IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No.614 of 2026

Decided on: 17.11.2026

Kaili and another .....Petitioners

Versus

ACC Private Barmana ....Respondent

Coram:

Hon'ble Mr. Justice Ranjan Sharma, Judge

[1] *Whether approved for reporting? Yes*

For the petitioners: Mr. Mohinder Verma, Advocate vice Mr. Pradeep Verma, Advocate.

For the respondent: Nemo.

Ranjan Sharma, Judge

Petitioner has laid a challenge to the order dated 29.01.2024 [Annexure P-4], passed by Land Acquisition Collector, BBN [Industries], ECC Bilaspur, Himachal Pradesh, whereby, the application filed by the petitioners under Section 28-A of the Land Acquisition Act, 1894, was dismissed, with the findings that once the petitioners have already submitted themselves to the recourse under Section 18 of the Land Acquisition Act, which led to the passing of an Award by Learned

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

Additional District Judge, Bilaspur, in Reference Number 19 of 1997, on 22.12.1990, therefore, in such an eventuality the application under Section 28-A, was not maintainable.

2. Learned Counsel for the petitioner submits that even though the petitioners had sought reference under Section 18 of the Act, which led to the passing of an Award on 22.12.1990, still the petitioners have a right to seek redetermination of compensation under Section 28-A of the Land Acquisition Act.

STATUTORY PROVISIONS OF SECTION 28-A OF LAND ACQUISITION ACT:

3. Before proceeding to analyze the claim of the petitioners, it is necessary to have recap of Section 28-A of Land Acquisition Act, 1894, which reads as under:-

> "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."

4. For appreciating the controversy, in the backdrop of Section 28-A of the Land Acquisition Act, 1894, it is necessary to have recap of the mandate of law entitling the landowner for seeking re-determination of compensation as given to other landowners, *in the following terms:-*

4(i). Two Judge Bench of the Hon'ble Supreme Court in ***Union of India and another versus Hansoli Devi and others, (2001) 4 SCC 404,*** formulated two questions to be answered by Larger Bench, which read as under:-

"I. (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?

Aforesaid questions were answered by Constitutional Bench of the Hon'ble Supreme Court in ***Union of India and another versus Hansoli Devi and others, (2002) 7 SCC 273,*** whereby, Question No.1 (b), as referred to above, was answered, *in the following terms:-*

> "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 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.

While answering Question No.2, the Hon'ble Constitutional Bench of the Hon'ble Supreme Court has mandated that if a landowner had received compensation with or without protest pursuant to Award made by Land Acquisition Collector but if such person has not filed an application under Section 18 of the Act to make a reference, then irrespective of the fact whether he has received the compensation awarded by the

Collectors with or without protest, he would be a person aggrieved within the meaning of Section 28-A and would be entitled to make an application when some other land owner's application for reference is answered by the reference Court, *in the following terms:-*

> "11. Coming to the second question for reference the receipt of compensation with or without protest pursuant to the award of the Land Acquisition Collector is of no consequence for the purpose of making a fresh application under Section 28-A. If a person has not filed an application under Section 18 of the Act to make a reference, then irrespective of the fact whether he has received the compensation awarded by the Collectors with or without protest, he would be a person aggrieved within the meaning of Section 28-A and would be entitled to make an application when some other land owner's application for reference is answered by the reference Court. It is apparent on the plain language of the provisions of Section 28-A of the Act. Otherwise, it would amount to adding one more condition, not contemplated or stipulated by the Legislature itself to deny the benefit of substantial right conferred upon the owner."

4(ii). While dealing with the right of a landowner for seeking re-determination of compensation under Section 28-A of 1894 Act, the Hon'ble Supreme Court in ***Banwari and others versus Haryana State Industrial and Infrastructure Development Corporation Limited (HSIDC) and others, 2024 SCC Online SC 3685,*** has mandated that right to re-determination of compensation under Section 28-A is admissible to a landowner who has not taken recourse to the remedy of reference under Section 18 of the said Act, *in the following terms:-*

> "3.4 Immediately thereafter the appellants on 30th June 2016 filed an application under Section 28-A of the 1894 Act before the LAC, Jhajjar as reference was not filed by the appellants.
>
> 14. This Court has laid down the conditions which are required to be satisfied for invoking the provisions of Section 28-A(1) of the 1894 Act as follows:
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> (i) An award has been made by the Court under Part III of the Act after coming into force of Section 28-A;
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> (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 move the application under Section 18;

(v) The application is moved within three months from the date of the award on the basis of which redetermination of amount of compensation is sought; and

(vi) Only one such application can be moved under Section 28-A for redetermination of the compensation by the applicant."

4(iii). The principle based on Section 28-A of Land Acquisition Act, 1894 entitling a landowner who had not taken recourse to the remedy of reference for claiming re-determination of compensation within 90 days from the date of passing of Award, has been reiterated by the Hon'ble Supreme Court in ***Andanayya and ors. versus Deputy Chief Engineer and ors. [Civil Appeal Nos.3897-3903 of 2026 [Arising out of SLP (C) Nos.2587-2593 of 2021],*** decided on 25.03.2026, *in the following terms:-*

"5. The appellants, who did not seek a reference, filed an application under Section 28-A of the Act on 01.02.2007, within 90 days from the date of the award of the Reference Court, seeking re-determination of their

compensation based upon the award of the Reference Court in LAC Nos. 1-5/2003. During the pendency of the said application, appeals were filed before the High Court by some of the landowners, as well as by respondent No.2, seeking enhancement and reduction of compensation, respectively. After the appeals filed by respondent No.2 were dismissed by the High Court, vide order dated 06.08.2012, the first application filed by the appellants under Section 28-A of the Act was allowed on 02.04.2013, and their compensation was re-determined on the basis of the award of the Reference Court, even though the appeals filed by the landowners were still pending and came to be allowed by the High Court only on 22.07.2013, further enhancing the compensation to Rs. 3,50,000/- per acre.

14. Section 28-A of the Act provides for the re-determination of compensation in the case of landowners who have not made any reference under Section 18 of the Act, on the basis of the award passed under Part III of the Act alone. Now, it is pertinent to note that there can only be one award passed by the Court under Part III of the Act. In other words, the award passed by the High Court or this Court would also be an award under this provision, subject to the rider that the award pertains to Part III of the Act alone. The opening words of this Section, “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," must be understood from the point of view of finality of the said award. Thus, one cannot say that the applicability of this provision is restricted to the award passed by the Reference Court alone. We would only clarify that, on a conjoint reading of Sections 3(d) and 28-A of the Act, the term 'Court' used in Section 28-A would include under its ambit the High Court and this Court as well. Any interpretation to the contrary would militate against the very objective of the Act, making Section 28-A of the Act redundant. If the object of the Act is to ensure equality between similarly placed landowners, redetermination cannot be done partially qua an award of the Reference Court alone as against that of the High Court or this Court.

Section 54 of the 1894 Act "54.

Appeals in proceedings before Court.— Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid

> an appeal shall lie to [the Supreme Court] subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and in Order XLIV thereof."
>
> (emphasis supplied)"

4(iv). While dealing with the scope of Section 28-A of Land Acquisition Act, the Hon'ble Supreme Court has outlined in ***New Okhla Industrial Development Authority and Another versus Rajveer Singh and Others, 2026 SCC OnLine SC 1935*** that right to seek re-determination of compensation is available to those landowners who did not file any application for reference under Section 18 of the Act of 1894 and/or to those landowners whose application under Section 18 of Land Acquisition Act was dismissed, on the ground of delay or any other technical ground, in view of the principle outlined by the Hon'ble Supreme Court in the case of ***Hansoli Devi [supra],*** *in the following terms:-*

> "3. The party respondents claim under their predecessors-in-interest whose lands were proceeded against under Section 4(1) read with Section 17 of the Act of 1894 and acquired. An award was passed on 15.02.1977 and the entire compensation,

admittedly, was received by the predecessors-in-interest, who did not file any application for reference under Section 18 of the Act of 1894. But others, whose lands were also acquired by the very same notification, sought a reference under Section 18, which though referred, was rejected by the Additional District Judge, Ghaziabad, by a judgment and decree dated 25.11.1981. An appeal was filed therefrom under Section 54 of the Act of 1894, being First Appeal No.458 of 1982, which by Annexure P1, was disposed of on 18.04.2022. The party respondents, hence, filed an application under Section 28A of the Act of 1894 on 23.05.2022, within three months from the date of Annexure P1. No consideration having been carried out, the applicants filed a writ petition, in which expeditious decision was ordered. The application under Section 28A, subsequently stood rejected as not maintainable since it was filed on the basis of the decision passed in First Appeal and not based on an order passed by the Reference Court under Section 18 of the Act of 1894.

14. Later, a different issue was referred to a Constitution Bench which was considered in Union of India and Another v. Hansoli Devi The questions referred and decided, is not relevant for our purpose, but we will refer to it briefly, with one intent. Therein, the referred questions were with respect to

(i) whether dismissal of an application seeking the reference on the ground of delay amounts to not filing an application within the meaning of Section 28A and (ii) entitlement of a person whose application was dismissed on the ground of delay or on any other technical ground, to maintain an application under Section 28A of the Act of 1894. The third question was as to whether a person who received the compensation without demur, could be considered 'a person aggrieved' under Section 28A. The Constitution Bench categorically found that the dismissal of an application seeking reference under Section 18, whatever be the ground, would come within the ambit of Section 28A and such landowner would be entitled to make an application thereunder. As to the third question referred, it was held that for the purpose of Section 28A, the receipt of compensation, with or without protest, is of no consequence and the landowner would definitely fall within the meaning of person aggrieved under Section 28A.

20. This Court by the aforesaid decision conferred entitlement on a landowner who has not sought for a reference under Section 18, to make an application under Section 28A, after an order being passed by the High Court in First Appeal from the order of the Reference Court. At first blush, this may look contrary to the decision in Jose

> Antonio Cruz and even Pradeep Kumari by two different three Judge Benches and a two Judge Bench in Hansoli Devi. But, on closer scrutiny, the distinction is insofar as the reference under Section 18 by the other landowners having been rejected without any enhancement. The first enhancement was in First Appeal before the High Court, which identical facts come out in the instant case."

ANALYSIS:

5. Taking into account the statutory provisions of Section 28-A of Land Acquisition Act and the mandate of law, as referred to above and the material on record, this Court is not convinced with the submissions made, for the reason, *firstly*, the remedy under Section 28-A of Land Acquisition Act is available to those who have not taken recourse to Section 18 of the Act; *and secondly*, it is not the case of the petitioners that they had sought reference under Section 18 of the Act, which was disallowed/dismissed on the ground of delay or any other technical grounds therefore, the claim of the petitioners for seeing re-determination of compensation under Section 28-A of Land Acquisition Act, 1894 is not tenable, in view of the judgment passed by a

Constitutional Bench of the Hon'ble Supreme Court in ***Union of India and another versus Hansoli Devi and others, (2002) 7 SCC 273 [supra];*** *and* *thirdly,* the material on record indicates that land of the petitioners was acquired in terms of the Award dated 20.09.1986 by the Respondents for the construction of ACC Factory and feeling aggrieved, the petitioners had filed a Reference Petition Under Section 18 of the Land Acquisition Act, which was forwarded to Learned District and Sessions Judge, Bilaspur, for decision and the said Reference was decided by a Reference Court-Learned Additional District Judge, Bilaspur, vide Reference No.19 of 1987 on 22.12.1990. In these circumstances, once the petitioners have availed the remedy of Reference under Section 18 of the Land Acquisition Act, then, in such circumstances, the remedy for seeking re-determination of compensation under Section 28-A of the Land Acquisition Act was not available to the petitioners and the Learned Land Acquisition Collector had validly passed the Impugned Orders on 29.01.2024 *[Annexure P-4],* dismissing application under Section 28-A of the Land Acquisition Act to be not maintainable;

and fourthly, the Hon'ble Supreme Court has mandated in case of ***Banwari and others versus Haryana State Industrial and Infrastructure Development Corporation Limited (HSIDC) and others, 2024 SCC Online SC 3685,*** that the remedy under Section 28-A was available to those persons who have not sought taken recourse to Section 18 of the Act before Learned Reference Court under the Act; *and fifthly,* the findings recorded in Para 3.5 and para 14 (iv) of the judgment in case of ***Banwari Lal (supra)*** negates the claim of the petitioner; *and sixthly*, the principle outlined in the case of ***Banwari*** (supra), has been reiterated by the Hon'ble Supreme Court in the case of ***Andanayya and others versus Deputy Chief Engineer and others,*** Civil Appeal 003897-003903 of 2026, decided on 25.03.2025; *and lastly,* the petition filed by the petitioners before Land Acquisition Collector under Section 28-A of the Land Acquisition Act suffers from suppression of material facts, *for the reason,* that the petitioners have set up a case in Para 2 of application filed under Section 28-A that they had not made any Reference under Section 18 of the Land Acquisition

Act, to which a categorical finding was recorded by Land Acquisition Collector in Para 5 of Impugned Orders dated 29.01.2024 *[Annexure P-4]* that feeling aggrieved against the Award passed by the Collector on 29.09.1986, the petitioners have filed a Reference, which was adjudicated on merits, enhancing compensation by Learned Additional District Judge, Bilaspur, vide Reference No.19 of 1987 on 22.12.1990. Besides the above, even in instant petition *[CMPMO No.614 of 2026]* suppression of material facts is writ large; as a perusal of Para 3 of instant petition indicates that the petitioners could not file Reference Petition under Section 18 of the Land Acquisition Act and therefore, they were seeking re-determination of compensation under Section 28-A as given to other landowners, including Smt. Nagru is contrary to the record, which reveals that the petitioners had filed a Reference Petition under Section 18 which was adjudicated upon on merits by Learned Additional District Judge, Bilaspur vide Reference No.19 of 1987 in terms of Award dated 22.02.1990. In these circumstances, once the petitioners have pleaded

distorted and incorrect facts and suppressed material facts in proceedings under Section 28-A and even in present proceedings, therefore, in view of the principle of *'suppressio veri, expressio falsi',* no indulgence can be shown in favour of the petitioners. Resultantly, in view of above discussion, the Impugned Orders dated 9.01.2024 *[Annexure P-4],* does not warrant any interference, in instant proceedings.

6. In the backdrop of the factual matrix and the principles outlined by the Hon'ble Supreme Court, since this Court was not inclined to interfere in the Impugned Order dated 29.01.2024 [Annexure R-4], therefore, at the request of Learned Counsel for the petitioners, the matter was adjourned, to enable Learned Counsel to assist this Court with case law, if any.

7. Upon listing of the matter today, Learned Counsel for the petitioner fairly submits that he is unable to find out any judgment in his favour so as to establish the right and entitlement of petitioners for laying a challenge to the Impugned Order dated 29.01.2024 *[Annexure P-4]* passed by Land Acquisition Collector [Industries] ACC Bilaspur, Himachal Pradesh.

8. For the reasons recorded hereinabove and in facts of instant case, this Court is not inclined to interfere in the Impugned Orders dated 29.01.2024 *[Annexure P-4];* and consequently, the instant petition, being without merit, ***is dismissed***.

In aforesaid terms, instant petition and all the pending miscellaneous application(s), if any, shall stand disposed of.

(Ranjan Sharma)
Judge

November 17, 2026
[Bhardwaj]