

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4475 OF 2023

Nitin Bharat Savale
Datta Nagar,
Taluka Indapur, District – Pune

... Petitioner

Versus

1. State of Maharashtra,
Through its Principal Secretary,
Department of Revenue.

2. The District Collector,
Solapur.

3. Smt. Manisha Avahale,
Special Land Acquisition Officer No. 2-cum-
Additional Collector,
Solapur.

4. Union of India,
Through its Divisional Manager,
Central Railway, Solapur.

... Respondents

Mr. Sujeet Bugade, for the Petitioners.

Mr. Prashant P. More, Addl. GP for the Respondents - State.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

JUDGMENT RESERVED ON : 22 NOVEMBER 2024

JUDGMENT PRONOUNCED ON : 27 FEBRUARY 2025

JUDGMENT (Per Advait M. Sethna, J.) :

1. Rule, made returnable forthwith. The respondents waive service.

By consent of the parties, heard finally.

2. This petition is filed under Article 226 of the Constitution of India for the following substantive prayers / reliefs, which read thus:-

“(b) That this Hon’ble Court be pleased to issue appropriate writ, order, direction in terms of Writ of Mandamus or any other appropriate writ, order, direction to hold and declare that, the impugned provision i.e., section 28-A of the Land Acquisition Act procedurally improper, arbitrary, illegal and against the public welfare policy.

(c) That this Hon’ble Court be pleased to issue appropriate writ, order direction in terms of Writ of Mandamus or any other appropriate writ, order, direction to quash and set aside the impugned order of rejecting the application (Exhibit-A) by condoning the delay of 44 days caused in filing the application on such terms and conditions as this Hon’ble Court deems fit and proper.

(d) That pending the hearing and final disposal of the present writ petition, further effect and implementation of impugned Order dated 23-11-2022 be stayed on such terms and conditions as this Hon’ble Court may deem fit and proper.”

A) Issues Before the Court:

3. The principle issue for consideration is premised on the validity and legality of the Impugned Order dated 23 November 2022 (“**Impugned Order**” for short) passed by respondent no. 3. The said order rejected the petitioner’s application for enhanced compensation made under section 28A of the Land Acquisition Act, 1984 (“**Land Acquisition Act**” for short) dated 16

September 2022, solely on the ground that such application is barred by limitation under the proviso to section 28A of Land Acquisition Act.

B) Factual Matrix:

The relevant facts necessary for adjudication of the present proceedings are :-

4. This petition is filed by Mr. Nitin Bharat Savale (**“The Petitioner”**, for short) residing at taluka Indapur, district Pune. The petitioner states that he is the brother of the original applicant, one Mr. Sachin Savale (**“The Original Applicant”**, for short), who moved an application for enhanced compensation under Section 28-A of the Land Acquisition Act, 1894 (**“Land Acquisition Act”** for short). Both, the petitioner and the original applicant are grandsons of the original landholder, Late Mr. Shankar Kisan Savale (**“The Original Landholder”**, for short) as stated by the petitioner. Further, it is stated by the petitioner that owing to the ill-health and physical inability of the original applicant to approach this Court, the petitioner has preferred the present petition on his behalf.

5. The respondent no.1 is the State of Maharashtra through its Principal Secretary Department of Revenue. The respondent no.2 is the District Collector of Solapur. The respondent no.3 is one, Smt. Manisha Avahale, the Special Land Acquisition Officer No. 2-cum-Additional Collector,

Solapur. Respondent no.4 is the Union of India through its Divisional Manager Central Railway Solapur.

6. The respondent nos. 3 and 4, vide award statement no. LAQ/SR/24/97 dated 19 December 2003, made under section 11 of the Land Acquisition Act awarded a final compensation amount to the tune of Rs. 13,45,579 towards the acquisition of 2,200 sq. meters of the original landholder's land situated at Gat No. 281 ("**Subject Land/Property**", for short) for the purpose of the railway extension project of the Kurduwadi-Miraj-Latur railway line. This award also includes acquisition of land parcels situated at Gat nos. 292 and 293 belonging to one, Mr. Pradeep Aabasheb Bocharé and the award of subsequent final compensation respect to said acquisition. It is pertinent to note that the subject land/property situated at Gat no. 281 and the land parcels owned by Mr. Bocharé, situated at Gat nos. 292 and 293 were acquired by the respondents for the same project and purpose, that being the extension of the Kurduwadi-Miraj-Latur railway line. Therefore, the petitioner original landholder, i.e., the ancestors of the petitioner and the said Mr. Bocharé were both project-affected persons.

7. Further, a notice dated 18 April 2007 was issued by the respondent no.3 to the original landholder, under section 12(2) of the Land Acquisition Act, wherein compensation amount of Rs. 3,36,395 was to be paid

to the original landholders, i.e., the ancestors of the petitioners with respect to acquisition of the subject land/property. The said notice further, directed the original landholders to remain present in the office of the respondent no.3 on 26 April 2007 along with the relevant documents in order to claim the compensation amount.

8. A reference application for enhanced compensation was filed by Mr. Pradeep Aabasaheb Bochara, another landholder and project-affected person with respect to land parcels situated at Gat nos. 292 and 293 (supra), under section 18 of the Land Acquisition Act before the learned Civil Judge, Senior Division, Barshi. The judgment/order in the said reference application bearing LAR no.75 of 2009 was pronounced on 4 March 2022. Operative Part of the said judgment/order is reproduced below: -

“The reference is allowed partly with proportionate costs in the following terms :-

The claimant is entitled to get enhanced compensation to the tune of Rs. 729.82 per sq. meter for the acquired lands.

The claimant is also entitled to the solatium at the rate of 30% on the enhanced compensation under section 23(2) of the Land Acquisition Act, 1894.

The claimant is also entitled to the interest of 12% per annum on the amount of enhanced compensation from the date of preliminary notification till the date of award as under section 23(1A) of the Land Acquisition Act.

The claimant is also entitled to the 9% interest on the enhanced compensation from the date of notification under Section 4 to the date of payment of such excess to the Court and thereafter,

interest at the rate of 15% p.a. till realization of the amount of compensation under section 28 of the said Act.”

9. Pursuant to the above, the petitioner having come to know of the judgment/order dated 4 March 2022 passed in the reference application for claim of enhanced compensation bearing LAR no.75 of 2009 (supra), applied for certified copies of the said reference application and the judgment/order passed in such application dated 4 March 2022, on 23 August 2022 and the same was received by him on 25 August 2022. Pursuant to this, the petitioner filed an application dated 16 September 2022 claiming enhanced compensation as under section 28-A of the Land Acquisition Act, before the respondent no. 3. The said application of the petitioner, however, came to be rejected by the respondent no.3 vide impugned Order dated 23 November 2022 mainly on the ground that it is barred by limitation as provided under section 28-A of the Land Acquisition Act, owing to a delay of 44 days on part of the petitioner in filing such application.

10. The petitioner attributed the delay in filing the application (supra) to unforeseen situations being the death of the petitioner's brother, Late Mr. Sujit Mohan Savale on 8 November 2021 and further death of the petitioner's aunt, Late Mrs. Chitra Mohan Savale on 8 June 2022. The petitioner claimed that he was in tremendous mental agony and psychological

pressure which led to the said delay of 44 days in filing of the application for enhanced compensation.

11. The petitioner, thus, being aggrieved by the impugned order dated 23 November 2022 passed by respondent no.3, preferred this writ petition before this Court on 27 January 2023.

C) Rival Submissions:

The case of the Petitioner:

12. Mr. Sujeet Bugade, learned counsel for the petitioner at the very outset would submit that the impugned order dated 23 November 2022 passed by respondent no. 3 is unreasonable, arbitrary, illegal and thus ought to be quashed and set aside.

13. Mr. Bugade would submit that a perusal of the impugned order clearly demonstrates that the respondent no. 3 has refused to take cognizance of the petitioner's application dated 16 September 2022 for enhancement of compensation under section 28A of the Land Acquisition Act, on the sole ground that the same is barred by limitation. In this context, the respondent No. 3 in passing the impugned order gravely erred by not considering the vital and material aspect of knowledge of the petitioner in regard to the passing of the order dated 4 May 2022, of the Reference Court.

14. Mr. Bugade, would further submit that such knowledge of the order of the reference court is extremely crucial for determining the issue of limitation. According to him the aspect of such knowledge of the petitioner with regard to the order of the reference court dated 4 May 2022, is extremely vital for the purposes of deciding the issue of limitation. Non consideration of the said aspect in the impugned order caused grave and irreparable prejudice to the petitioner. He would submit that in this regard it is pertinent to note that the petitioner made an application dated 23 August 2022 for obtaining certified copy of the order dated 4 May 2022 passed by the reference court in an application under section 18 of the Land Acquisition Act by the other landowner, i.e., Mr. Pradeep Bocharé. It was on 25 August 2022 that the petitioner received a certified copy of the said order of the reference court dated 4 May 2022. Thus, according to Mr. Bugade, the limitation period of three months as stipulated under section 28A of the Land Acquisition Act ought to be reckoned from the date of the petitioner making an application for certified copy of the order of the Reference Court which was so done on 23 August 2022 and/or on 25 August 2022 being the date on which petitioner received certified copy of the said order.

15. In view thereof the application of the petitioner dated 16 September 2022 under section 28A for enhanced compensation was made within a reasonable period, which the respondent no. 3 failed to consider in the

impugned order. Thus, he would submit that the the impugned order dated 23 November 2022 is arbitrary, unfair, unjust and illegal.

16. Mr. Bugade in support of the petition on the issue of limitation, in the alternative would submit that he was prevented from applying for certified copy of the order of reference court dated 4 May 2022 due to death of his brother on 8 November 2021, followed by the death of his aunt on 8 June 2022. It was owing to such circumstances completely beyond control and comprehension may have lead to some inadvertent, unintentional delay in filing the application dated 16 November 2022 for enhanced compensation, as set out in the impugned order. According to him, considering such peculiar facts and circumstances which prevented the petitioner from strictly complying with the timeline of three months, prescribed under section 28A of the Land Acquisition Act, ought to have been factored in by the respondent no.3 and duly considered in the impugned order. Thus, the respondent having failed to take such constructive approach despite the provision under section 28A being in the nature of a beneficial legislation not only caused grave and irreparable prejudice to the petitioner but also rendered the impugned order as perverse and illegal.

17. Mr. Bugade, would further submit that it is well settled the right of claiming compensation under section 28A stems from Article 300A of the Constitution of India. The Petitioner cannot be deprived of such constitutional

right without the due process of law. However, the impugned order has infringed the petitioner's valuable constitutional right under the said provision by completely misinterpreting section 28A of the Land Acquisition Act resulting in the refusal of his application dated 16 September 2022.

18. Mr. Bugade would thus submit that considering the above the impugned order dated 23 November 2022 fails all test of legal scrutiny and hence ought to be quashed and set aside, as prayed for in the petition.

Submission of the Respondents:

19. Mr. Prashant More, learned AGP for the State would vehemently oppose the submissions canvassed by Mr. Bugade. He would rely on the provision of section 28A and the clear language stipulated therein under the proviso to the said section which entails the limitation period of three months to be reckoned from the date of judgment/award of the reference court. He would submit that there is no irregularity, much less illegality in the impugned order.

20. Mr. More would accordingly submit that the three-months period stipulated under section 28A expired on 2 August 2022. However, the petitioner made an application dated 16 September 2022 under section 28A seeking enhancement of compensation, only on 16 September 2022. Thus, as

per the said provision, the said application of the petitioner was ex-facie time-barred and hence not maintainable.

21. Mr. More in support of his submission would rely on judgment of co-ordinate bench of this Court in **Kashinath Janardhan Khanave v. State of Maharashtra¹**, in this regard to urge that in similar facts and circumstances this court held that the petitioner's claim in the said case belated even by a day could not be entertained under section 28A of the Land Acquisition Act. The said decision being squarely applicable to the present case, the petition deserves nothing short of a dismissal.

D) Analysis and Conclusion:

22. At the threshold we may note that the basic issue arising for determination in the present petition revolves around the aspect of the claim of the petitioner being barred by limitation or otherwise as stipulated under section 28A of the land acquisition act. For adjudicating such issue, it is pertinent to refer to certain relevant dates and events which are undisputed-

“a. It was on 4 May 2022 that a judgment/award was passed by the reference court under section 18 of the land acquisition act on the application initiated by the other landowner of the subject land, i.e., Mr. Pradeep Bocharé for enhancement of compensation arising out of the award passed by the SLAO for an amount of Rs. 23,85,344, including the solatium and interest.

1 WP No. 313 of 2024 dated 24 January 2024

b. It was on 2 August 2022 that a three-month period, i.e., the 90-day ended, as stipulated under section 28A for making an application to redetermine the amount of compensation on the basis of the judgment/award of the reference court dated 4 May 2022.

c. It was on 23 August 2022 that an application for certified copy of the judgment/award dated 4 May 2022 was made by the Petitioner.

d. It was on 25 August 2022 that the petitioner received a copy of the said judgment/award passed by the reference court dated 4 May 2022.

e. The petitioner preferred an application dated 16 September 2022 for enhanced compensation before the respondent no. 3, filed under section 28A of the Land Acquisition Act.

f. It was on 23 November 2022 that the petitioner's application made under section 28A was rejected by the impugned order passed by the respondent no. 3. It is this order which is challenged in the present petition.

23. In the above context, of the impugned order dated 23 November 2022 passed on an application of the petitioner dated 16 September 2022 for the grant of enhanced compensation under section 28A of the Land Acquisition Act would demonstrate that the only reason for rejecting such application was that such application was not presented within 90 days to be

computed from 4 May 2022, i.e., date of the judgment/award of the reference court. In view thereof, the application of the petitioner dated 16 September 2022 for enhanced compensation, under section 28A of the Land Acquisition Act was time-barred. In this context, we have noted the submission of Mr. Bugade who would emphatically urge that section 28A is in the nature of a beneficial legislation. The very purpose of such provision is to ensure that people such as the petitioner who belong to the economically backward strata of the society, being not literate and people of limited means, are not deprived of their statutory, legal right of receiving compensation under the framework of the Land Acquisition Act, coupled with their constitutional right to property under Article 300A. Having perused the provision of section 28A the legislative intent behind the provision is to ensure that the benefit of claiming compensation inures to the landowner/person interested/affected, and they are not deprived of such statutory rights. To this extent, we are in agreement with the submissions of the petitioner.

24. However, there is yet another dimension to the provision under 28A of the Land Acquisition Act. Whilst the provision enables the landowner/person interested to make an application to the collector for claiming enhanced compensation, the proviso to the said section is to be equally noted. The section along with the proviso reads thus:

“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.”

A plain reading of the proviso to section 28A makes it clear that it prescribes a categorical three-month period to be reckoned from the date of the judgment/award passed by the reference court disposing the reference under section 18. Thus, the edict of the legislature is clear inasmuch as the period of three months in making the application is fixed and sacrosanct and is not subject to any further extension. In view thereof, going by the factual matrix of the present case, the application of the petitioner under section 28A of the Land Acquisition Act was made on 16 September 2022, whereas, the judgment/award of the reference court was dated 4 May 2022. Thus, it is clear that such application is beyond the period of three months from the date of passing of the judgment/award by the reference court as categorically stipulated under the proviso to the section 28A of the Land Acquisition Act. Even

though the petitioner made an application for certified copy of the judgment/award of the reference court on 23 August 2022 and received a copy thereof on 25 August 2022, the fact remains that the application of the petitioner dated 16 September 2022 for enhanced compensation was made much after the prescribed period of three months under the proviso to section 28A of the Land Acquisition Act.

25. In the above context, we now examine the legal position in regard to the above under the umbrella of judgments of the Supreme Court and other courts which have had the occasion of dealing with such issue of limitation in the context of section 28A of the Land Acquisition Act. Firstly we refer to the judgment of the Supreme Court in the case of **Tota Ram v. State of U.P. and Ors**² the operative part of the said judgment reads thus:

“... A reading thereof clearly indicates that a person whose land is acquired under a common notification issued under Section 4(1) of the Act but who failed to avail of the remedy of reference under section 18, is eligible to make a written application within three months from the date of the award of the court enhancing the compensation. It has been interpreted by this court that the "Court " means court of Original Civil Jurisdiction to whom reference under section 18 would lie. Admittedly, the award of the reference court having been made on May 18, 1990, the limitation began to run from that date. The proviso to Section 28-A gives a right to the persons to obtain the certified copy of the award and decree and the time taken for obtaining the certified copy of the award and the decree shall be excluded in computing the period of three months. In view of the express language, the question of

² 1997 (6) SCC 280

knowledge does not arise and, therefore, the plea of the petitioner that the limitation of three months begins to start from the date of the knowledge is clearly unsustainable and cannot be accepted. The High Court, therefore, is right in its decision in that behalf...”

The Supreme Court in the above judgment, makes it clear that in view of the express language of section 28A read with the proviso the aspect of knowledge of the person concerned does not arise. Juxtaposing this to the given facts, Mr. Bugade’s claim that the petitioner made an application dated 16 September 2022 under section 28A of the Land Acquisition Act immediately on receiving certified copy of the judgment/award of the reference court on 25 August 2022 becomes insignificant, in as much as the Supreme Court in the above decision holds that the plea of the limitation of three months begins from date of knowledge, cannot be accepted.

26. We may also observe that a similar view taken by the Supreme Court in an earlier judgment in the case of **Jose Antonio Cruz Dos R. Rodriguese and Anr v. Land Acquisition Collector and Anr**³. The relevant portion of the judgment of the Supreme Court reads thus:

“... There is, however, no doubt that the period of limitation has to be computed from the date of the Court's award under Section 18 on the basis whereof redetermination is sought. Admittedly, in both the cases at hand, the applications for redetermination of compensation under Section 28-A were made long after the expiry of three months from the date of the award of the Court which constituted the basis for seeking redetermination. We

3 1996 (6) SCC 746

are, therefore, of the opinion that the High Court was right in taking the view that a both the applications were time-barred...”

The above decision of the Supreme Court would be applicable and binding on us in adjudicating the issue of limitation in the context of section 28 A of the Land Acquisition Act in relation to the petitioner’s application dated 16 September 2022 for enhanced compensation.

27. We may now refer to a decision of the Supreme Court in the case of **Popat Bahiru Govardhane and Ors v. Special Land Acquisition Officer and Anr⁴**, where the Supreme Court had the occasion of dealing with the reckoning of the period of limitation as contemplated by section 28A of the Land Acquisition Act. In the said judgment the Supreme Court draws a distinction between the provisions under section 18 and section 28A of the Land Acquisition Act. It proceeds to hold that the aspect of knowledge actual or constructive being an essential requirement of fair-play and natural justice would apply to an application made under section 18 of the Land Acquisition Act. However, such criteria of knowledge of the judgment/award passed by the reference court would not be applicable for interpreting section 28A of the Land Acquisition Act. This is because there is no question of issuing notice to such applicant who was not a party to the reference proceedings of such court. There is no duty cast upon the reference court to issue notice to the

4. 2013 SCC OnLine SC 752

landowners who have not initiated proceedings for enhancement of compensation before such court. Therefore, applying the above ratio to the given facts, Mr. Bugade's submission on limitation cannot be accepted by us, in these proceedings.

28. We have also taken note of the judgment co-ordinate bench of this court cited by Mr. More for the respondents in the case of **Kashinath Janardhan Khanave** (supra) where this court has applied the settled law and held that the application under section 28A of the Land Acquisition Act made beyond the period of three months as stipulated under the proviso is necessarily time bared.

29. In the aforesaid backdrop we may now refer to a decision of the Supreme Court in the case of **Bir Wati and Ors v. Union of India and Anr**⁵, where it was examining the issue of limitation in the context of section 28A of the Land Acquisition Act. The relevant portions of the said judgment reads thus:-

“10) In Union of India & Anr. Vs. Hansoli Devi & Ors., a two Judge Bench of this Court referred three specific questions to the larger Bench of Five Judges for answer. These three questions read as under: (Hansoli Devi Case, SCC pp. 407-08 para 8)

8. ... “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

5. 2017 (16) SCC 548

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?"

11) So far as question 1 (b) with which we are concerned here, it was answered in Para 10 which reads as under: (Hansoli Devi Case, SCC pp. 407-08 para 8)

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

12) In the light of aforesaid law laid down by this Court, one cannot dispute that so far as the appellants are concerned, notwithstanding dismissal of their reference application as being barred by limitation by the reference Court and the High Court, they still have a right to apply under Section 28-A of the Act to the Collector for re-determination of the compensation payable to them on the basis of the compensation awarded by the reference Court to other similarly situated landowners whose land was acquired along with the appellants' land.

13) It is true that one of the requirements to apply to the Collector under Section 28-A 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 28-A 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 28-A 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) Let the Collector entertain the application, if made by the appellants within three months from the date of the order under Section 28-A of the Act and hold an inquiry as contemplated under Section 28-A of the Act for determining the compensation, if found payable to the appellants under the Act. However, the appellants would not in such a case be entitled to claim any interest of any nature due to delay on their part. The Collector shall decide the application once made by the appellants within three months and release the payment of compensation as directed hereinabove in favour of appellants after making proper verification about their family relations with the

original claimant etc.”

30. A perusal of the above decision would take us to the submission of Mr. Bugade in regard to the test of reasonableness as sought to be applied in obtaining the certified copy of the order of the reference Court. However, the Supreme Court in the above judgment by way of indulgence and resorting to its powers under Article 142 of the Constitution of India, has issued the directions in the interest of justice. In the said decision indulgence was granted to the appellant to apply under section 28A of the Land Acquisition Act to the Collector, despite its application being time-barred, only with a view to do complete and substantial justice.

31. In light of the foregoing discussion we hold that the delay by the petitioner in making the application under section 28 A of the Land Acquisition Act for enhanced compensation cannot save the limitation as concluded in the impugned order, which warrants no interference.

32. The petition is dismissed. Rule is discharged. No order as to costs.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI , J.)