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**(1995) 01 AHC CK 0077**  
**In the Allahabad High Court**  
**Case No : Writ Petition Mo. 18 (L/A) of 1991**

Feroz Gandhi Polytechnic, Rae Bareli

APPELLANT

Vs

3rd Addl.District Judge, Rae Bareli and others

RESPONDENT

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**Date of Decision :** 05-01-1995

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Land Acquisition Act, 1894 — Section 28A

**Citation :** (1995) 01 AHC CK 0077

**Hon'ble Judges :** Brijesh Kumar, J and Sudhir Narain, J

**Final Decision :** Allowed

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## Judgement

Brijesh Kumar, J.—Heard learned counsel for the parties. Only a short legal question is involved in this petition.

2. The brief facts seem to be that some land was acquired for the purposes of the petitioner, namely, Firoz Gandhi Polytechnic. Ratapur Crossing, City, district Raebareli. On a reference, made under sec. 18 of the Land Acquisition Act the Court enhanced the compensation on the motion of some of the persons whose land was also acquired. After that enhancement it appears that the opposite parties moved application under Section 28A of the Land Acquisition Act for redetermination of the amount of compensation on the basis of the award of the Court. The Collector on receipt of the application under section 28A of the Land Acquisition Act, referred the matter to the Court for redetermination of amount of compensation. Third Additional District Judge, Raebareli disposed of the application enhancing the compensation by his order dated 29.5.1989, a certified copy of which has been filed as annexure 3 to the writ petition.

3. The only ground passed on behalf of the petitioner before us is that the Court had no jurisdiction to pass an order under section 28A of the Land Acquisition Act. Section 28A reads as follows :

"28A. Redetermination 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, subsection (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 with three months from the date of the award of the Court require that the amount of compensation payable to them may be redetermined 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 subsection, 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 subsection (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 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. A perusal of the provision quoted above clearly indicates that an application is to be moved before the Collector if any aggrieved person makes a prayer for redetermination of the amount of compensation on the basis of order passed by the Court provided the land is subject matter of same Notification under section 4(1) of the Land Acquisition Act. Such an application for redetermination on higher rate would lie despite the fact that the applicant may not have applied for enhancement of compensation under section 18 of the Land Acquisition Act. Subsection (2) of Section 28A provides that on receipt of the application under subSection (1) the Collector shall conduct an inquiry after giving notice to all persons interested and after hearing, shall make an award determining the amount of compensation. It clearly indicates that the award under subsection (2) of Section 28A is to be made by the Collector on the application moved under subsection (1) of Section 28A. In case a person who does not accept the award given under subsection (2) moves the Collector with a prayer to refer the matter for determination of the Court then alone a reference would be made to the Court and provisions of Sections 18 to 28 of the Act would be applicable.

5. A bare reading of the above provision itself shows exclusion of the jurisdiction of the Court for redetermination of amount of compensation under Section 28A of the Land Acquisition Act since under Subsection (3) the jurisdiction of the Civil Court would be available only on reference made by the Collector on the

application moved by any person who has not accepted the award under subsection (2) of Section 28A of the Land Acquisition Act. It is very clear that first of all Section 28A envisages dealing of the application by the Collector at the first instance for redetermination. The jurisdiction of Civil Court arises only if one is not satisfied with the order passed on the application for redetermination by the Collector.

6. It may also be seen that other provisions of the Act where it is meant that the Court may deal with the matter it has been so specifically provided in the provisions itself. For example Section 18 of the Land Acquisition Act provides for a reference to Court on the application of a person who does not accept the award and applies to the Collector for reference to the Court. Similarly under Section 30 where a dispute regarding apportionment is raised such a dispute is to be referred by the Collector for decision of the Court. What is meant to be emphasised is that where it was intended that the matter is to be referred to the Court for decision by the Collector, it has been specifically so provided. As indicated earlier also Section 28A clearly provides under subsection (1) and subsection (2) that the applications to be dealt with by the Collector and after hearing the interested parties he has to give his award under subsection (2). It is only after one is not satisfied or does not accept the award given under subsection (2) by the Collector that he may apply for reference to the Court.

7. Looking to the provisions of the Land Acquisition Act, as referred to above, in our view, it is a clearcut case where the court has assumed jurisdiction which does not vest in it on the reference made by the Collector, on an application under Section 28A of the Land Acquisition Act, for redetermination of the award. Court gets jurisdiction only on a reference under Sec. 28A(3) of the Act which stage had not yet arrived in this case.

8. Learned counsel appearing for the opposite parties nos. 4 to 7 submits that the petition may be thrown out on the ground that the alternative remedy is available to the petitioner. In this connection he has referred to Section 54 of the Land Acquisition Act which provides that an appeal shall only lie from an award or from any part of the award to the High Court. In this connection It will also be relevant to note that the Collector, who is empowered to make an award under subsection (2) of Section 28A of the Land Acquisition Act, gave no award. Hence, there is no award under the Act against which an appeal may be filed. Under some misconception the matter was referred to the Court. The jurisdiction of the Court arises only under subsection (3) of Section 28A of the Act. The impugned order is not referable to subsection (3) either, as an order by Civil Court under subsection (3) of Section 28A can be passed only after an award has been given by the Collector under subsection (2) of Section 28A and which is not acceptable to the aggrieved person. In any case, we find that the question of maintainability of an appeal would be a controvertial question. The order passed by the Court is clearly an order absolutely without any jurisdiction. In such a situation it would not be feasible to relegate a party to the alternative remedy which too is doubtful

whether it could be available or not. An appeal lies only against an order passed under the Act. The order passed by the Civil Court, which has been impugned, is not referable to any provision of the Act. We, therefore, decline to entertain this objection raised on behalf of the opposite parties.

9. In the result, we allow the writ petition and quash the order as contained in Annexure3 to the writ petition, passed by Illrd Additional District Judge, Raebareli in L.A C. no. 17 of 1988. We further direct the Collector, Raebareli to dispose of the application moved by the opposite parties under Section 28A of the Land Acquisition Act in accordance with law expeditiously. The Illrd Additional District Judge, Raebareli shall remit back the record to the Collector without delay.

10. There would be no order as to costs.

(Petition allowed)