

KAUK220001292024



**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC
ANKOLA, AT ANKOLA, UTTARA KANNADA.**

Dated this the 30th day of June, 2026.

Presided Over by:

**Smt.Priya Ravi Joglekar, B.Com. LL.M.
Senior Civil Judge, Ankola.**

L.A.C.No.02/2024

Petitioner: Laxmi w/o Nagesh Nayak,
Age: 80 years, Household,
R/o: Bhavikeri, Tal.Ankola,
Uttara Kannada District.

(By Sri P.P.G., Advocate)

-Vs-

Respondents: 1. The Special Land Acquisition Officer,
Seabird Project, Naval Base,
Karwar.
2. The Defence Estate Officer,
Karnataka & Goa Circle,

Bangalore-42.

**(R1- By learned D.G.P)
(R2-Exparte)**

J U D G M E N T

The present petition filed by the petitioner under Section 28-A(3) R/w Section 18 of Land Acquisition Act praying to direct the respondent No.1 to refer the matter to this Court in the interest of justice and equity.

2. The brief facts of the petitioner/applicant's case are as under:

The property bearing Sy.No.38 hissa 2 for an extent of 01 acres 35 guntas situated at Nellur-Kanchinbail village, Belekeri Hobli, Ankola Taluka was originally belonged to the father of the applicant/petitioner by name Kallu Kalappa Nayak. He died on 13.02.1994 at Bhavikeri village left behind the property. The petitioner is the only sole legal heir of deceased Kallu Kalappa Nayak.

3. It is further averred that the land of the applicant/petitioner has been acquired by the Seabird project and the Award has been passed on 30.11.1991 as per 4(1) notification dated 20.07.1989 and 6(1)

notification dated 09.11.1989. The respondent No.1 has acquired the land without awarding enhance compensation amount. The petitioner in order to get enhancement of compensation filed an application under Section 28(A) of the Land Acquisition before the respondent No.1 based on the Award passed in LAC No.19/2011 on the file of Civil Judge (Sr.Dn), Kumta on 03.03.2012. After going through the application filed by the petitioner under Section 28(a) of the Land Acquisition Act, the respondent No.1 ordered for enhancement of compensation amount. When the said Order was sent for approval before the Deputy Commissioner, the Deputy Commissioner also ordered that the applicant is entitled for enhancement of compensation amount. Thereafter, the respondent No.1 sent the said Award copy to the respondent No.2. But, the respondent No.2 rejected the said enhanced Award Order of Nellur-Kanchinbail village of petitioner by stating that the land mentioned in LAC No.19/2011 and the petitioner's land are not mentioned under the same 4(1) notification and returned it to the respondent No.1 on 18.12.2017. Thereafter the respondent No.1 filed application on 10.01.2018 before the Deputy Commissioner seeking to reject the approval of enhanced of compensation amount Order passed by the

Deputy Commissioner. Hence, the Deputy Commissioner without enquiring and intimating to the petitioner, rejected the redetermination Order on 13.01.2018.

4. Thereafter, when the petitioner enquired with the respondent No.1, the respondent informed her that the application under Section 28A is disposed off. When the petitioner obtained all the documents, she came to know that the said application has been rejected without giving any information.

5. It is further averred that the Hon'ble Civil Judge (Sr.Dn) Kumta in LAC No.19/2011 excluding the value of the trees and plants, determined the market value of the land at Rs.11,500/- per gunta and passed the Judgment on 03.03.2012. Considering the quality and nature of the petitioner's land the petitioner is also entitled to receive compensation at the rate of Rs.11,500/- per gunta and separate compensation to the trees and plants. The petitioner's land and the land awarded in LAC 19/2011 dated 03.03.2012 are situated in the same village and fall under the same notification. Hence, the petitioner is entitled to receive compensation for her acquired land as per the

Judgment in LAC No.19/2011 dated 03.03.2012. If enhancement award Order is not granted to the petitioner, the petitioner will be to put to great loss. The petitioner is legally entitled to claim enhancement of compensation amount of Rs.11,500/- per gunta for the acquired land with more compensation for the trees and plants. 90 days has been elapsed after receiving the application under Section 28(A) of Land Acquisition Act. Hence, the petitioner filed the present application seeking re-determination of compensation amount based on the Judgment passed in LAC No.19/2011.

6. After institution of the petition, notices sent to the respondents. After serving notice to the respondents, the respondent No.2 remained absent before the court and he was placed Exparte. The learned DGP filed memo of appearance for respondent No.1. But not filed objections to the above said petition.

7. In order to prove the petition averments, the petitioner got examined herself as P.W.1 and got marked Ex.P.1 to Ex.P.12. On the other hand, respondent No.1 not adduced any respondents side evidence.

8. Heard arguments and perused the materials

available on record.

9. The following points would arise for my consideration:

POINTS

1. Whether the petitioner has made out sufficient grounds to allow the petition?

2. What order

10. My finding to the above said points are as under:

Point No. 1 : In the Affirmative.

Point No. 2 : As per final order,
for the following;

REASONS

11. **POINT NO.1**: It is the specific case of the petitioner/applicant is that one Kallu Kalappa Nayak being the original owner of Sy.No.38 hssa 2 totally measuring 01 acres 35 guntas situated at Nellur-Kanchinbail village, Belekeri Hobali, Ankola Taluka. He died on 13.02.1994 leaving behind the petitioner. The land of the petitioner has been acquired for SEABIRD project as per 4(1) notification dated 20.7.1989 and 6 (1) notification dated 09.11.1989 without awarding

enhancement of compensation. The petitioner in order to get enhancement of compensation, filed application as per Section 28(A) of Land Acquisition Act before respondent No.1 on the basis of award passed in LAC No.19/2011 by the Hon'ble Civil Judge (Sr.Dn) Kumta on 03.03.2012. The respondent No.1 after scrutinizing the application filed by the petitioner awarded enhanced compensation amount for the said land. When the said Order was sent for approval before the Deputy Commissioner, the Deputy Commissioner also ordered that the petitioner/applicant is entitled for enhancement of compensation amount. Thereafter the said Award has been sent to respondent No.2 by the respondent No.1. But, the respondent No.2 objected that the land in question in LAC No.19/2011 and the land of the petitioner are not one and same under 4(1) notification and rejected the said Award in respect of land acquisition of Nellur-Kanchinbail village on 18.12.2017. Thereafter, the respondent No.1 sent the said Award copy to the respondent No.2. But the respondent No.2 rejected the said enhanced Award Order of Nellur-Kanchinbail village of petitioner by stating that the land mentioned in LAC No.19/2011 and the petitioner's land are not mentioned under the same 4(1) notification and returned it to the respondent No.1

on 18.12.2017. Thereafter, the respondent No.1 filed application on 10.01.2018 before the Deputy Commissioner seeking to reject the approval of enhanced of compensation amount Order passed by the Deputy Commissioner. Hence the Deputy Commissioner without enquiring and intimating to the petitioner, rejected the Order on 13.01.2018. Hence, the petitioner filed the above said application and prayed to allow the application.

12. On going through the petition, following are the undisputed facts:

:UNDISPUTED FACTS :

1. One Kallu Kalappa Nayak being the owner of petition schedule property i.e., Sy.No.38 hissa 2 measuring 01 acres 35 guntas situated at Nellur-Kanchinbail village, Belekeri Hobali, Ankola Taluka and he died on 13.02.1994 at Bhavikeri village left behind his only daughter i.e., the petitioner.

2. The said property is acquired for SEABIRD Project by respondent No.1 for the benefit of respondent No.2.

3. The award is passed with respect to petition schedule property in the name of father of petitioner by name Kallu Kalappa Nayak.

13. The petitioner is referring the Award was rejected by the respondent No.2 and the approval was given by the respondent No.1 and she is seeking relief as per the Award was passed by the Senior Civil Judge Kumta in LAC No.19/2011 and also prays for enhancement of compensation as awarded in the above said LA C petition. Because the nature of the land of this petition and the land which has been shown in the LAC No.19/2011 are one and same.

14. The P.W.1 reiterated all the petition averments in her affidavit of chief-examination. Ex.P.1 to Ex.P.12 are marked. Ex.P.1 is the RTC extract. Ex.P2 is the certified copy of 4(1) notification. Ex.P3 is the Certified copy of 6 notification. Ex.P4 is the certified copy of Award. Ex.P5 certified copy of Order passed by the respondent No.1 as per Section 28(A) of the Land Acquisition Act. Ex.P6 is the certified copy of Order passed by the Dy.Commissioner, Uttar Kannada, Karwar. Ex.P7 is the certified copy of rectification Order passed by the Deputy Commissioner, Uttar Kannada,

Karwar. Ex.P8 is the certified copy of mutation entry No.976. Ex.P9 is the surviving family members certificate. Ex.P10 is the death certificate of petitioner's father by name Kallu Kalappa Nayak. Ex.P11 is the copy of application given to respondent No.1. Ex.P12 is the application of petitioner given to respondent No.1.

15. Per contra, the learned counsel for the respondent No.1 cross-examined the PW 1 and taken defense that the petitioner had lost her rights to claim the above said petition. Further taken defense that if the award was passed by the Senior Civil Judge, Kumta in LAC No.19/2011 could produce this court, then it is very helpful to determine the grant of award. Further, the notification was produced by the petitioner and the land acquired by the respondent No.1 is not tallying with each to get her. All these defense was denied by the PW 1 and nothing elicited from the mouth of the PW 1. Further, the learned counsel for the respondent No.1 had taken defense that the said above said petition is barred by time limitation. All these suggestions were denied by the PW 1.

16. The learned counsel for petitioner/ applicant argued that, the SLAO has power to re-determination of

compensation under Section 28(A) and he relied on the following citations:

1. **AIR 1995 SUPREME COURT 2259 (3)** in Union of India and another vs. Pradeep Kumari and others wherein it has held that,

(B) Land Acquisition Act, S.28A – Re-determination of compensation – Powers of Collector – Can award interest on additional amount of compensation awarded.

2. **AIR 2002 SUPREME COURT 3240 (C) (5)** in Union of India and another vs. Hansoli Devi and others wherein it has held that, (C) Land Acquisition Act, S.28A – Re-determination of compensation on basis of Court award – Application for – Can be made by person who had made reference under S.18 but whose application was rejected on ground of delay -Words “had not made an applicationS.18” - Cannot be given literal meaning.

3. **AIR 2017 SUPREME COURT 4069** in Bir Wati and others vs. Union of India and another wherein it has held that,

(B) Land Acquisition Act, S.28A – Re-determination of compensation – Application for – Dismissal of reference petition u/S.18 being barred by limitation – Application under

S.28-A to Collector for re-determination still, maintainable.

4. **2011 (5) KCCR 4120** in Muniyappa and others vs. The Special Land Acquisition Officer for Railways and Karnataka Industries Areas Development Board and another wherein it has held that, Land Acquisition Act, 1894 - S.28A – Redetermination of amount of compensation on the basis of the award of the Court – The compensation amount fixed by the Collector – Party filing petition u/S18 could also invoke Section 28A.

5. **2016 (3) KCCR 2555** in North West Karnataka Road Transport, Corporation, Hubli, Dharwad district vs. Assistant Commissioner and Special Land Acquisition Officer, Dharwad, Sub-Division and others wherein it has held that,

Land Acquisition Act, 1894 – Section 28A – Benefit under – Nowhere is Section 28-A, it is stated that it has to be from the date of the first award. If it is read that it has to be from the date of the first award only, it defeats the very object of introducing Section 28-A. It cannot be contended with any rate of success that Section 28-A benefit can be denied on the ground that the applicants have not filed the applications within three months from the date of the first award. In any case, the reference proceedings culminate in the last of

the awards passed pursuant to the remand orders. The earlier award/ awards passed by the Reference Court become non-existent in the wake of their setting aside by the Appellate Court. Introducing Section 28-A is to ensure that the benefit of claiming the just compensation is conferred even on those land-losers, who have not sought Section 18 Reference for reasons of poverty, etc. Benevolent provision should not be read with non-benevolent eye. That Section 28-A provides for making application within three months from the date of the award, on the basis of which the redetermination of the market value is sought.

6. ILR 2008 KARNATAKA 419 in The Special Land Acquisition Officer and another vs. Sri.Muniyappa and others wherein it has held that,

A. Land Acquisition Act, 1894 - S.28A - Application under - Re-determination of compensation - Rejection of application - Held, An award under sub-section (2) of Section 28A of the Act is necessary to make an application to the Court under sub-section (3) of Section 28A of the Act - Application of the claimants was rejected by the Land Acquisition Officer under sub-section (2) of Section 28A of the Act - Even an order of rejection of an application for re-determination of compensation amounts to

an award and the person aggrieved by such an order has the right to approach the LAO to have the matter referred to the Civil Court – Further Held, If the LAO fails to refer the matter for re-determination of the Court, the claimants are entitled to make an application before the Court under Section 28A(3) of the Act seeking a direction to the LAO to make reference for re-determination of the compensation. The application filed by the claimants under Section 28A(3) of the Act is maintainable.

7. 2007 (3) KCCR 1706 in Smt. Ningajamma vs. The State of Karnataka and others wherein it has held that,

Land Acquisition Act, 1894 - S.28A – Redetermination of compensation. The scope of Section 28-A of the Act is that any person who is aggrieved by the determination of the market value by the LAO and who has not sought reference under Section 18 can make application under Section 28-A of the Act for re-determination of the compensation inconformity with award passed by the reference Court. The provisions of Sections 18 to 28 of the Act are made applicable to an application filed under Section 28-(3) of the Act. There is alternate remedy for the person under Section 18(3)(b) of the Act is to file a petition before the Reference Court seeking a direction to the LAO to refer the matter as

the case of Section 28-A is in respect of re-determination of compensation on the basis of the award of the reference Court – Hence writ petition is not maintainable.

8. 2011 AIR SCW 273 in V.Ramakrishna Rao vs. Singareni Collieries Company Ltd., and another wherein it has held that, Land Acquisition Act, 1894 - S.28A(3) – Redetermination of compensation – Person not satisfied with award u/S.28A(2) – Can make application to Collector u/S.28A(3) for making reference to Court – This right cannot be frustrated merely because applicant becomes entitled to receive compensation at par with other land owners.

9. 2005 AIR SCW 5535

10. 2017 (1) KCCR 632

17. In addition to above the learned counsel for petitioner argued that the object underlining the enactment under section 28(A) is to remove inequality in the payment of compensation for same or similar quantity of land arising on account of inarticulate and poor people not been able to take advantage of the right of reference to the Civil Court under section 18 of the Act. This is sought to be achieved by providing an opportunity to all aggrieved parties whose land is

covered by same notification to seek re-determination, once any of them has obtained order for payment of higher compensation from the reference Court under section 18, section 28-A is therefore, in the nature of a beneficent provision intended to remove inequality and to give relief to the inarticulate and poor people who are not able to take advantage of right of reference to the Civil Court under sec.18 of the Act.

18. Further it is argued that, as per Hon'ble Supreme Court Judgment **AIR 2002 SUPREME COURT 3240** Section 28(A) redetermination of compensation on the basis of court award once the reference application is rejected is also maintainable and further argued that, the object of Section 28(A) was to confer a right of making a reference on the person who might have not made a reference earlier under Section 18 and therefore ordinarily when a person makes made a reference under Section 18 but that was dismissed under delay and they would not get right to section 28A of Act when some other person makes a reference and reference is answered, since the 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". It is also argued that, notwithstanding dismissal of their reference application as being barred by limitation by the reference court still they have right to apply under section 28(A) of the Act to the Collector for re-determination of compensation payable to them on the basis of compensation awarded by the reference Court to other similarity situated land owners whose land was acquired along with the applicant's land.

19. Coming to the merits of the present application is concerned, no doubt at cost of repetition it is an undisputed fact that the one Kallu Kalappa Nayak being the original owner who died on 13.02.1994 leaving behind the petitioner. The land of the petitioner has been acquired for SEABIRD project as per 4(1) notification dated 20.7.1989 and 6 (1) notification dated 09.11.1989 without awarding enhancement of compensation. The petitioner in order to get enhancement of compensation, filed application as per Section 28(A) of Land Acquisition Act before respondent No.1 on the basis of award passed in LAC No.19/2011 by the Hon'ble Civil Judge (Sr.Dn) Kumta on 03.03.2012. The respondent No.1 after scrutinizing the application filed by the petitioner awarded enhanced

compensation amount for the said land. When the said Order was sent for approval before the Dy.Commissioner, the Dy.Commissioner, Uttara Kannada Karwar also ordered that the petitioner is entitled for enhanced compensation amount. Thereafter the said Award has been sent to respondent No.2 by the respondent No.1. But the respondent No.2 objected that the land in question in LAC No.19/2011 and the land of the petitioner is not one and same under 4(1) notification and rejected the said Award in respect of land acquisition of Nellur-Kanchinbail village on 18.12.2017. Thereafter, the respondent No.1 sent the said Award copy to the respondent No.2. But, the respondent No.2 rejected the said enhanced Award Order of Nellur-Kanchinbail village of petitioner by stating that the land mentioned in LAC No.19/2011 and the petitioner's land are not mentioned under the same 4(1) notification and returned it to the respondent No.1 on 18.12.2017. Thereafter, the respondent No.1 filed application on 10.01.2018 before the Deputy Commissioner seeking to reject the approval of enhanced of compensation amount Order passed by the Deputy Commissioner. Hence the Deputy Commissioner without enquiring and intimating to the petitioner, rejected the Order on 13.01.2018.

20. I have gone through the citation referred in LAC Misc.24/2019 by the learned counsel for petitioner with due respect.

21. It is made clear from the above cited judgment dismissal of reference application under Sec.18 being barred by limitation. The application u/Sec.28(A) to Collector for re-determination till maintainable. In the light of aforesaid law laid down by Hon'ble Supreme Court and Hon'ble High Court, notwithstanding dismissal of their reference application as being barred by limitation by the reference court, they still have a right to apply u/Sec.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 or other similarly situated land owners whose land was acquired along with the applicant's land. The Sec.28(A) ensure the benefit of claiming the just compensation is conferred even on those land-loosers, who have not sought section 18 reference for reason of poverty etc. Benevolent provision should not be curtail to them. Even an order of rejection of an application for re determination of compensation amounts to an award and the person aggrieved by such an order has right to

approach the LAO to have the matter referred to the civil court. If the LAO fails to refer the matter for re-determination of the court, the claimants are entitled to make an application before the court u/Sec.28A-(3) of the Act seeking a direction to LAO to make reference for re-determination of the compensation. The application filed by the claimant u/Sec.28A-(3) of the Act is maintainable. My above said view is also supported by decision reported in ILR 2008 KARNATAKA 419 in Special Land Acquisition Officer and another vs. Sri.Muniyappa and others. It is needless to mention that in the instant case LAO SEABIRD straight away dismissed the application filed by the applicant stating that there is no provision of law for re-determination and there is no any provision for second time reference. The reason assigned by the LAO definitely hit the provision of Sec.28A-(3) of the Act it specifically provides the re-determination, even though the reference application is already rejected.

22. Having regard to above principles of law, no doubt at cost of repetition the application filed by the petitioner/applicant under Secion 28A-(3) of Land Acquisition Act is certainly maintainable. With this observation, I proceed to answer **point No.1 in the**

"Affirmative".

23. **POINT NO.2** : In view of my findings on point No.1 in the Affirmative; I proceed to pass following order;

O R D E R

The reference application filed by applicant/petitioner under Sec.28A-(3) r/w.Sec.18 of Land Acquisition Act is hereby allowed.

The respondent No.1 is hereby directed to refer the reference application with the award and relevant documents to this court within one month from the date of this order.

No order as to cost.

(Typed to my dictation by the Stenographer, corrected and revised by me and then pronounced in the open Court on **30th June, 2026**)

(Smt.Priya Ravi Joglekar)
Senior Civil Judge, Ankola.

:: ANNEXURE ::**WITNESS EXAMINED FOR THE PETITIONER:**

P.W.1: Laxmi w/o Nagesh Nayak

DOCUMENTS EXHIBITED FOR THE PETITIONER:

- Ex.P1: RTC extract
- Ex.P2: Certified copy of 4(1) notification
- Ex.P3: Certified copy of 6 notification
- Ex.P4: Certified copy of Award
- Ex.P5: Certified copy of Order U/S 28(A) of the Land Acquisition Act
- Ex.P6: Certified copy of Order passed by the Dy.Commissioner, Uttar Kannada
- Ex.P7: Certified copy of rectification Order
- Ex.P8: Certified copy of mutation entry No.976
- Ex.P9: Surviving family members certificate
- Ex.P10: Death certificate
- Ex.P11: Copy of application
- Ex.P12: Application of petitioner

WITNESSES EXAMINED FOR THE RESPONDENT: -

-NIL -

DOCUMENTS EXHIBITED FOR THE RESPONDENT:

- NIL -

sd/-

Senior Civil Judge, Ankola.