



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

19 WRIT PETITION NO. 218 OF 2025

MANGALSING JOHARSING PATIL

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND OTHERS

...

AND

20 WRIT PETITION NO. 219 OF 2025

SHIVRAM BABURAO KAWADE

VERSUS

THE STATE OF MAHARASHTRA THROUGH SECRETARY
AND OTHERS

...

AND

21 WRIT PETITION NO. 220 OF 2025

SURESH RATAN DEVARE

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND OTHERS

...

Shri I.K. Wagh, Advocate h/f Shri More Kumar Gaurav M.,
Advocate for the Petitioners.

Shri M.K. Goyanka, AGP for Respondent Nos.1 to 3/State.

...

CORAM : MANGESH S. PATIL

&

PRAFULLA S. KHUBALKAR, JJ.

DATE : 17th February, 2025

Per Court :-

By way of these three separate Writ Petitions, the
land owners, who made an attempt to make a reference by

resorting to Section 28A of the Land Acquisition Act, 1894, are before us being aggrieved by the communications dated 22.08.2019 whereby, the Land Acquisition Officer refused to make a reference under sub-section (3) of Section 28A.

2. When we raised a query as to why, in the light of wording of Section 28A(3), making provisions of Sections 18 to 28 applicable, the petitioners cannot resort to a remedy prescribed under sub-section (3) (Maharashtra Amendment) to Section 18 whereby, an order of the Collector is susceptible to challenge in a revision under Section 115 of the Code of Civil Procedure before the High Court, the learned advocate for the petitioners was unable to satisfy us. He would submit that considering the specific wording of sub-section (3) of Section 18 (Maharashtra Amendment), it is only the order passed by the Collector under that section can be challenged by way of a revision under Section 115 of the Code of Civil Procedure. He would submit that this scheme or mechanism has nothing to do with the applications seeking reference under Section 28A. It is only after the Collector makes a reference under Section 28A(3) that the provisions of Sections 18 to 28 would be applicable. In

short, his submission is to the effect that the mechanism provided under Section 18(3) (Maharashtra Amendment) cannot be read into the provisions of Section 28A(3).

3. The learned AGP would submit that once sub-section (3) of Section 28A enables the land owners to make a reference, mentions that the Collector may make a reference and simultaneously, lays down that provisions of Sections 18 to 28, as far as may be, apply to such reference as they apply to a reference under Section 18, the mechanism provided under sub-section (3) of Section 18 (Maharashtra Amendment) would automatically apply to the fact situation in the matter in hand. He would submit that the impugned communication refuses to make a reference. It being an order of the kind similar to one contemplated under Section 18, when the State Amendment expressly provides that any order made by the Collector on an application under that section shall be subject to the revision under Section 115 of the Code of Civil Procedure, there is no escape from the mechanism and even the impugned order can only be challenged by resorting to the remedy under Section 18(3), and the writ petitions are not maintainable.

4. Obviously, we do not intend to go into merits or otherwise of the impugned communications whereby, the Collector has refused to make a reference on the petitioners' applications purportedly moved under Section 28A(3).

5. For deciding the issue regarding maintainability of the writ petition under Article 226, for the sake of convenience, we reproduce Section 18(3) (Maharashtra Amendment), as also, Section 28-A in its entirety, which read as under:-

“Section 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 person 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.”*

Maharashtra. By Maharashtra Extension and Amendment Act XXXVIII of 1964, s. 3 (w.e.f. 7.12.1964).

To s. 18, after sub-sec. (2) the following sub-section shall be added, namely:

"(3) Any order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the Collector were a court subordinate to the High Court within the meaning of s. 115 of the Code of Civil Procedure 1908 (Act V of 1908)". "

“Section 28A. *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.”

6. As can be appreciated, Section 28A enables the land owner, who has not made any reference under Section 18, to derive benefit of enhancement to which other land owners from the same notification under Section 4 have been found entitled to by the reference court. As a corollary, any land owner, who is not satisfied with the order of the Collector on the application moved under Section 28A, is entitled to make an application soliciting a reference to the Civil Court. Sub-section (3) of Section 28A further makes it abundantly clear that provisions of Section 18 to 28 shall as far as they apply to a reference under Section 18 will apply even in respect of the order passed under Section 28A. Meaning thereby, if the Collector makes a reference under Section 28A(3), all provisions of Sections 18 to 28 would apply. By analogy, if the Collector refuses to make a reference under sub-section (3) of Section 28A, even that fact situation will have to be dealt with in accordance with the mechanism provided under Section 18(3), by way of challenge to the order of the Collector refusing to make a reference, by preferring a revision to the High Court under Section 115 of the Code of Civil

Procedure. One cannot read this mechanism in a truncated manner as submitted by the learned advocate for the petitioners. Making of a reference under different provisions and still directing the provisions of Sections 18 to 28 to be applicable, would take within its sweep not only the orders making a reference, but would axiomatically cover within the orders of the Collector refusing to make a reference.

7. We are, therefore, of the considered view that the impugned communications being in the nature of rejection of application under Section 28A(3) thereby, refusing to make a reference, would be susceptible to challenge in a revision under Section 115 of the Code of Civil Procedure before the High Court in the light of sub-section (3) of Section 18.

8. The Writ Petitions are dismissed with liberty to the petitioners to resort to the remedy if they so desire.

9. It is clarified that we have not expressed any opinion touching the merit, including the issue of limitation in preferring the revisions.