



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12456 OF 2023

Maharashtra Krishna Valley Development
Corporation Limited. ...Petitioner.

Versus

Baburao Ishwar Sathe
Since deceased Thr. LRs. and Others. ...Respondents.

WITH

WRIT PETITION NO. 12458 OF 2023

Maharashtra Krishna Valley Development
Corporation Limited. ...Petitioner.

Versus

Mainoddin G. Shaikh
Since deceased Thr. LRs. and Others. ...Respondents.

WITH

WRIT PETITION NO. 12457 OF 2023

Maharashtra Krishna Valley Development
Corporation Limited. ...Petitioner.

Versus

Shivaji Limbaji Chavan and Others. ...Respondents.

Ms. Chaitrali A. Deshmukh for the Petitioner.
Ms. Shruti Tulpule for the Respondent No. 1.
Ms. Tanu Bhatia, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Reserved on : August 30, 2024

Pronounced on : September 18, 2024.

ORDER :

1. Preliminary objection has been raised to the maintainability of present Petitions which challenge the Award passed under Section 28-

A of the Land Acquisition Act, 1894 [for short “the LA Act”].

2. In order to appreciate the dispute involved in the present Petition, few facts which are necessary to be expounded are that the Petitioner – Corporation is the acquiring body for Bori Medium Project, District Solapur. The notifications under Section 4 and Section 6 of the LA Act were issued on 29th January 1998 and 6th June, 1999 and the Award under Section 11 was passed on 30th October 2000. The Award was challenged under Section 18 of LA Act by one Sidram Bamshetti Bharamshetti by filing LAR No.183 of 2001. The LAR proceedings came to be disposed of on 14th December, 2019 in terms of the compromise *pursis* filed before the National Lok Adalat and in accordance with the terms of compromise the Award came to be passed on 14th December 2019.

3. Respondent Nos.1 and 2 herein filed an application dated 15th February 2020 under Section 28-A of the LA Act for re-determination of the compensation on the basis of award passed in LAR No.183 of 2001 pursuant to the compromise recorded by the National Lok Adalat, which came to be rejected by Respondent No. 3. As against this, Writ Petition No. 899 of 2021 was filed before this Court and by order dated 17th March 2021, this Court directed the Special Land Acquisition Officer to re-determine the compensation. The Respondent No.3 by order dated 29th August 2021 re-considered the application and

allowed the same on the basis of award passed in LAR No.183 of 2001 and also granted interest under various heads.

4. The present Petition filed under Article 227 of Constitution of India seeks to challenge the Award dated 29th August, 2021 passed by the Respondent No 3 on various grounds such as absence of inquiry under Section 28-A(2) of the LA Act, non issuance of notice to the Petitioner, and the inclusion of administrative office expenses and establishment expenses in the Award.

5. Ms. Tulpule, learned Counsel for Respondent-Claimants has raised a preliminary objection in view of Section 28-A(3) of LA Act which provides for seeking a reference to the Court by the person who has not accepted the Award. She would submit that a Petition under Article 227 of Constitution is not maintainable to challenge the Award passed by the Special Land Acquisition Officer under Section 28-A of LA Act.

6. Ms. Deshmukh, learned Counsel for the Petitioner would submit that Section 28-A of LA Act does not contemplate re-determination of compensation based on Lok Adalat Award passed with the consent of parties and the application for enhanced compensation on the basis of Lok Adalat Award is not maintainable. She submits that the issue of maintainability cannot be decided by the Reference Court either under Section 18 or Section 28-A of LA Act. Pointing out Section 18 of the LA

Act, she submits that the Reference will be limited to the classes of dispute specified therein and which does not include the issue of maintainability. She would further submit that Section 18(1) of the LA Act uses the expression “any person interested” which is defined under Section 3(b) of the LA Act and the acquiring body would not fall within the definition of person interested. She would further submit that the acquiring body is challenging the enhancement of compensation awarded and under Section 25 of the LA Act the Reference Court cannot award an amount lesser than the amount awarded by the Collector. She submits that it cannot be the intention of introduction of Section 28-A(3) of the LA Act to render redundant the provisions of Section 25 of the LA Act. She would further submit that under Section 50(2) of the LA Act, there is a bar on the acquiring body to demand reference under Section 18 of the LA Act which bar will also apply to Section 28-A(3). She would further submit that this Court had earlier taken a view in the case of ***V.I.D.C v. Santosh [2017(2) Mh.L.J. 432]*** that as the Corporation is neither a local body nor Company there is no right to file appeal which finding has been reversed by the Apex Court holding that the Corporation could not seek a reference under Section 50(2) of the LA Act against the award passed by the Land Acquisition Commissioner but could definitely prefer an appeal against the enhancement made by the Reference Court. She would further submit

that the Allahabad High Court has considered an identical issue of Section 28-A(3) of the LA Act in the case of ***Rajendra Prasad Sharma v State of U.P. [2023 SCC OnLine All 627]*** and has held that beneficiary of the acquired land will not be entitled to seek a reference under Section 28-A(3) of the LA Act and the bar under Section 50(2) of the LA Act which is applicable to a reference under Section 18 of the LA Act will also apply to a reference under Section 28-A(3) of the LA Act. She would further point out that Section 28-A(3) of the LA Act applies the provisions of Sections 18 to 28 as far as may be applicable to a reference under the said Section and if Section 18 limits the issues for consideration the same would also apply to Section 28-A. She submits that use of the expression “shall” in Section 18 of the LA Act has to be construed as mandatory and not directory. In support, she relies upon following decisions :

- [a] ***V.I.D.C., Wardha v. Santosh [2017(2) Mh.L.J. 432];***
- [b] ***Vidharbha Irrigation Development Corpn. v. Santosh Janba Warghane [(2019) 12 SCC 650];***
- [c] ***Regional Medical Research Centre, Tribals v. Gokaran [(2004) 13 SCC 125];***
- [d] ***G. C. Patel v. Agricultural Produce Market Committee [(1975) 2 SCC 484];***
- [e] ***U P Awas Evam Vikas Parishad v. Gyan Devi [(1995) 2 SCC 326];***
- [f] ***Rajendra Prasad Sharma vs State of U.P. [2023 SCC OnLine All 627];***

[g] ***Umadevi v. District Collector [2022(1) Mh.L.J. 564];***

[h] ***NOIDA v. Yunus [(2022) 9 SCC 518] and***

[i] ***DDA v. Bholanath Sharma [(2011) 2 SCC 58]***

7. *Per contra* Ms. Tulpule, learned counsel for the Respondent would submit that the provisions of Section 28-A of LA Act is a code in itself and provides the remedy to challenge the amount determined under Section 28-A. She submits that Section 28-A(3) used the expression “any person” which will include the acquiring body. She submits that the decisions relied upon by learned counsel for the Petitioner are in cases of non award of interest which is distinguishable on facts whereas in the present case there is an award and Section 28-A(3) of the LA Act provides that where the award is not accepted by any person, the matter can be referred for determination of the Court. She submits that the Apex Court in the case of ***U P Awas Evam Vikas Parishad v. Gyan Devi [(1995) 2 SCC 326]*** lays down that the intention of enacting Section 50(2) of the LA Act is that the acquiring body cannot be permitted second innings. She would submit that however in the present case Section 28-A would be a Reference in first instance and is therefore maintainable. She submits that Section 50(2) of the LA Act refers to Section 18 of the LA Act and not Section 28-A(3). She

submits that it is only because the claim of petitioner is barred by limitation that the present petition has been filed.

REASONS AND ANALYSIS:

8. The pivotal issue raised by the preliminary objection is whether the acquiring body for whose benefit the land has been acquired can maintain a reference under Section 28-A(3) of LA Act.

9. Section 28-A was introduced in the statute book by Amendment Act 68 of 1984 w.e.f 24th September, 1984. The Statement of Objects and Reasons provide that the object of the Amendment Act was to restructure the legislative framework for acquisition of land so that it is more adequately informed by this objective of serving the interests of the community in harmony with the rights of the individual. Relevant for our purpose is the amendment proposal for introduction of Section 28-A which reads thus :

“(ix) Considering that the right of reference to the civil court under Section 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised only by the comparatively affluent landowners and that this causes inconsiderable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed to provide an opportunity to all aggrieved parties whose land is covered under the same notification to seek re-determination of compensation, once any one of them has obtained orders for payment of higher compensation from the reference court under Section 18 of the Act.”

10. Section 28-A of the LA Act reads thus :

“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.”

11. The statutory scheme of Section 28-A of the LA Act is that where the amount awarded by the Collector under Section 11 of the LA Act has been enhanced by the Court in a Reference preferred by any landowner under Section 18 of LA Act, the benefit of the enhanced compensation should be made available to all persons interested in other lands covered by the same notification and who are aggrieved by the Award by seeking re-determination of compensation without

driving them to seek reference under Section 18 of LA Act. The Collector is then enjoined to conduct an enquiry after giving notice to all persons interested and after giving them an opportunity of being heard, make an award determining the amount of compensation payable to the applicants. If any person has not accepted the Award passed by the Collector, he may seek a reference to the Court to which reference the provisions of Sections 18 to 28 shall as far as may be apply.

12. It is clear that Section 28-A of LA Act is a complete Code in itself prescribing the entire procedure from applying to the Collector for enhanced compensation to demanding a reference. The provisions governing the Reference to the Court and procedure thereon provided in Part III of the LA Act in case of Reference in the first instance by the landowner under Section 18 is compacted in Section 28-A providing a similar procedure.

13. Much emphasis has been laid by Ms. Tulpule on Section 28-A(3) to contend that the remedy available to the acquiring body is to seek a Reference by applying to the Collector. It will have to be seen whether by introducing Section 28-A of the LA Act, the remedy which was not available to the acquiring body to demand reference under Section 18 of LA Act is made available by virtue of Section 28-A (3).

14. After an Award is passed under Section 11, Section 18 entitles

any person interested who has not accepted the Award to seek a Reference to the Court only where the dispute is respect of the following:

- (a) objection to the measurement of the land
- (b) the amount of compensation
- (c) the persons to whom compensation is payable
- (d) apportionment of the compensation among the persons interested.

15. The provisions of Section 18 thus limits the jurisdiction of the Reference Court to the classes of the disputes specified therein.

16. In ***UP Awas Evam Vikas Parishad v. Gyan Devi*** (supra) the Apex Court was concerned with the interpretation of Sub-Section (2) of Section 50 of LA Act in the context of right of the acquiring body to participate in the proceedings and to assail the determination of compensation if aggrieved. The Apex Court in the majority decision in paragraph 19 held as under :

"19. We would now revert to the question regarding the legal remedies that are available to a local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court. In this context, it may be state that the limitation placed by the proviso on the right conferred by Section 50(2) of LA Act cannot be so construed as to deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of Constitution as well as the remedies available under the LA Act. The proviso to Section 50(2) only takes away the remedy of a reference under Section 18 of the LA Act...."

17. The Apex Court also noted the decision in ***Himalayan Tiles and Marble (P) Ltd v. Francis Victor Coutinho [1980 3 SCC 223]*** which had held that the beneficiary of the acquisition is a “person interested” for purpose of Section 18(1). The Apex Court in ***UP Awas Evam Vikas Parishad*** took a view that having regard to express provision contained in proviso to Section 50(2), it would not be correct to say that the local authority or a company for whom land is acquired is a “person interested” under Section 18(1) because on that view the beneficiary would be entitled to seek a reference against the award of Collector.

18. The Apex Court summed up its conclusion in paragraph 24 as under:

“24. To sum up, our conclusions are :

1. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation.

2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will be taken up.

3. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.

4. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the

acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

5. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

6. The local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

7. In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the court.

8. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court the local authority, the should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.

9. Since a company for whom land is being acquired has the same right as a local authority under Section 50(2), whatever has been said with regard to a local authority would apply to a company too.

10. The matters which stand finally concluded will, however, not be reopened."

19. In partly dissenting judgment delivered by the Learned Judge (R.M. Sahai J), it was held that the acquiring body is not a necessary party before the Collector and no proceeding is liable to be set aside for non impleadment or non issuance of notice to the acquiring body. It is in the context of that issue, in the dissenting judgment it was held that the acquiring body cannot sit on the fence and then appear after

finalisation of compensation to claim that it may be permitted second innings. The reliance placed by Ms. Tulpule on the observation made in the dissenting judgment is clearly misplaced.

20. The majority decision in *UP Awas Evam Vikas Parishad* (supra) concludes that the proviso to Section 50(2) precludes a local authority to seek a reference but does not deprive the local authority who is aggrieved by determination of amount of compensation by the Collector or by the Reference Court to invoke the remedy under Article 226 of Constitution of India as well as the remedies available under the LA Act.

21. Section 28-A of the LA Act was introduced to ameliorate the inequality in payment of compensation to ensure that those landowners who were unable to seek reference under Section 18 of the LA Act can seek re-determination in the wake of enhanced compensation granted under Section 18 of the LA Act in respect of other lands covered by the same notification. The purport was to introduce parity amongst similarly placed landowners as it was observed that right of Reference to civil court under Section 18 is not usually taken advantage of by inarticulate and poor people. The whole object of the introducing Section 28-A on the statute book would be frustrated if the acquiring body which is denied the right to seek a reference under Section 18 is then held entitled to demand a reference

under Section 28-A(3). It is usually the deprived class who is unable to access the right of reference to the civil court under Section 18 and their right to re-determination of compensation would be further thwarted by adopting the interpretation placed by Ms. Tulpule.

22. The other reason which militates against the right of the acquiring body to demand a reference under Section 28-A(3) is Section 25 of LA Act which reads thus :

“25. Amount of compensation awarded by Court not to be lower than the amount awarded by the Collector.- The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under section 11.”

23. Section 25 was introduced on the statute book along with Section 28-A by the Amendment Act 68 of 1984. Section 25 only makes a reference to Section 11 Award and not to the re-determined Award under Section 28-A(2). In my view, Section 25 of LA Act will have to be read harmoniously with Section 28-A(2) to give effect to the legislative intent of benefiting the landowners covered by the same notification who have not filed Reference under Section 18. Section 25 cannot be read to place an embargo against reduction of the compensation of an amount lesser than one awarded in the first instance under Section 11 only. If the provisions of Section 25 are construed to apply only to an Award under Section 11, the same would lead to a situation where under Section 18 the Reference Court is restrained from awarding

lesser amount than the Award under Section 11, whereas in case of Reference under Section 28-A(3), the Reference Court can award an amount lesser than the re-determined amount based on enhanced compensation. Such an interpretation would defeat the object of introducing Section 28-A. In my view, Section 25 will have to be read harmoniously with Section 28-A and read thus the Reference Court cannot award an amount lesser than the re-determined compensation awarded by the Collector under Section 28-A. In that view of the matter, the acquiring body does not benefit by demanding a Reference to Civil Court. As rightly pointed out by Ms. Deshmukh the provisions of Section 18 to 28 are mandatorily applicable to Section 28-A(3) to the extent possible.

24. Section 50(2) of the LA Act precludes the demand of reference under Section 18 by the acquiring body which is in consonance with the statutory scheme as Section 25 of the LA Act recognises the need for enhancement of compensation in favour of the land owners in a reference under Section 18 of the LA Act and prohibits the Court from awarding an amount less than the amount awarded by the Collector.

25. By virtue of applicability of provisions of Section 18 to Section 28 to Section 28-A(3), only those classes of disputes as specified under Section 18 would be covered in a Reference under Section 28-A(3). In the instant case the challenge on the ground that Section 28-A of LA

Act will not apply where the compensation is enhanced by consent in Lok Adalat is not an issue which would fall within the ambit of Section 18 and therefore the only remedy available to the acquiring body is to approach this Court under Article 226/227 of Constitution of India.

26. To accept the interpretation placed by Ms. Tulpule would lead to a situation where the acquiring body is precluded from seeking a reference under Section 18 but will be entitled to demand a reference under Section 28-A(3). The submission that Section 50(2) only precludes reference under Section 18 cannot be accepted as the provisions have to be harmoniously interpreted to give effect to the legislative intent. It was the intention of legislature to give limited right to the acquiring body to participate in the proceedings before the Collector and the Reference Court restricted to adducing evidence as far as determination of compensation is concerned and to file an Appeal against the enhancement made by the Reference Court. The proviso to Section 50(2) of LA Act specifically preclude the acquiring body from demanding a reference under Section 18 and in my view, the bar would operate also where there is re-determination under Section 28-A. Permitting the acquiring body to demand reference under Section 28-A(3) would frustrate the legislative intent to place all landowners covered by the same notification on equal footing.

27. Having held that the acquiring body cannot demand a Reference

to the Court under Section 28-A(3), the issue to be considered is whether the remedy of Appeal is available to the acquiring body against the order of re-determination of compensation under Section 28-A(2).

28. In ***V.I.D.C, Wardha*** (supra), learned Single Judge of this Court had held that Vidharbha Irrigation Development Corporation is not a local authority within the meaning of Section 3(aa) of LA Act and has therefore no right to participate in the proceedings before the Collector or the reference Court and refused the Corporation leave to file appeal. The said decision was reversed by the Apex Court by holding that though the Corporation could not seek reference under Section 50 of LA Act as against the award passed by the Land Acquisition Commissioner but could definitely prefer an appeal against the enhancement made by the Reference Court.

29. The definition of local authority was considered by the Apex Court in ***Regional Medical Research Centre, Tribals v. Gokaran*** to include all bodies on whose behalf land is acquired.

30. The Petitioners herein being the beneficiary of the acquisition can maintain an Appeal under Section 54 of LA Act which reads thus:

"Subject to the provisions of 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 Code of Civil Procedure, 1908 and in Order XLV thereof."

31. It is thus clear that an Appeal lies against an award or from any part of the award of the Court. Court has been defined in Section 3(d) as:

"the expression "Court" means a principal Civil Court of original jurisdiction, unless, the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform functions of the Court under this Act."

32. The Collector while re-determining the compensation on the basis of award of the Court under Section 28-A is not a Court within the meaning of Section 3(d). The provision of Appeal is therefore not available against the award of compensation under Section 28-A by the Collector.

33. In ***Rajendra Prasad Sharma vs State of U.P.*** (supra), the Allahabad High Court has taken a view that the reference under Section 28-A(3) of LA Act is not maintainable at the instance of acquiring body. I respectfully agree with the view taken by the Division Bench of Allahabad High Court.

CONCLUSIONS:

34. In light of the above discussion, the preliminary objection to the maintainability is rejected for the following reasons :

(a) The acquiring body is not a person interested within the meaning

of Section 18(1) and is therefore precluded from seeking reference under Section 18 of LA Act in view of the specific bar under the proviso to Section 50(2) of LA Act.

(b) In view of the legislative intent in introducing Section 28-A on the statute book to bring parity amongst all similarly placed landowners covered by the same notification, Section 28-A takes its colour from Section 18 of LA Act, and thus the statutory bar under the proviso to Section 50(2) will also apply to re-determination of compensation by the Collector under Section 28-A(2) and the acquiring body is precluded from seeking reference to the Civil Court under Section 28-A(3).

(c) Even if it is assumed that the bar under the proviso to Section 50(2) is not applicable to Section 28-A(3), the scope of reference under Section 28-A(3) of the LA Act will be restricted in the same manner *qua* the issues which would apply in a reference under Section 18 of the LA Act and therefore in the facts of the present case, the remedy of reference is not available to the acquiring body.

(d) Section 25 of the LA Act which prohibits the Reference Court from awarding an amount less than the amount awarded by the Collector under Section 11 has to be read harmoniously with Section 28-A(2) which places all land owners covered by the same notification on the same footing, and therefore the Reference Court cannot award

compensation which is less than the enhanced amount granted under Section 18 of LA Act.

(e) The remedy of Appeal under Section 54 is not available against re-determination of compensation as the Collector while re-determining the compensation on the basis of award of the Court under Section 28-A is not a Court within the meaning of Section 3(d).

(f) As the acquiring body cannot demand a reference under Section 28-A(3) and remedy of appeal is not available against re-determination of compensation by the Collector, the acquiring body can invoke the jurisdiction of this Court under Article 226 of Constitution of India.

[Sharmila U. Deshmukh, J.]