts failed on the ground of delay. Therefore, eventually the Reference Application remained undecided on merits. Thus, the remedy under Section 28-A of the L. A. Act cannot be said to have been unavailable to the Petitioner. The Respondent No.1 dismissed the Application of the Petitioner filed under Section 28-A of the L. A. Act only on the ground that the Petitioner

had filed Reference Application under Section 18 of the L. A. Act. In view of the above-referred authoritative pronouncement of the Hon'ble Supreme Court of India, in the facts and circumstances of the case, the impugned order is liable to be quashed and set aside.

20. The contention of the learned Assistant Government Pleader that, the discretion under Article 226 of the Constitution of India may not be exercised in favour of the Petitioner on the ground of delay, in our considered view, needs no favorable consideration. Admittedly, the Application under Section 28-A of the L. A. Act was preferred by the Petitioner before Respondent No.1 within the period of limitation. The Respondent No.1 passed the impugned order on 28/12/2018 and the Petitioner approached this Court by filing the Writ Petition on 27/01/2020. It shows that, the Petitioner approached this Court within a period of little over one (1) year.

21. In light of the above discussion, we proceed to pass the following order :

ORDER

- (I) The Writ Petition is partly allowed.
- (II) The impugned order dated 28/12/2018, passed by Respondent No.1, is quashed and set aside.

- (III) The Respondent No.1 shall consider and decide the Petitioner's Application filed under Section 28-A of the L. A. Act on its own merit, in accordance with law, within a reasonable period.
- (IV) The Petitioner shall not be entitled for the component of interest for the period prior to filing the Application under Section 28-A of the L. A. Act, if any.
- (V) Writ Petition stands disposed off accordingly.

[NEERAJ P. DHOTE, J.]

[R. G. AVACHAT, J.]

Sameer