



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3917 OF 2021

Shamkant Daulatrao Suryawanshi And Others
VERSUS
The Special Land Acquisition Officer And Another

.....

Mr. Girish V. Wani, Advocate for the Petitioners
Mr. S.B. Jadhav, AGP for Respondents Nos. 1 and 3
Mr. Subhash Chillarge, Advocate for Respondent No.2

.....

CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 4 MAY, 2026

ORDER :

1. Heard the learned counsel for respective parties.
2. The petitioners are challenging the order dated 22.08.2019 passed by the learned Special Land Acquisition Officer No.1, Upper Tapi Project, Hatnur, District Jalgaon, in SR No.208 of 2003, whereby the application filed by the petitioners under Section 28A(3) of the Land Acquisition Act, 1894 (for short, "the Act"), came to be rejected.
2. Mr. G.V. Wani, learned counsel for the petitioners, submits that land bearing Gut No.126 admeasuring 1 Hectare 16 R and Gut No.127-P admeasuring 87 R situated at Chitegaon, Taluka Chalisgaon, District Jalgaon, came to be acquired by respondent No.2. The said lands originally belonged to Daulatram Kaluram Suryawanshi and, after his death, the present petitioners, being his legal heirs, became owners thereof. He submits



that the acquisition proceedings commenced in the year 2005 by issuance of notification under Section 4 of the Act and the award under Section 11 of the Act came to be passed on 26.09.2008. At the relevant time, the petitioners had not sought reference under Section 18 of the Act. He further submits that another land owner, whose land was also acquired under the same notification and who was aggrieved by the award, had filed Land Acquisition Reference No.490 of 2009 and the said reference came to be settled before the Maha Lok Adalat on 16.09.2012. Thereafter, the petitioners filed an application under Section 28A of the Act before respondent No.1 within the prescribed period. However, respondent No.1 rejected the said application by observing that, since the matter was settled before the Maha Lok Adalat and in view of the Government Resolution dated 13.10.2011, the petitioners had filed an affidavit on stamp paper stating that they would not initiate proceedings under Section 28A(3) of the Act. Learned counsel submits that merely because the petitioners had filed an affidavit on a stamp paper of Rs.100/- stating that they would not seek reference, their statutory right to file an application under Section 28A(3) of the Act cannot be taken away. Though learned counsel fairly admits that such undertaking was given, he submits that respondent No.1 was not competent to adjudicate upon the said issue. According to him, once an application under Section 28A(3) of the Act was received, respondent No.1 was under an obligation to forward the same to the Reference Court and was not supposed to decide the maintainability thereof. He, therefore, prays



that the writ petition be allowed by setting aside the order dated 22.08.2019 passed by the learned Special Land Acquisition Officer.

3. In support of his submissions, learned counsel for the petitioners relied upon the judgment of the Hon'ble Apex Court in the case of ***V. Ramakrishna Rao v. The Singareni Collieries Company Ltd.*** reported in AIR SCW 273.

4. Per contra, learned AGP appearing for respondent Nos.1 and 3, as well as Mr. Chillarge, learned counsel appearing for respondent No.2, supported the impugned order. It is submitted that the petitioners had accepted the compensation and had also filed an affidavit specifically stating that they would not challenge the award under Section 28A(3) of the Act. Therefore, according to them, the petitioners are estopped from seeking reference under Section 28A(3) of the Act.

5. Mr. Chillarge, learned counsel for respondent No.2, relied upon the judgment delivered by the Division Bench of this Court in Writ Petition No.3110 of 2016 (***Smt. Umbadevi Rajkumar Jeure and others vs. The District Collector, Solapur and others***).

6. Having heard the learned counsel for the parties and after going through the material placed on record, it would be necessary to refer to Section 28A of the Land Acquisition Act, 1894, which 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.

(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."

7. There is no dispute about the fact that the petitioners had filed an application under Section 28A(3) of the Act. The principal contention raised by the respondents is that, since the petitioners had accepted the compensation by filing an undertaking that they would not challenge the award, they are estopped from filing such application. The question,



therefore, that falls for consideration is whether respondent No.1 was competent to adjudicate upon the said application.

8. The Hon'ble Apex Court, in ***V. Ramakrishna Rao v. The Singareni Collieries Company Ltd.*** (supra), after considering Section 28A of the Act, in paragraphs 9, 10 and 11, has observed thus:

“9. The above reproduced provision represents the Legislatures determination to ensure that the goal of equality enshrined in the Preamble of the Constitution and Articles 38, 39 and 46 thereof is translated into reality, at least in the matter of payment of compensation to those who are deprived of their land for the benefit of the State, its instrumentalities/agencies and even private persons. Section 28A also represents statutory embodiment of the doctrine of equality in matters relating to the acquisition of land. The Act which was enacted in 1894 and was amended after 90 years has the potential of depriving a large segment of the society ie. the agriculturist of their only source of livelihood. The scheme of Section 28A provide some solace to this segment of the society by ensuring that such of the land owners whose land was acquired under the same notification but who could not, on account of poverty, ignorance and other disabilities join others in seeking reference under Section 18 get an opportunity to claim compensation at par with others. This section is aimed at removing inequality in the payment of compensation in lieu of acquisition of land under the same notification. To put it differently, this section gives a chance to the land owner, who may not have applied under Section 18 for determination of market value by the Court to seek re-determination of the amount of compensation, if any other similarly situated land owner succeeds in persuading the Reference Court to fix higher market value of the acquired land. Therefore, Section 28A has to be interpreted in a manner which would advance the policy of legislation to give an opportunity to the land owner who may have, due to variety of reasons not been able to move the Collector for making reference under Section 18 of the Act to get higher compensation if market value is revised by the Reference Court at the instance of other land owners, whose land is acquired under the same notification. Of course, this opportunity can be availed by filing application within the prescribed period. In Union of India v. Pradeep Kumari (supra), a three-Judge Bench of this Court held that Section 28A is in the nature of a beneficent provision intended to remove inequality and to give relief to the inarticulate and poor land owners, who are not able to take advantage of the right of reference to the Civil Court under Section 18 of the Act and such a provision should be interpreted in a manner which advances the policy of legislation.



10. *In Union of India v. Munshi Ram (supra)*, a two-Judge Bench considered the meaning of the word re-determination appearing in Section 28A and held that compensation payable to the applicant under Section 28A should be at par with what is finally payable to those who sought reference under Section 18 of the Act and if the compensation payable to the latter category is reduced by the superior court, the one who gets higher compensation under Section 28A may be directed to refund the excess amount. What was emphasized by the two-Judge Bench was that re-determination of the amount of compensation under Section 28A must be commensurate with the compensation payable to those who had sought reference under Section 18 and if the higher court reduces the amount of compensation payable in terms of the order of the Reference Court, then those making application under Section 28A must be asked to refund the excess amount. A somewhat similar view was expressed in *Kendriya Karamchhari Sehkhari Grah Nirman Samiti Limited v. State of Uttar Pradesh (supra)* in the following words:

It is true that once the Reference Court decides the matter and enhances the compensation, a person who is otherwise eligible to similar relief and who has not sought reference, may apply under Section 28-A of the Act. If the conditions for application of the said provision have been complied with, such person would be entitled to the same relief which has been granted to other persons seeking reference and getting enhanced compensation. But, it is equally true that if the Reference Court decides the matter and the State or acquiring body challenges such enhanced amount of compensation and the matter is pending either before the High Court or before this Court (the Supreme Court), the Collector would be within his power or authority to keep the application under Section 28-A of the Act pending till the matter is finally decided by the High Court or the Supreme Court as the case may be. The reason being that the decision rendered by the Reference Court enhancing compensation has not attained finality. and is sub judice before a superior court.

11. *If sub-section (3) of Section 28A is interpreted keeping in view the object sought to be achieved by enacting the provision for removing inequality in the matter of payment of compensation, it must be held that a person who is not satisfied with an award made under Section 28A(2) can make an application to the Collector under Section 28A(3) for making a reference to the Court as defined in Section 3(d) of the Act and this right cannot be frustrated merely because as a result of re-determination made under Section 28A(2) read with Section 28A(1) the applicant becomes entitled to receive compensation at par with other land owners. There is nothing in the plain language of Section 28A(3) from which it can be inferred that a person who has not accepted the award made under Section 28A(2) is precluded from making an application to the Collector with the request to refer the matter to the Court. Of course, the Court to which reference is made under Section 28A(3) will have to bear in mind that a*



person who has not sought reference under Section 18 cannot get compensation higher than the one payable to those who had sought reference under that section.”

9. Upon careful consideration of the provisions of Section 28A of the Act, this Court finds that respondent No.1 had no jurisdiction to adjudicate the issue as to whether the petitioners were estopped from seeking reference under Section 28A(3) of the Act on account of the undertaking allegedly given by them. Once an application under Section 28A(3) of the Act is filed, the Special Land Acquisition Officer is required to refer the matter to the competent Civil Court for adjudication. The question as to whether the petitioners had accepted the award unconditionally or whether they are estopped from seeking reference are all matters which fall within the domain of the Reference Court. In the present case, respondent No.1 has committed an error in rejecting the application itself by entering into adjudication on the aforesaid aspects. Therefore, this Court is of the considered view that the impugned order dated 22.08.2019 passed by the learned Special Land Acquisition Officer No.1, Upper Tapi Project, Hatnur, District Jalgaon, cannot be sustained and deserves to be quashed and set aside. Hence, the following order:

ORDER

- (i) The writ petition is allowed.
- (ii) The order dated 22.08.2019 passed by the learned Special Land Acquisition Officer No.1, Upper Tapi Project, Hatnur, District Jalgaon, in SR No.208 of 2003, is hereby quashed and set aside.



(iii) Respondent No.1 – Special Land Acquisition Officer is directed to forward the reference under Section 28A(3) of the Land Acquisition Act, 1894, to the competent Principal Civil Court of original jurisdiction, in accordance with law.

(iv) It is made clear that this Court has not recorded any finding as regards whether the petitioners had accepted the award in view of the undertaking allegedly executed by them, and it is for the Civil Court to decide the said issue on its own merits. The respondents are at liberty to raise all such contentions before the Civil Court.

[SIDDHESHWAR S. THOMBRE]
JUDGE

S P Rane