

(2026) 01 KL CK 1672

In the High Court Of Kerala

Case No : Writ Petition (C) No. 41724 OF 2025

Jayakumari P

APPELLANT

Vs

Special Tahasildar L.A (General)

RESPONDENT

Date of Decision : 15-01-2026

Acts Referred:

Land Acquisition Act, 1894 — Section 11(1), 11(2), 18, 28A
Land Acquisition (Kerala) Rules, 1990 — Rule 12(5)

Citation : (2026) 01 KL CK 1672

Hon'ble Judges : C. Jayachandran, J

Bench : Single Bench

Advocate : M.S.Amal Dharsan, Noel Jacob, Ajith Viswanathan

Final Decision : Allowed

Judgement

C. Jayachandran, J

1. Whether an Award passed in terms of Section 11(2) of the Land Acquisition Act, 1894 (for short, 'the Act') is outside the scope of Section 28A of that Act, is the question involved in this writ petition. The question, in fact, received consideration by a learned Single Judge in Beena Sarasan v. State of Kerala [2025 KHC OnLine 231], wherein it was answered in the negative, holding that Section 28A does not make any distinction between an Award passed under Section 11(1) or Section 11(2), and therefore, an awardee under Section 11(2) is also entitled to seek re-determination of compensation as per Section 28A of the Act.

2. The following is the factual matrix:

The landed property, having an extent of 1.60 ares, in the name of Sri.Jayakumar, was acquired for the development of JNNURM/KSUDP project of the Thiruvananthapuram Corporation. Compensation was fixed at Rs.2,61,058/- and the same was received. While so, Sri.Jayakumar passed away. The petitioners are his legal heirs. Admittedly, no reference under Section 18 has

been preferred. The petitioners would contend that they could not seek reference under Section 18 due to the chronic kidney disease of Sri.Jayakumar, which ultimately took his life. Ext.P9 is the judgment rendered in a connected land acquisition reference, based upon which the petitioners preferred Ext.P10 application under Section 28A of the Act. The same was dismissed vide the impugned Ext.P11 Order, citing that, an awardee under Section 11(2) of the Act cannot seek further statutory benefits, inasmuch as the compensation amount is received, on consent.

3. The learned Government Pleader would submit that the issue requires reconsideration in the light of the following judgments of the Honourable Supreme Court:

(1).State of Gujarat v. Daya Shamji Bhai [1995 KHC 951] and (2). Government of Tamil Nadu, rep.by its Secretary, Transport Department v. P.R.Jaganathan [2025 KHC OnLine 6952].

4. Heard the learned counsel for the petitioners and the learned Government Pleader. Perused the records.

5. Straightaway, reference can be made to Daya Shamji Bhai (supra). In that case, an Award was passed in terms of Section 11(2) of the Act; and the question involved was whether the awardees are entitled to seek a reference in terms of Section 18 of the Act. The discussion at paragraph no.7 is extracted here below:

"7. The Reference Court negated the contention of State and its reliance on agreement of the parties on the ground that since the said agreements were not registered under Registration Act, they cannot contract out from statute. Therefore the Reference Court has the power to award higher compensation. It is seen in the contract they had agreed to receive compensation and 25 per cent more in addition thereto. They had also agreed not to seek any reference under S.18. In the light of the above, no option is left to the parties under S.18 to seek reference. Sub-section (2) of S.11 gives right to the parties to enter into an agreement to receive award compensation awarded under S.11 in terms of the contract. In fact, it would be more expeditious to have the dispute sorted out as to avoid delay in determination of proper compensation. The contract between the owners and the Collector in writing the terms to be included in award of the Collector is conclusive and binds the parties. They would not be entitled to seek any reference for enhancement of the compensation required to be adjudicated under S.23(1) of the Act. It would be seen that when compensation was received under protest, S.18 gets attracted."

It could be seen that the Supreme Court negated the right of awardees under Section 11(2) to seek reference in terms of Section 18.

6. This judgment, however, cannot impact the dictum laid down in Beena Sarasan (supra) for the essential reason that what has been considered in Beena

Sarasan (*supra*) is the entitlement of an awardee under Section 11(2) to seek re-determination in terms of Section 28A; whereas, Daya Shamji Bhai (*supra*) considered the entitlement of an awardee under Section 11(2) to seek a reference in terms of Section 18. Needless to say, the scope and ambit of a reference under Section 18, and re-determination of compensation under Section 28A are different altogether, both operating in its own separate spheres. This Court also notice the following distinguishing features as well in respect of Daya Shamji Bhai (*supra*). In the agreement under Section 11(2), there was a specific clause not to seek any reference under Section 18. Again, the second proviso to Section 31(2) of the Act contains a specific embargo from making a reference under Section 18, unless the amount has been received under protest. Admittedly, an awardee under Section 11(2) does not receive the compensation amount under protest. These parameters would not apply to re-determination under Section 28A. In the subject agreements in question, there is no clause foreclosing the remedy under Section 28A. Nor is there any provision similar to the second proviso to Section 31(2), insofar as invocation of the remedy under Section 28A is concerned. Of course, the learned Government Pleader maintains a contention based on Clause 3 to Form No.10(a) to the Land Acquisition (Kerala) Rules, 1990 (for short 'the Rules'), which will be dealt with separately. This Court, therefore, holds that the dictum laid down in Daya Shamji Bhai (*supra*) is not on all fours to the facts herein, so as to warrant a reconsideration of the law laid down in Beena Sarasan (*supra*).

7. The second judgment relied on by the learned Government Pleader is the one in P.R.Jaganathan (*supra*). In that case, initially lease agreements were executed between the landowners and the Department of Defence in the year 1942, pursuant to which, possession was given to the Department. In the year 2011, proceedings for acquisition was initiated under Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (for short 'the 1997 Act'). As could be seen from paragraph no.12 of the judgment, a Division Bench of the Madras High Court held the 1997 Act to be ultra vires. Pending Special Leave Petition, the Government of Tamil Nadu revived the 1997 Act. Paragraph no.13 of the judgment is important, wherein a G.O. dated 20.11.2019, issued by the Government, is referred to, indicating that the State Level Private Negotiation Committee fixed the rates of compensation, which were approved and sanctioned towards compensation to the landowners. Paragraph no.13 also took stock of the fact that the compensation so granted was substantially above the then prevailing guideline value, which was accepted by the landowners, by consent. It is in the backdrop of the above facts that the Honourable Supreme Court held that, once the compensation has been fixed on mutual consent by virtue of an agreement, the landowners cannot fall back upon the statutory provisions to seek enhancement.

8. This Court notice that the methodology adopted in P.R.Jaganathan (*supra*) for arriving at the compensation is not in terms of the scheme of the 1997 Act dealt with therein, but as per a totally different scheme, whereby the agreements have

been entered into, by consent, between the landowners and the concerned Departments. Therefore, the question of a provision similar to that of Section 11(2) of the Act and that of Section 28A has not fallen for consideration in P.R.Jaganathan (supra).

9. The learned Government Pleader would rely upon paragraph no.24 of P.R.Jaganathan (supra), wherein, another judgment of the Honourable Supreme Court in Ranveer Singh v. State of Uttar Pradesh and Others [(2016) 14 SCC 191] is relied upon. A perusal of the quoted portions in paragraph no.24 of P.R.Jaganathan (supra) would also leave no room for any doubt that what was discussed and held in Ranveer Singh (supra) is the right of an awardee under Section 11(2) to seek a reference under Section 18; and not the remedy under Section 28A of the Act. This Court, therefore, finds that the two judgments, which are relied upon by the learned Government Pleader do not mitigate the dictum laid down in Beena Sarasan (supra).

10. In this regard, this Court is persuaded to refer to the findings of the Honourable Supreme Court in Banwari v. Haryana State Industrial and Infrastructure Development Corporation Limited (HSIIDC) [2024 KC 6685]. The following excerpts from paragraph nos.11, 14 and 24 are extracted herein:-

"11. It can thus be seen that this Court has held that the object underlying the enactment of S.28A of the 1894 Act is to remove inequality in the payment of compensation for same or similar quality of land arising on account of inarticulate and poor people not being able to take advantage of the right of reference to the civil court under S.18 of the 1894 Act. It was held that this is sought to be achieved by providing an opportunity to all aggrieved parties whose land is covered by the same notification to seek redetermination once any of them has obtained orders for payment of higher compensation from the Reference Court under S.18 of the 1894 Act. It was held that while construing the provisions of such a legislation, the Court should adopt a construction which advances the policy of the legislation to extend the benefit rather than a construction which has the effect of curtailing the benefit conferred by it.

x x x x x

14. This Court has laid down the conditions which are required to be satisfied for invoking the provisions of S.28A(1) of the 1894 Act as follows:

- (i) An award has been made by the Court under Part III of the Act after coming into force of S.28A;
- (ii) By the said Award, the amount of compensation in excess of the amount awarded by the Collector under S.11 has been allowed to the applicant in that reference;
- (iii) The person moving the application under S.28A is interested in other land covered by the same notification under S.4(1) to which the said award relates;

- (iv) The person moving the application did not move the application under S.18;
- (v) The application is moved within three months from the date of the award on the basis of which redetermination of amount of compensation is sought; and
- (vi) Only one such application can be moved under S.28A for redetermination of the compensation by the applicant.

x x x x

24. As already discussed hereinabove, the provisions of S.28 - A(1) of the 1894 Act have been elaborately considered by a three Judges Bench of this Court in the case of Pradeep Kumari and Others (supra). In the said case, it has been held that the Statement of Objects and Reasons of S.28A would reveal that the object underlying the enactment of the said provision is to remove inequality in the payment of compensation for same or similar quality of land. It has been held that the said provision is for giving benefit to inarticulate and poor people not being able to take advantage of the right of reference to the civil court under S.18 of the Act. It has been held that this is sought to be achieved by providing an opportunity to all aggrieved parties whose land is covered by the same notification to seek redetermination once any of them has obtained orders for payment of higher compensation from the reference court under S.18 of the Act. The same benefit would be available to the other landholders under S.28A. It has been held that S.28A being a beneficent legislation enacted in order to give relief to the inarticulate and poor people, the principle of interpretation which would be required to be adopted is the one which advances the policy of the legislation to extend the benefit rather than a construction which has the effect of curtailing the benefit conferred by it."

11. Toeing in the same line, a Division Bench of this Court held in District Collector, Kannur and Others v. Athickal Muhammed Kunhi and Others [2013 (1) KHC 13] in paragraph no.17 as follows:-

"17. From the above decisions and provision of law the following principles emerge out. The goal of equality enshrined in the preamble of Constitution and Art.38, Art.39 and Art.46 are attempted to be made a reality by the legislature, so far as payment of compensation to the losers of the land for the benefit of the State, its agencies/instrumentalities and even private parties. Acquisition of land deprives the agriculturist of his livelihood and some times throws them to the streets. S.28A envisages solace to such owners of land whose lands are also acquired under the same notification but for various reasons like poverty, ignorance and other inabilities could not join others in seeking reference under S.18 of the Act for enhancement of compensation. The scheme under S.28A thrives at removing the disability suffered by the owners of land and removes the inequality, if any, so far as payment of compensation. This gives one more opportunity to the land owners who did not or could not seek reference under S.18 to seek higher compensation. It could be termed as beneficial legislation so far as land losers. Therefore, there has to be liberal interpretation with a purpose

to champion the policy of the legislation giving opportunity to the owners of land who miss their chance by not filing an application under S.18 of the Act.”

12. Thus, giving a liberal interpretation to a beneficial legislation, this Court cannot, but hold in tune with Beena Sarasan (supra). As correctly taken note of by the learned Single Judge, Section 28A does not make any distinction, whatsoever, by and between an Award passed under Section 11(1) and Section 11(2) of the Act. It is also worthwhile to notice that Section 28A was originally not there in the statute, but was inserted by Act 68 of 1984. It was pointed out by the learned Government Pleader that Section 11(2) was also introduced by the same Act. If the intention of the statute makers was to exclude from the purview of Section 28A, those awardees under Section 11(2), the same would have been explicitly provided in the statute, especially when both the provisions - Section 11(2) and Section 28A - were introduced by the same amendment. To hold otherwise, in the absence of any such indication in Section 28A would be doing violence to the interpretation, which is required in cases of beneficial legislation, which obviously has to be liberal, as held by the Division Bench in Athickal Muhammed Kunhi (supra).

13. Before parting with the judgment, this Court should also address the contention of the learned Government Pleader based on Form No.10(a) of the Rules. Before specifically referring to Form No.10(a), this Court has to notice that Section 11(2) contains no express embargo/interdiction from making any claim for enhancement. At best, the same may be treated as implied, but for Section 28A. Similarly, Rule 12(5) of the Rules also does not speak about any embargo/interdiction, insofar as seeking enhancement is concerned. Rule 12(5) merely says that the agreement shall be in Form No.10(a). It is in that agreement in Form No.10(a), that the following interdiction comes by way of Clause 3, which is extracted herebelow:-

“(3) That the owner and the interested party shall not claim any amount in addition to the amount agreed upon as aforesaid as compensation and accept it without any protest.”

14. It has to be noticed that the interdiction only prohibits the owner and the interested party from claiming any amount, in addition to the amount agreed upon, with a further duty to accept the same, without any protest. In the ordinary connotation and parlance, this would plug the rights of the owner of the land from claiming any amount in addition to the agreed amount. Admittedly, the amount is received without any protest. However, looking into the ambit of Section 28A - a stand alone provision - encompassing a distinct and different package, uninfluenced by and inconsequential of the volition of the party, this Court is persuaded to hold that Clause 3 in Form No.10(a) also cannot imperil the rights of an awardee under Section 11(2) to take recourse to Section 28A of the Act. This Court may have to emphasise that the volition of the party - in the sense of not seeking a reference under Section 18 or in any other sense - has little significance, while claiming the benefit under Section 28A. It has been so

specifically engrafted that any interested person is entitled to the benefit of Section 28A, notwithstanding that they have not made any application under Section 18. Thus, the volition of the parties pale into insignificance, insofar as Section 28A is concerned. If that be so, the consent signified by the parties as regards the compensation amount, also cannot stand in the way of claiming the benefit under Section 28A. This interpretation syncs with the loadable object of introduction of Section 28A to ensure parity and equality in the matter of compensation for the losers of the land, who come under the same notification.

15. The learned Government Pleader's contention that Ext.P10 is preferred beyond the period of three months from the date of Ext.P9 Award is also repelled, for the reason that a certified copy of Ext.P9 Award is seen issued only on 20.12.2024, reckoned from which date, the claim was filed well within the statutory period of three months. Similarly, the learned Government Pleader would canvass another contention that, when Section 18 remedy is not available for an awardee under Section 11(2), then a fortiori, remedy under Section 28A cannot be availed, inasmuch as, the former is a larger remedy, whereas the latter, is a lesser one. I cannot endorse the said submission as well, for reasons already adverted hereinabove. The argument that the remedy under Section 18 is a larger remedy and the one under Section 28A is a lesser remedy also does not commend appreciation.

16. Though rendered in the factual premise of claims between co-sharers, in a recent judgment in *Ramphal and Others v. Haryana State Industrial and Infrastructure Development Corporation Limited and Others* (unnumbered Civil Appeals of 2026, arising from SLP(C) Nos. 4532-4539 of 2023), the Supreme Court has gone to the extent of holding that the losers of land due to acquisition cannot be deprived of the due compensation amount, even when the remedy under Section 28A is not sought for.

17. In such circumstances, the contentions of the respondents will stand repelled. Ext.P11 will stand quashed, and there will be a direction to the 1st respondent to afford the petitioners the benefit in terms of Section 28A of the Act, in accordance with law. In other words, the petitioners' application vide Ext.P10 has to be reconsidered, affording the benefits under Section 28A. In view of the fact that, this is an acquisition of 2013, the 1st respondent shall do the needful as directed as expeditiously as possible.

Resultantly, this Writ Petition will stand allowed as indicated above.