

MHYA070009482013 	Presented on	:-	30/04/2013		
	Registered on	:-	30/04/2013		
	Decided on	:-	04/05/2026		
	<u>Duration</u>	:-	<u>Y.</u>	<u>M.</u>	<u>D.</u>
			13	00	04

**IN THE COURT OF 2nd JT. CIVIL JUDGE, (SR.DN.) AT DARWHA,
DIST. YAVATMAL.**

[PRESIDED OVER BY : SMT. C.R. UMREDKAR]

LAR No.16/2013

Exh. No.38

Shripat Vithobaji Vitholikar Dead through L.Rs. 1. Datta Shripatrao Vitholikar, Age - 65 years, Occ. - not mentioned, 2. Raju Shripatrao Vitholikar, Age - 53 years, Occ. - not mentioned, 3. Dnyaneshwar Shripatrao Vitholikar Dead Through L.R. 3A. Varsha Dnyaneshwar Vitholikar, Age - 50 years, Occ. - not mentioned, 3B. Sau. Shilpa Punjab Mahalle, Age - 33 years, Occ. - not mentioned, 3C. Sau. Chaitali Mahesh Thakare, Age - 30 years, Occ. - not mentioned, 3D. Akash Dnyaneshwar Vitholikar, Age - 27 years, Occ. - not mentioned,	... Petitioner.
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	Nos.1, 2 an 3D R/o Pusad, Tq. Pusad, District Yavatmal. No.3A R/o Bori, Tq. Digras, Disgrict Yavatmal.	
	..Vs..	
1.	Maharashtra State through Collector Yavatmal, Dist. Yavatmal.	...Respondents.
2.	Special Land Acquisition Officer, Upper Painganga Project, Pusad, Tq. Pusad, District : Yavatmal.	
3.	Executive Engineer, Arunawati Project Division, Digras, Tq. Digras, District : Yavatmal.	

Claim : Reference under section 28(A)(3) of the Land Acquisition Act, 1894.

APPEARANCE:- Ld. Adv. Shri. N. P. Ingole for petitioner.

Ld. APP Shri A.P. Rathod for respondent no.1 & 2

Ld. Adv. Shri A.A. Alone for respondent no.3

:-: JUDGMENT :-:

(Delivered on 04 May, 2026)

This reference is filed under section 28(A)(3) of the Land Acquisition Act, 1894 (for short 'the Act') for enhancement of compensation of the house at village Bori, Tq. Digras, District

Yavatmal acquired by the Government for the purpose of Arunawati Project vide LAR no. 11/65/1985-86.

2. Description of acquired property:

Village	House No.	Acquired area	
Bori	48	Open sace in square meter	Construction in Square meter
		21.28	19.88

3. Facts of the case is as under :

Respondent no.2 published notification u/section 4 of the Land acquisition Act in Government gazette on 24/07/1986 and award passed by the Land Acquisition Officer, Yavatmal on 19/02/1988. Respondents had acquired total 65 houses of village Bori. Out of total 65, only one person Deorao Ganpatrao Gawande preferred reference under section 18 of Land Acquisition Act bearing LAR No. 885/1990, before Civil Judge Sr. Dn. Pusad. Civil Judge Sr. Dn. Pusad decided reference under section 18 of the Land Acquisition Act on 30/09/1997 and awarded enhancement of compensation @ Rs.258.18 sq. mtrs for construction. Thereafter, on 17/06/2004, respondent no.2 has passed his review award and granted compensation @ 35% of the valuation submitted by the owners in the present reference. It is not as per judgment passed by Civil Court in reference under section 18 of Land Acquisition Act. Hence, being dissatisfied of award dated 17/06/2004, the petitioner has filed the present petition for enhancement of compensation before this Court. Thereafter, the claimant in LAR No. 885/1990, has preferred appeal

against the judgment of reference Court, preferred First Appeal before Hon'ble High Court, Bench at Nagpur bearing F.A.No.47/1998. After the decision of said appeal, this petitioner has made amendment in his original petition and claimed 100% amount on the basis of above referred appeal of Hon'ble High Court.

4. Respondents no.1 and 2 filed their written statement in reference at Exh.11 and No.3 has filed his written statement at Exh.16. They submitted that the petitioner in reply under section 9(1) of the Act must have claimed before Land Acquisition Officer regarding specific amount, reasons, location of the land and examples of the sale-deed within the area shall have filed. The petitioner has not filed statement under section 9 of the Act. The petitioner is first time in the petition demanding the excess amount without evidence which is not tenable under the Act. Land Acquisition Officer has given all the opportunities to the petitioner to substantiate his claim under section 9 of the Act. The Land Acquisition Officer has rightly considered all the aspects laid down in the Act for determination of compensation. The compensation awarded by Land Acquisition Officer to the petitioner being adequate and proper, hence, this reference deserve to be rejected with costs.

5. From the rival contentions of both parties, my learned predecessor framed issues at Exh.17 on 31/07/2018 and I recorded my findings against them for the reasons mentioned below :

	ISSUES	FINDINGS
01.	Whether the petitioner is entitled for enhanced compensation ? If yes, to what extent ?	In the affirmative.

		As per final order.
02.	Whether present reference challenging award passed by the Collector under section 28A of the Land Acquisition Act 1894 is tenable in this Court ?	In the affirmative
03.	Whether the reference is in limitation ?	In the affirmative
04.	What order and relief ?	As per final order.

REASONS:

6. In order to prove her claim, petitioner no.3D Akash Dnyaneshwar Vitholika has filed his affidavit in lieu of examination-in-chief at Exh.25. He also relied on the following documents;

Sr No.	Particulars	Exhibits
01.	Award, dated 17/06/2004	31
02.	Notice dt 20/11/2007	32
03.	Copy of judgment Passed by Hon'ble High Court in FANo. 47/1998	33
04.	Copy of judgment in LAC No.885/1990	34
05.	Copy of Judgment passed in LAR No. 45/2009	35

7. By filing pursis at Exh.28, the petitioner closed their evidence.

8. To rebut the evidence of petitioner, neither any respondent nor any witness on their behalf entered into witness box. Respondent no.1 and 2 filed pursis at Exh.37 and closed their

evidence. The respondent no.3 closed their evidence by filing pursis at Exh. 29.

9. Ld. Advocate Shri. Ingole for petitioner advanced his argument also heard Ld. A.G.P Shri. Rathod for respondent no.1 and 2. Also heard argument advanced by Ld. Advocate Shri. Alone for respondent no.3 at a length.

10. Learned Advocate for the petitioner submitted that petitioner has filed this petition on the basis of judgment passed by Civil Court in LAR No.885/1990. Despite of giving direction by Hon'ble High Court in **Writ Petition No. 3299/1999** Land Acquisition Officer has not granted compensation to the built up area as per judgment passed in the above land reference, therefore this petitioner has filed the present petition under section 28(A)(3) of Land Acquisition Act. The petitioner have claimed enhancement of compensation for the built up area as per the judgment passed by Civil Court in L.A.R. No.885/1990. While Ld. A.G.P. and Advocate for respondent no.3 argued that the compensation awarded by the Land Acquisition Officer is correct. The petitioner has not adduced evidence before this Court to get enhanced compensation for the construction. Valuation reports are not proved as per law, therefore they cannot be considered for the determination of enhanced compensation for the acquired house.

As to issue Nos.2 and 3 :-

11. Issue nos. 2 and 3 are the issues based on law and they are interconnected with each other, therefore, they are considered first and collectively.

12. As per Section 28(A) of the Act, a special right has been conformed upon a person whose property has been acquired but who did not challenged the Award of the Collector under Section 18 of the said Act. In order to seek parity in such a situation any such applicant can file application before the concerned Collector within three months from the date of order of reference court praying that the compensation payable to her may be also re-determined accordingly.

13. In the present case, the Collector considered the application under Section 28(A) of the said Act and passed Award on 17/06/2004 which is at Exh.31. There is nothing on record to show that the applicant was made aware the Award was to be announced on any particular day. Petitioner was not informed about such proposed date. The record also does not reflect that either the applicant was present at the time of making award or represented by any one in any manner whatsoever.

14. In this reference, the petitioner had mentioned that original petitioner got actual knowledge about the Award in the Month of November of 2007 when he received notice from the respondent no.2. On perusal of Exh.1, it disclosed that reference under Section 28-A (3) was filed before concerned Collector on 17/12/2007. Moreover, notice under Section 28-A is at Exh.32 which shows that the notice was issued on 20/11/2007. Thus, limitation would fall under proviso (b) of Section 18 (2) i.e. within six weeks of the receipt of notice from the Collector under Section 12(2) of the said Act.

15. Section 28-A is beneficial provision meant for poor, illiterate and inarticulate persons. Petitioner seems to fall in such category only as none from their side could draw attention of the Collector to the aforesaid development. The Hon'ble Apex Court held that since the provision is beneficial and based on equity and parity, the onus is much more rigorous on the adjudicating authority than that person. So from the pleading of petitioner it can be said that she has got actual knowledge about the award on 20/11/2007 and original petitioner has reference under Section 28(3) on 17/12/2007. Therefore, this reference is well within limitation.

16. In the written statement, respondent no.1 and 2 submitted that the civil Court in a reference is bound to satisfy itself that the reference made by Collector complies with the conditions specified so as to gives Court the jurisdiction to hear the reference. The contents contemplated being;

1. There has been written application by person interested who has not accepted award,
2. The nature of petition is such which can be taken into consideration under Section 18 of the Act and
3. The application is within limitation as prescribed by law.

17. This reference under Section 28-A (3) has been forwarded by Collector i.e. respondent no.1 to this Court vide letter, dated 03/09/2012. With discloses that petitioner has not accepted the copy of award and prayed for referring the reference under section 28-A (3) to this court along with documents attached with it.

From the pleading of respondent no.1 and 2 it appears that the petitioner moved written application before L.A.O. for forwarding this reference to the court and they have not accepted the Award. The nature of application can be taken into consideration as under section 18 of the Act. As discussed earlier, the reference under section 18 is within limitation. Therefore, the conditions for filing reference under section 28-A(3) are fulfilled by the petitioner, hence, this reference is tenable under Section 28-A(3) for the Act in this Court. It is quite evident that there is nothing on record which may indicate that either the present petition is not maintainable or it is barred by limitation. The Ld. Advocates for respondent failed to make any such submissions on the aforesaid two issues. Hence, I answered issue no.2 and 3 are in affirmative.

As to issue no.1 :-

18. In this reference petitioner adduced her evidence at Exh. 16 and 23. He deposed that total 98 houses at village Bori were acquired by respondents for Arunavati Project. One Deorao Ganpatrao Gawande has filed reference under section 18 of Land Acquisition Act. In this reference, Civil Court Pusad passed award on 30/07/1990 and granted enhanced compensation to built-up area as per the valuation made by the valuer Mr. Kelkar. On the basis of this judgment, 65 persons filed application under section 28(A) of the Act before Land Acquisition Officer. All the applications are rejected on the ground that private valuation cannot be considered. Thereafter, petitioners filed Writ Petition No. 3299/1999 in the Hon'ble High Court which is decided on 22/09/1999. The Hon'ble High Court set aside order passed by Land Acquisition Officer on 21/06/2000 and

remanded those petitions for fresh consideration. Thereafter the Land Acquisition Officer again rejected the applications on 21/06/2000. Thereafter the applicants have against filed the Writ Petition No. 2538/2000. Thereafter, as per direction of the Hon'ble High Court in W.P. No. 2538/2000 on dated 15/01/2003, Land Acquisition Officer decided applications under section 28(A) of the Act on 17/06/2004 and granted enhanced compensation at 35% of valuation made by private valuer Mr. Kelkar.

19. Further, this petitioner stated that as per direction of Hon'ble Bombay High Court, she preferred petition before State Government which were allowed and directed Land Acquisition Officer to consider applications under section 28(A) of the Act. Therefore, their applications decided by Land Acquisition Officer on 17/06/2004 and granted enhanced compensation @ Rs.49.88 per sq. meter for open land and compensation for built-up area as 35% of the valuation made by the private valuer. This award dated 17/06/2004 is not as per the judgment passed by Civil Court, Pusad. In support of this petitioner filed documentary proofs such as copy of award dated 17/06/2004, copy of judgment in LAR No.885/1990 and also copy of judgment of ***Hon'ble High Court in First Appeal No.47/1998***. Also the petitioner has filed copy of valuation report filed by them before Land Acquisition Officer.

20. In cross-examination, the petitioner deposed that he have not remember the exact measurement of built-up area and open space. He also admitted that his house was built by cement concrete. It is admitted that he has not given enhancement of 35% in compensation. From the cross-examination of petitioner, it has come

on record that he had not made reference under section 18 of Land Acquisition Act. In cross-examination, petitioner submitted that original valuation report was submitted by him to the Land Acquisition Officer therefore, it is not filed in this matter. Also it has come on record that valuer Mr. Kelkar is no more.

21. It is not disputed that petitioner is the owner of house no.48 of village Bori and this house is acquired by the respondents for Arunavati Project. It is also not in dispute that the petitioner had filed application under section 28A before Land Acquisition Officer wherein the rate of open land was enhanced @ 49.88/- per sq. mtr by Land Acquisition Officer.

22. So far as Section 28-A is concerned, it is true that sub-section (1) thereof provides for redetermination of the amount of compensation on basis of an award by reference Court in reference u/s.18 in respect of another land acquired under the same notification u/s.4 (1) of the said Act.

23. Sub-section thereof provides that any person who has not accepted the award under sub-section 2 may, by written application to the Collector required that the matter be referred by the Collector for the determination of the Court, and provisions of Sec. 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18.

24. The petitioner has filed copy of application made by him u/s.28-A before Land Acquisition Officer, it reflects that petitioner had claimed enhanced compensation on the basis of judgment passed in LAC No.45/2009. The copy of award dt, 17/06/2004 is at Exh. 31

and copy of judgment passed by reference court in L.A.C. No.45/2009 is at Exh. 43. The Ld. Advocate for the petitioner submitted that the house acquired in above case is at village Kalsa. The village Kalsa and village Bori are nearest village. Hence, the Ld. Advocate for petitioner prayed to consider the rate given in LAR No.45/2009. After going through these documents it appears that house property involved in LAC No. 45/2009 was acquired by the Government by the different notification u/s. 4(1) of the Act. This judgment in L.A.C. No. 45/2009 reflects that in the reference u/s. 18 of Land Acquisition Act, the Court awarded enhanced compensation at 85% as per the valuation made by Mr. Kelkar for constructed area. While award dated 17/06/2004 passed by Land Acquisition Officer in the reference u/s 28-A reflects that same rate of open land granted by Land Acquisition Officer to the petitioner but while granting enhanced compensation for built up area he granted only 35% as per the valuation made by valuer. From this, it is clear that the Land Acquisition Officer has granted compensation to the petitioner is inadequate, improper and not as per the market rate.

25. The *Hon'ble Bombay High Court, in 2007(2), ALL MR, 316, Bayaji Tatya Kalunke vs. State of Maharashtra*, held that when lands are acquired in the same village for the same purpose under the same notification, owners are entitled for parity in compensation parity.

26. Petitioner has filed the copy of judgment of Hon'ble High Court, Bench at Nagpur in First Appeal No. 47/1998 at Exh.33 against the judgment of reference Court in LAC No. 885/1990. After

perusal of said judgment of Hon'ble High Court, it reveals that the house of deceased Deorao and the case in hand is acquired in same village and same notification. The ***Hon'ble High Court, Bench at Nagpur in First Appeal No.47/1998*** has granted 100% of private valuation report by deduction 35% amount of private valuation report. Hence, as per the ground of parity, the present petitioner is entitled for enhanced compensation as per guided by Hon'ble High Court in supra case. Before deciding the enhanced compensation, the following calculation is made as per award Exh. 31;

House No.	Constructed area as per Award Exh.31	Total Amount of Valuation Report	35% amount of valuation report	Difference as per F.A.No.47/1998 after deducting 35% amount
48	19.88	1,90,800/-	66,780/-	1,24,020/-

27. In the light of aforesaid discussion, it is held that the compensation awarded by L.A.O. is insufficient, inadequate and not as per judgment passed in First Appeal No. 47/1998 and the petitioner is entitled for compensation at 100% of the valuation made by valuer along with statutory benefits after deducting amount paid by Land Acquisition Officer @ 35% to the petitioners. Hence, I answer point Nos. 1 in affirmative and to answer to issue no.4, following order is passed;

ORDER

1.	Reference is allowed.
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2.	Respondents shall pay enhanced compensation for house No.48 having built-up area 19.88Sq mtr by deducting 35% amount of valuation report which comes to 1,24,020/- (Rs. One Lac Twenty Four Thousand Twenty only) as additional amount along with statutory benefits on it.
3.	Respondents do pay the component @ of Rs12% p.a.from the date of publication of notification under Section 4 sub-section (1) to the date of award of the Collector or the date of taking possession whichever is earlier on the enhanced/additional compensation.
4.	Respondents do pay solatium @ 30% on the enhanced compensation.
5.	Respondents do pay to the petitioner interest @ 9% p.a. on enhanced compensation, for the first year from the date of notification u/s.4(1) of the Act i.e. 02/04/1986 and thereafter @ 15% p.a. till the date of realization of entire amount.
6.	Respondents to deduct amount of compensation, if any already received by the petitioners out of enhanced amount of compensation.
7.	Respondents do pay the costs of the litigation to the petitioners and bear their own costs.
8.	Award be drawn up accordingly.

Dated : 04/05/2026

Place : Darwaha.

(**Smt. C.R. Umredkar**)
 2nd Jt. Civil Judge (Sr. Dn.),
 Darwaha Dist. Yavatmal.