
(2016) 02 KL CK 0138
In the High Court Of Kerala
Case No : L.A.A. No. 1723 of 2007

K.V. Sarada

APPELLANT

Vs

The Special Tahasildar, Thalassery

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7, Order 8 Rule 8
Constitution of India, 1950 — Article 226, Article 300A, Article 38, Article 39, Article 46
Land Acquisition Act, 1894 — Section 11, Section 12, Section 18, Section 18,

Citation : (2016) AIRCC 1553 : (2016) 2 ILRKerala 186 : (2016) 4 KerLJ 421 :
(2016) 2 KHC 81 : (2016) 2 KLT 120 : (2016) 3 LawHeraldSC 2118 : (2016) 3
RCRCivil 281

Hon'ble Judges : Ashok Bhushan, C.J., A.M. Shaffique and A.K. Jayasankaran
Nambiar, JJ.

Bench : Full Bench

Advocate : George Sebastian, Advocate, for the Appellant; Alosius Thomas L.,
Senior Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, C.J. and A.M. Shaffique, J.—1. This Full Bench has been constituted on a reference made by a Division Bench vide order dated 13.08.2015.

2. Brief facts need to be noted for answering the reference and deciding the issues raised in this appeal are: An extent of 0.2042 hectare of land comprised in R.S. No. 193/4 and O. 0400 hectare of land comprised in Sy. No. 277/8 and some other plots of land belonging to the appellant and her mother were acquired for the establishment of "Naval Academy". The Land Acquisition Officer gave an award under Section 11 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") at the rate of Rs. 1,15,200/- per hectare (Rs. 466.40 per cent). The appellant did not seek a reference under Section 18 of the Act. However, certain other land owners whose lands were acquired by the same Notification had made application for reference under Section 18 of the Act. Land

Acquisition reference No. 124 of 1987 was decided on 26.07.1989 by the Sub Court, Payyannur enhancing land value to Rs. 800/- per cent. Appellant and her mother filed application under Section 28A(1) on 13.03.1990 for re-determination of the compensation. The Land Acquisition Officer allowed the application under Section 28A(1) enhancing compensation payable to the appellant also at the rate of Rs. 800/- per cent. Appellant made an application for making reference under Section 28A(3) of the Act on which L.A.R. No. 50 of 2004 was registered before the Sub Court, Payyannur. In the above reference, appellant filed certified copies of judgment dated 06.02.1988 in L.A.R. Nos. 157 and 158 of 1987, judgment dated 26.07.1989 in L.A.R. No. 124 of 1989 and judgment dated 03.09.1997 in L.A.R. No. 120 of 1987. Oral evidence was also adduced by the appellant before the Sub Court, Payyannur. Before the Sub Court, the appellant and her mother claimed that in L.A.R. Nos. 157 and 158 of 1987 an amount Rs. 2,000/- per cent has been granted as enhanced compensation and in L.A.R. No. 120 of 1987 an amount of Rs. 1,500/- per cent was granted, hence the appellant is also entitled for the same enhancement. It was pleaded that the land of the appellant is similar to that of L.A.R. No. 120 of 1987. The Sub Court, Payyannur decided L.A.R. No. 50 of 2004 by judgment dated 31.07.2006. It was held that application of the appellant having been filed on the basis of the judgment in L.A.R. No. 124 of 1989 where compensation was granted at the rate of Rs. 800/- per cent, she is not entitled to claim any other amount on the basis of L.A.R. Nos. 120, 157 and 158 of 1987. The Sub Court, however directed for payment of interest at the rate of 9% for one year from the date of taking possession and thereafter at the rate of 15% till the date of realisation. Aggrieved by the order passed by the Sub Court, Payyannur, appellant filed this appeal before this Court.

3. Before the Division Bench, at the time of hearing the appeal, the learned counsel for the appellant placed reliance on various judgments of this Court as well as the judgment of the Apex Court in *Ambya Kalya Mhatre v. State of Maharashtra* (, [2011] 9 SCC 325) and contended that the Sub Court, Payyannur was fully entitled to take into consideration every land acquisition awards which were produced before that court. It was contended that reference under Section 28A(3) is a reference akin to one under Section 18 and the Sub Court has to arrive at the correct market value of the land and the mere fact that in the application filed by the appellant under Section 28A(1) reliance was made on the judgment in L.A.R. No. 124 of 1987 was not an inhibition for the Sub Court to award higher compensation. It was contended that in view of the judgment of the Apex Court in *Ambya Kalya Mhatre v. State of Maharashtra* (supra) where the Apex Court held that in a reference made under Section 18 of the Act the claim can be amended, the appellant was entitled to claim a higher amount.

4. Before the reference court, the above submissions made by the learned counsel for the appellant were refuted by the learned Government Pleader and it was contended that the appellant cannot claim any higher amount than the amount claimed under Section 28A(1). Right under Section 28A(1) is based on

an award made under Section 18 and since in the award in L.A.R. No. 124 of 1987 Rs. 800/- per cent was allowed, no higher amount could have been claimed by the appellant in the reference under Section 28A(3). The Division Bench noticed the judgment of this Court in *Ragava Poduval v. Special Tahsildar* (, 2004 [3] KLT 261), *Purushan v. State of Kerala* (, 2005 [1] KLT 687), *Indirva Devi v. Special Tahsildar* (1991 [1] KLT 33) and *District Collector v. Muhammed Kunhi* (, 2012 [4] KLT 360). In support of his submission that in a reference under Section 28A(3) the Sub Court cannot grant any amount in excess of the amount originally claimed under Section 28A(1), learned Government Pleader has placed reliance on the Division Bench judgment of this Court in *State of Kerala v. Kumaran Nair* (, 2001 [1] KLT 539) in which case, the Division Bench had held that a Court while deciding a reference under Section 28A(3) cannot grant any amount in excess of the claim in the re-determination application. The Division Bench further noticed that the Division Bench judgment in *State of Kerala v. Kumaran Nair* (supra) was not noticed by the learned Single Judge while deciding *Purushan v. State of Kerala* (supra). The Division Bench also noticed the judgment in *District Collector v. Muhammed Kunhi* (supra) where it was held that the District Collector can take into consideration all facts in considering enhancement or reduction of compensation. The Division Bench opined that the earlier two Division Bench judgments, *Indira Devi v. Special Tahsildar* and *District Collector v. Muhammed Kunhi* (supra) require a re-look in the light of the decision of the Apex Court in *Ambya Kalya Mhatre v. State of Maharashtra* (supra). In paragraph 19 of the reference order, the following has been stated:

"19. The issue, therefore, will be whether as contended by the learned counsel for the appellant, in a reference under Section 28A(3), the court is not bound by the claim made under an application for reference under Section 28A(1) and can rely on other awards of the reference court wherein higher amounts have been granted. Of course, various views, slightly different, have been expressed by the Division Benches. Of course in *Muhammed Kunhi's* case (, 2012 (4) KLT 360) in paragraph 20 it has been held that the Collector can take into account all relevant facts for considering enhancement or reduction of compensation. According to us, in view of the importance of the question raised, an authoritative pronouncement by a Larger Bench is required since the views taken in 2001 (1) KLT 539 as well as in *Muhammed Kunhi's* case (, 2012 (4) KLT 360) require a re-look in the light of the decision of the Apex Court in *Ambya Kalya Mhatre's* case (, 2011 (4) KLT 1) taking the view that an amendment as regards the amount claimed in the reference application and seeking higher compensation, is not at all barred."

5. Shri George Sebastian, learned counsel for the appellant in support of the appeal contended that when reference is made under Section 28A(3), the reference court is free to determine the land value since all provisions of Sections 18 to 28 of the Act become applicable in a proceeding under Section 28A(3). It is submitted that the reference court has to decide a reference under Section 28A(3) on the basis of evidence and materials brought before it. Subsequent

references decided under Section 18 where enhanced land value has been granted are relevant evidence which can be looked into and relied by the reference court. It is submitted that the reference court while deciding a reference under Section 28A(3) is not inhibited from the original claim submitted by the claimant under Section 28A(1) nor award on the basis of which application was filed for re-determination can be said to be outer limit for awarding compensation under Section 28A(3). It is further submitted that in view of the judgment of the Apex Court in *Ambya Kalya Mhatre v. State of Maharashtra* (supra) when under Section 18 claimant is entitled to amend his claim during the proceeding under Section 18 on the same analogy the claimant under Section 28A(3) can also increase his claim. It is submitted that the view of the learned Single Judge in *Raghava Poduval v. Special Tahsildar and Purushan v. State of Kerala* (supra) and the Division Bench judgment in *District Collector v. Muhammed Kunhi* (supra) are in accordance with law and the Division Bench judgment in *State of Kerala v. Kumaran Nair* (supra) does not lay down the correct law.

6. Learned Senior Government Pleader, Shri Alosius Thomas refuting the submissions of the learned counsel for the appellant contended that re-determination of the compensation under Section 28A(1) is based on the award under Section 18, hence re-determination under Section 28A proceeding cannot exceed the amount in the award under Section 18 of the Act which is the basis of the claim. It is submitted that in proceedings under Section 28A(1), a land holder who has not filed a reference under Section 18 can claim re-determination of the compensation but he cannot file more than one application under Section 28A(1) and when he opts for an award in application under Section 28A(1), he cannot be allowed to claim any other amount on the basis of any other award in a reference under Section 28A(3). Proceeding under Section 28A(3) envisage a reference when an application for re-determination of compensation under Section 28A(1) is not favourably decided. In event the claim as made under Section 28A(1) has been allowed, the applicant cannot be said to be an aggrieved person to make a reference under Section 28A(3). In the present case claim of land value at the rate of Rs. 800/- per cent on the basis of L.A.R. No. 124 of 1987 was allowed by the Land Acquisition Officer, the appellant was not an aggrieved person to make a reference and the reference court in deciding the claim under Section 28A(3) cannot go beyond the original claim. It is submitted that judgment of the Apex Court in *Ambya Kalya Mhatre v. State of Maharashtra* (supra) is not attracted in the facts of the present case since in the said case the Apex Court was considering the scope and ambit of a claim under Section 18 which principles are not applicable while deciding the reference under Section 28A(3).

7. Learned counsel for the parties have referred to and relied on various judgments of this Court and the Apex Court which shall be referred to while considering the submissions in detail.

8. We have considered the submissions made by the learned counsel for the

parties, perused the records and have gone through the reference order dated 13.08.2015. From the submissions of the parties and the pleadings on record, the following are the issues which arise for consideration in this appeal.

(i) Whether the court deciding a reference under Section 28A(3) can award compensation exceeding the amount as awarded by court on the basis of which award the application for re-determination has been made by an interested person under Section 28A(1)?

(ii) Whether judgments of this Court in Raghava Poduval, Purushan and District Collector v. Muhammed Kunhi's cases (supra) taking the view that reference court under Section 28A(3) is not inhibited from awarding higher compensation than one claimed under Section 28A(1) or the judgment of the Division Bench in State of Kerala v. Kumaran Nair taking the view that reference court under Section 28A(3) cannot grant amount in excess of the amount claimed under Section 28A(1), lays down the correct law?

(iii) Whether in view of the judgment of the Apex Court in Ambya Kalya Mhatre's case (supra), judgment of the Division Bench in State of Kerala v. Kumaran Nair needs reconsideration?

All the issues being interconnected are taken together.

9. The Scheme of the Land Acquisition Act, 1894 prior to the amendments made in the Act by Act 68 of 1984 provided enhancement of compensation only on a reference made under Section 18 of the Act. Section 11 contemplates an enquiry and award by the Collector with regard to the value of the land. After an award is given by the Collector, Section 18 of the Act contained in Part III of the Act deals with reference to court and the proceedings thereon. Section 18(1) provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested. Section 18 provides as follows:

"18. Reference to court (I) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made.,-

(a) if the person making it was present or represented before the Collector at the

time when be made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2); or, within six months from the date of the Collector's award, whichever period shall first expire."

10. Section 23 provides for the matters to be considered in determination of the compensation by the court and further Section 24 provided for matters to be neglected in determining the compensation by the court. Section 25 provided that amount of compensation by court shall not be lower than the amount awarded by the Collector. Thus the court under Section 18 was to pass an award taking into consideration the other statutory provisions regarding the amount of compensation. Any one aggrieved by the said award of the court could have filed an appeal under Section 54 of the Act to the High Court and thereafter to the Supreme Court. The scheme of the Act thus indicated that any person who has not filed an application for reference under Section 18 could not have obtained any benefit even in a case where the court under Section 18 enhanced compensation of the land covered by the same notification. Thus benefit of the order of the court under Section 18 was available only to those persons who have applied for reference. Even if the determination of the Collector is wholly insufficient and faulty, those land owners who did not make a reference under Section 18 could not have obtained any relief regarding compensation which was awarded to them by the Collector.

11. By Act 68 of 1984 substantive amendments were made in the Act. Taking into consideration the fact that right of reference to the civil court under Section 18 is not usually taken advantage of by inarticulate and poor people and the benefit is usually obtained by the comparatively affluent landowners, provisions of the Act were amended. The Statement and Object of Act 68 of 1984 indicated the purpose and object for inserting Section 28A. Paragraph (ix) of the Statement and Object is as follows:

"Considering that the right of reference to the Civil Court under S. 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised by the comparatively affluent landowners and that this causes considerable 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 S. 18 of the Act."

Provisions of Section 28A were inserted by the aforesaid Amendment Act providing for "re-determination of the amount of compensation on the basis of the award of the court." Section 28A as inserted by the Amendment Act is as follows:

"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 S. 11, the persons interested in all the other land covered by the same notification under S. 4, sub-s. (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 S. 18, by written application to the Collector within three months from the date of the award of the Court requires 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-sec. (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and made an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-s. (2) may, by written application to the Collector, requires that the matter be referred by the Collector for the determination of the Court and the provisions of S. 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under S. 18."

12. A three Judge Bench in *Union of India v. Pradeep Kumari* (, [1995] 2 SCC 736) had occasion to examine the object and purpose underlined in Section 28A of the Act. The Apex Court held that the provisions has been inserted to remove inequality in 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 court under Section 18 of the Act. The following was laid down in paragraphs 8 and 10.

"8. We may, at the outset, state that having regard to the Statement of Objects and Reasons, referred to earlier, the object underlying the enactment of S. 28A 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 Act. This is sought to be achieved by providing an opportunity to all aggrieved parties whose land is covered by the same notification to seek re-determination once any of them has obtained orders for payment of higher compensation from the reference Court under S. 18 of the Act. S. 28A is, therefore, in the nature of a beneficent provision intended to remove inequality and to give relief to the inarticulate and poor people who are not able to take advantage of right of reference to the Civil Court under S. 18, of the Act. In relation to beneficent legislation, the law is well settled 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. The provisions of S. 28A should, therefore, be construed keeping in view the object underlying the said provision.

10. It is possible to visualise a situation where in the first award that is made by the Court after the coming into force of S. 28A the enhancement in the amount of compensation by the said award is not very significant for the reason that the person who sought the reference was not able to produce adequate evidence in support of his claim and in another reference where the award was made by the Court subsequently such evidence is produced before the Court and a much higher amount is awarded as compensation in the said award. By restricting the benefit of S. 28A to the first award that is made by the Court after the coming into force of S. 28A the benefit of higher amount of compensation on the basis of the subsequent award made by the Court would be denied to the persons invoking S. 28A and the benefit of the said provision would be confined to re-determination of compensation on the basis of lesser amount of compensation awarded under the first award that is made after the coming into force of S. 28A. There is nothing in the wording of S. 28A to indicate that the legislature intended to confer such a limited benefit under S. 28A. Similarly, there may be a situation, as in the present case, where the notification under S. 4(1) of the Act covers lands falling in different villages and a number of references at the instance of persons having lands in different villages were pending in the Court on the date of coming into force of S. 28A and awards in those references are made by the Court on different dates. A person who is entitled to apply under S. 28A belonging to a particular village may come to know of the first award that is made by the Court after the coming into force of S. 28A in a reference at the instance of a person belonging to another village, after the expiry of the period of three months from the date of the said award but he may come to know of the subsequent award that is made by the Court in the reference at the instance of a person belonging to the same village before the expiry of the period of three months from the date of the said award. This is more likely to happen in the cases of inarticulate and poor people cannot be expected to keep track of all the references that were pending in Court on the date of coming into force of S. 28A and may not be in a position to know, in time, about the first award that is made by the Court after the coming into force of S. 28A. By holding that the award referred to in S. 28A(1) is the first award made after the coming into force of S. 28A, such persons would be deprived of the benefit extended by S. 28A. Such a construction would thus result in perpetuating the inequality in the payment of compensation which the legislature wanted to remove by enacting S. 28A. The object underlying S. 28A would be better achieved giving the expression "an award" in S. 28A its natural meaning as meaning the award that is made by the Court in Part III of the Act after the coming into force of S. 28A. If the said expression in S. 28A(1) is thus construed, a person would be able to seek re-determination of the amount of compensation payable to him provided the

following conditions are satisfied:-

- (i) An award has been made by the Court under Part III after the 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) of which the said award relates;
- (iv) The person moving the application did not make an application to the Collector under S. 18.
- (v) The application is moved within three months from the date of the award on the basis of which the re-determination of amount of compensation is sought; and
- (vi) Only one application can be moved under S. 28A for re-determination of compensation by an applicant.

Similar observations were made by another three Judge Bench of the Apex Court in *Jose Antonio Cruz Dos R. Rodriquez v. Land Acquisition Collector* (, [1996] SC 746), where the following was stated in paragraph 3:

"....Thus, the newly added Section seeks to give the same benefit, which a person who had sought a reference and had secured the Court's award for a higher amount of compensation had received, to those who had, on account of ignorance or financial constraints, not sought a reference under S. 18"

In *V. Ramakrishna Rao v. Singareni Collieries Co. Ltd.* (, [2010] 10 SCC 650) the Apex Court held that Section 28A represents the Legislature's 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. The Judgment in *Union of India v. Pradeep Kumari* (supra) had occasion to consider the Scheme of Section 28A elaborately. Apart from outlining the object and purpose of insertion of Section 28A, the Apex Court interpreted the provision elaborately. Earlier view of the two Division Benches in *Babua Ram and others v. State of U.P. and Another* (, [1995] (2) SCC 689) and *Union of India v. Kannail Singh and Others* (, [1995] (2) SCC 728) that the limitation for filing under Section 28A(1) shall begin from the first of the award in point of time delivered under Section 18 was overruled by the three Judge Bench *Union of India v. Pradeep Kumari* (supra) and it was held that each of the award given under Section 18 gives cause of action to file application under Section 28A(1) and it is not required to compute the period of limitation of three months only from the first award. The Apex Court further noted that there may be situation where the first award in point of time gave only very insignificant enhancement and subsequent award may have been given higher compensation, restricting the benefit of Section 28A(1) only to

the first award would be denying the benefit of beneficent provision as inserted by Section 28A. The Conditions which need to be satisfied for proceeding under Section 28A were noticed and enumerated in paragraph 10 of the judgment which is to the following effect:

"10....

(i) An award has been made by the Court under Part III after the 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) of which the said award relates;

(iv) The person moving the application did not make an application to the Collector under S. 18.

(v) The application is moved within three months from the date of the award on the basis of which the re-determination of amount of compensation is sought; and

(vi) Only one application can be moved under S. 28A for re-determination of compensation by an applicant."

13. A Constitution Bench of the Apex Court in *Union of India and Another v. Hansoli Devi and Others* (, [2002] 7 SCC 273) after noticing the judgment of the Apex Court in *Union of India v. Pradeep Kumari and Jose Antonio Cruz Dos R. Rodriquez v. Land Acquisition Collector* (supra) has extracted with approval the conditions as enumerated in *Union of India v. Pradeep Kumari* (supra). The Apex Court further held that receipt of compensation with or without protest pursuant to the award by the Land Acquisition Officer is of no consequence for making application under Section 28A. It is further relevant to note that the Apex Court in *Jose Antonio Cruz Dos R. Rodriquez v. Land Acquisition Collector* (supra) has also laid down that the period of limitation of three months prescribed in Section 28A(1) has to be reckoned from the date of the award by the court disposing of the reference under Section 18 and not from the order of the High Court deciding the appeal against the award of the reference court.

14. The object of the Amendment Act 1984 as noted above is to extend the benefit of enhancement of amount of compensation by court on a reference filed by the land owners to those land owners also who could not approach the court for enhancement of compensation due to reason of poverty, financial constraint, ignorance or any other reason. Section 28A and its various sub-sections have been designed to achieve the above object. Under Section 28A(1), any person who has not earlier made a reference to the court for enhancement can make application within three months from the date of the award of the court for re-

determination of his compensation on the basis of the compensation awarded by the court. Thus the cause of action for filing an application under Section 28A(1) is the award by a court whereby compensation earlier determined by the Land Acquisition Collector has been enhanced. Section 28A(2) is a mechanism for deciding such applications Section 28A(3) gives right to the claimant who has not accepted the award determined by the Collector under Section 28A(2) to make an application for reference to the court and the provisions of Sections 18 to 28 so far as applicable have been made applicable to such references as they applied to reference under Section 18. While interpreting various sub-sections of Section 28A the underlined object of the amendment has to be kept in mind.

15. Now we proceed to examine the cases expressing divergent views on the questions as to whether under Section 28A(3) the court can award compensation in excess of the compensation awarded by the court in the award on the basis of which an application for re-determination has been filed under Section 28A(1).

16. There is one line of judgments taking the view that the court in a reference under Section 28A(3) in no manner is inhibited from exceeding the amount of compensation which had been granted in an award which is the basis of the application. Divergent views have been expressed by other cases that the court under Section 28A(3) cannot award compensation in excess of the compensation which has been awarded by the court in an award which is the basis of the application under Section 28A(3). Another question which arises is as to whether in a proceeding under Section 28A(3) claimant can bring in evidence other awards of the court pertaining to land covered by the same notification and whether it is permissible to place reliance on any other award which is not referred to in Section 28A(1).

17. The first case to be noticed is the Division Bench Judgment in Indira Devi v. Special Tahsildar (Supra), wherein a Division Bench of this Court had occasion to consider the provisions of Section 28A. Question as to whether the reference court under Section 28A(3) can grant compensation in excess to one which is claimed under Section 28A(1) has not been directly considered in the said case. However, observations were made by the Division Bench with regard to the scope and ambit of application for reference under Section 28A. The Division Bench, however, while considering the scope of enquiry on an application under Section 28A(1) by the Collector had observed that it is not necessary that compensation should be fixed at the same as awarded by the court in every case and the award is only a piece of evidence for consideration. The following observations have been made in paragraphs 62 and 63:

"62. We may also briefly advert to the basis on which the re-determination of the compensation is to be made under the section. There is no automatic re-determination of the amount of compensation on the mere passing of an award by the Court, and the application being made under S. 28A. The Collector has to apply his mind to the facts of the case and adjudicate whether the said award is liable to be applied to the case of the applicant. There is also no total setting

aside of the original award or re-opening of the matters covered by it, merely on the basis of the award of the court. On the other hand, what the provision contemplates is a re-determination of the amount of compensation, and compensation alone, on the basis of the award of the Court. In other words, what the section requires is to treat the award as an additional item of relevant evidence and to have the compensation re-determined accordingly, taking that also into account.

63. The relevancy and applicability of the court's award will arise in a variety of circumstances like the similarity of the lands or their being neighbouring ones, adoption of same basis for fixing the compensation earlier, adoption of a different multiplier by court for capitalisation and others. The true basis of the re-determination will be to ask: What would have been the compensation the Collector would have awarded had the award of the Court been available at the time he made his original award? That will be the re-determined compensation payable to the applicant. It does not mean that compensation should be fixed at the same rate as awarded by the court in every case. To put it differently, the Collector has to relate the award of the Court back to the date on which he made his original award and ascertain what amount he would have awarded as compensation if this piece of evidence had also been available to him at that time."

There are judgments by learned Single Judge where issues have been directly considered. In *Raghava Poduval v. Special Tahsildar* (supra), the learned Single Judge referring to the use of the word "re-determination" in Section 28A took the view that the Land Acquisition Officer as well as the reference court cannot be justified in insisting that the Land Acquisition Officer should originally have awarded the same land value for the claimant. The following was observed in paragraph 5:

"5. If, as a matter of fact, the intention of the legislature was to give relief under S. 28A only to those persons who were treated equally for the purpose of original land value with the parties to the court judgment relied on then the legislature would not have employed the term "re-determination". If that was the intention, the legislature would have very well more plainly said that the same rate of land value shall be awarded. User of the expression determination in my view contemplates that the Land Acquisition Officer can award reasonable proportionate enhancement or reduction upon the land value given to the parties in the judgment relied on through the re-determination which is directed to be done under S. 28A. To maintain an application under S. 28A, the statutory requirements are only that the applicants award as well as the award of the party to the judgment which is relied on by the applicant should have been covered by the very same 4(1) notification and it is not necessary that both the parties should have been given the same rate of Sand value by the awarding officer. On the above view. I hold that the Land Acquisition Officer as well as the reference court were not justified in insisting that the Land Acquisition Officer should

originally have awarded the same land value for the appellant and to the party in the judgment relied by him and that both the lands should have been under the same category as per the revenue records. What is required is only that both the lands should have been covered by the very same 4(1) notification."

Another judgment of the learned Single Judge taking the same view is *Purushan v. State of Kerala* (supra). Question which directly came for consideration in the above case was whether applicant in a reference under Section 28A(3) is entitled to have more land value than what was awarded to the claimant in the court judgment which was relied by the applicant in his application. Paragraph 1 noticed the issues raised and facts of the case which is extracted as follows:

"1. The important question raised for determination in this appeal is the question as to whether the claimant applicant in a reference under S. 28A(3) is entitled to have more land value than what was awarded to the claimant in the Court judgment that was relied on by the applicant in his application under S. 28A. The appellant filed an application under S. 28A of the Land Acquisition Act relying on the judgment in L.A.R. 30/94. Under that judgment, the claimant in that case was awarded land value @ Rs. 12,000/- per Are. The prayer of the appellant applicant in his application under S. 28A was that he also be awarded land value at the rate of 12,000/- per Are as was awarded to the claimant in L.A.R. 30/94. But before the claim under 28A was enquired into by the Land Acquisition Officer, the local reference Court awarded a higher rate of land value to another party, whose land was also acquired under the very same S. 4(1) notification i.e. the claimant in L.A.R. 378/89. Since the claimant in L.A.R. 378/89 adduced better evidence than the claimant in L.A.R. 30/94, the reference Court awarded land value at the rate of Rs. 12,597/- to him."

Learned Single Judge considered the provisions of Section 28A(3), 23 and other provisions and held the following in paragraphs 6 to 10 which are quoted below:

"6. S. 23 is one of the provisions which is expressly included by S. 28A(3) as applicable to a reference under S. 28A(3). S. 23 deals with the various matters to be considered in determining compensation. The very first matter is the market value of the land at the date of publication of the notification under S. 4(1). In other words, while the reference Court under S. 28A(3) comes to decide the question of correct compensation payable for the acquired property, that Court is entitled to consider as the first point the market value of the acquired land on the date of S. 4(1) notification. It is in that context that the parties are allowed to adduce evidence regarding market value.

7. In this particular case, the items of evidence adduced on the side of the appellant were Ext. A1 and parties own oral testimony as AW. 1. A1 is a Court judgment in a case pertaining to acquisition of another item of property for the same purpose and was covered by the very same S. 4(1) notification. Relevancy of such a judgment in the matter of market value determination of similar lands especially when they are covered by the very same S. 4(1) notification is well

settled. In fact, the very legislative principle underlying S. 28A as explained by the Supreme Court in *Union of India v. Pradeep Kumari* (, 1996 (1) KLT 93) and in *Union of India v. Hansoli Devi* (, AIR 2002 SC 3240) is to bring forth a parity between the land values given for similar lands acquired under the very same S. 4(1) notification. In other words, Legislature intends that equal treatment must be given to those persons by the Court also if they were treated equally in the matter of land value by the Land Acquisition Officer.

8. I had occasion to hold in *Pulukunnathu Raghava Poduval v. The Special Tahsildar* (, 2004 (3) KLT 261) that it is not obligatory to maintain an application under S. 28A that the Land Acquisition Officer should have awarded the same land value to the party making the application and also to the party to the judgment which is relied on in the application. I decided in that case that it is open to the Land Acquisition Officer to rely on the enhancement given by the reference Court in one case to lands coming under an inferior category and award a proportionate increase to the applicant's land which may be placed by the Land Acquisition Officer in a superior category and actually award more land value than what was awarded to the party in the judgment relied on in the application.

9. Learned Subordinate Judge's reasoning is that the party whose application has been completely allowed cannot have any sustainable grievances regarding the award of the Land Acquisition Officer. At first blush it would appear that the reasoning of the learned Subordinate Judge is correct. But then, the language under S. 28A(3) and the binding judicial precedents, including the pronouncement of the Constitution Bench of the Supreme Court in *Hansoli Devi*'s case dealing with legislative objective underlying S. 28A, will certainly justify determination of the question of correct compensation payable for the acquired property by the reference Court under S. 28A(3), on the basis of the evidence on record which can include Court judgments other than the one relied on in the S. 28A application.

10. Significantly the expression "re-determination" which appears in sub-s.(1) of S. 28A is substituted by the expression "determination" in sub-s.(3) of S. 28A. Determination of any reference necessarily has to be done on the basis of the evidence which comes on record. The only dependable item of evidence in this case, which came on record before the learned Subordinate Judge was Ext. A1 and the reason stated by the learned Judge for ignoring Ext. A1 in my opinion is not sustainable."

A Division Bench of this Court in *Sushama v. District Collector* (, 2010 [3] KLT 605) had occasion to consider the judgment of this Court in *Raghava Poduval v. Special Tahsildar* (supra). Question was referred as to whether the decision in *Raghava Poduval v. Special Tahsildar* (supra) laid down the correct law. The Court observed that ratio of the judgment in *Raghava Poduval v. Special Tahsildar* (supra) rests on the facts of that case and does not require reconsideration on any issue of law. The following was observed in paragraphs 4 and 5:

"4. In terms of S. 28A(1), the Collector has to pass an order on an application under that provision. If the claim is rejected on the basis of materials or on comparative evaluation of the materials placed, then the questions that would arise for determination at the instance of the person aggrieved by that decision would fall into the realm of appreciation of evidence. S. 28A(3) provides the claimant with the opportunity to request for a further reference to the Civil Court. The reference Court will have to answer the dispute on the basis of evidence. This would again give rise to an appeal to this Court under S. 54. We indicate this because, we come across writ petitions being filed in relation to compensation matters under the Act, as if they would lie at the drop of the hat. Though this Court may step in to wipe out injustice or to render justice on a particular fact situation, this Court would loath exercise its visitorial jurisdiction when appellate remedies are provided in terms of the statutory provisions. The exercise of visitorial jurisdiction, which is essentially extra - ordinary, in terms of Art. 226 is quite uncalled for when statutory remedies including appeals are provided. The exceptionally exceptional situations which cannot be remedied by such procedures alone would qualify as extra-ordinary. Failure to exercise jurisdiction or manifest illegality resulting in failure of justice may call for remedial writs being issued under Art. 226. But, every error in the course of exercise of jurisdiction including an alleged illegality in admitting or appreciating evidence, ought not to trigger the issuance of discretionary writs and orders in jurisdiction under Art. 226; more so, when alternate statutory remedies, including appellate, are available. The constitutional scheme does not permit the statutory remedies to be pushed off as not efficacious. Reminding ourselves of the limits of jurisdiction under Art. 226 vis-a-vis the width of the first appellate jurisdiction under S. 54 and of the reference Court following a reference either under S. 18 or 28A(3) of the Act, it needs to be laid down with sufficient emphasis that when matters can be taken up through competent statutory tracks, writ petitions under Art. 226 are not to be entertained, having regard to the availability of the efficacious alternate statutory remedies.

5. As noticed by the learned Single Judge in the reference order, in Babu Ram, the Apex Court held that the amount of compensation to be determined under S. 28A of the Land Acquisition Act, 1894, hereinafter referred to as the "Act" is relatable to land "similarly situated, possessed of the same value of potentialities etc." In Pradeep Kumari, the Apex Court after referring to the Statement of Objects and Reasons for the introduction of S. 28A into the Act, pointed out that the said provision was intended 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 Act. In Raghava Poduval, this Court held that the use of the word "re-determination" in S. 28A prompts the requirement to consider the materials and come to a proper conclusion as to whether the compensation already granted by the Collector is to be enhanced in exercise of power under S. 28A(1). Raghava Poduval was rendered in a land acquisition

appeal under S. 54 and the quality of adjudication of that appeal would have led the Court to lay down law as it did, on the basis of the facts of that case. There is no algebraic straight jacket formula on the basis of which the comparative evaluation can be done. A survey of the plethora of precedents laid down by the Apex Court, this Court and different other High Courts would show that it is inadvisable to decide all cases for compensation on the same yardstick. Appreciation of evidence relating to comparable nature of properties and other attendant matters are to be considered on a case to case basis. We are not persuaded to think that there is any striking cleavage of judicial opinion between Raghava Poduval, Babu Ram, Pradeep Kumari and Somasundaran. In fact, all those decisions operate in a manner advising the Courts regarding appreciation of evidence in such matters. The ratio of Raghava Poduval rests on the facts of that case and, therefore, does not require reconsideration on any issue of law. The reference will stand answered accordingly."

Another judgment relevant in this context is *Augusthy v. State of Kerala* (, 2013 [1] KLT 860). In the above case, application was filed under Section 28A(1) on the basis of award in LAR No. 121 of 2001 by the court. Application was rejected on the ground that the land is not comparable. Reference was made under Section 28A(3). The Sub Court also came to the conclusion that the properties are not comparable and the appellant is not entitled to enhancement of land value against which the appeal was filed. The Division Bench in the above context noticed the decision in *Raghava Poduval v. Special Tahsildar* and the Division Bench judgment in *Sushama v. District Collector* (supra). The Division Bench held that comparability is certainly a matter to be decided while considering the claim under Section 28A. Judgment of the Sub Court was upheld.

18. Another judgment relevant to be noticed is *District Collector v. Muhammed Kunhi* (, 2012 [4] KLT 360). Although directly the question did not fall for consideration before the Division Bench, while considering various aspects of re-determination under Section 28A, certain observations have been made. The following was observed in paragraph 20:

"20. Once application is filed before the Collector, he has to take into account all relevant facts into consideration such as the latest award, date of award, effective application, enhancement or reduction of compensation. As long as the applicant fulfills the conditions envisaged under S. 28A, there will be no embargo to proceed with the application. If an award is passed by Reference Court after remand of the matter by Appellate Court, it is also an award under S. 28A."

The above Division Bench was considering the case where a fresh award is made after an award by the appellate court, whether that award is to be taken into consideration or not. The Division Bench answered that the latest award passed after remand has to be taken into consideration. There cannot be any dispute to the proposition of law as laid down in the above case. The award passed after remand is an award which is passed in the same case on the basis of which an application for re-determination is filed by the claimant under Section 28A(1).

Any enhancement or reduction of amount of compensation is to be given due weight. Thus the observations made in paragraph 20 that the court has to take into consideration the latest award was in the context of the award passed after remand in the same case.

19. Now we notice the judgment taking the other view; that in a proceeding under Section 28A(3) compensation cannot be enhanced in excess of the claim made under Section 28A(1). The Division Bench judgment of this Court in *State of Kerala v. Kumaran Nair* (supra) has taken a contrary view to one noted above. In the above case land acquisition reference arose under Section 28A(3). Initially award under Section 11 of the Act was passed on 13.09.1987. Claimant did not make an application under Section 18. Later by judgment L.A.R. No. 22 of 1983 dated 10.04.1987 court has enhanced the compensation as Rs. 1,700/- per cent. Claimant filed application dated 03.07.1987 under Section 28A(1) seeking re-determination of the compensation. Claimant thereafter produced award dated 31.01.1989 in L.A.R. No. 161 of 1985 in which compensation of Rs. 2,450/- per cent was granted. Collector allowed the application under Section 28A(1) holding that he is entitled to compensation equivalent to that awarded in L.A.R. No. 22 of 1983. The claimant being not satisfied made an application for reference under Section 28A(1). The court granted land value taking into account the subsequent award in L.A.R. No. 161 of 1985 and L.A.A. No. 289 of 1988 fixing land value as Rs. 2,450/- per cent. State being aggrieved by the said judgment had filed appeal. Question which was raised has been noticed in paragraph 8 which is to the following effect:

"8. Can Collector or Court, while making re-determination of land value award compensation in excess of that had been awarded by the Court based on which application for re-determination is made? Admittedly and as seen from the application as mentioned above, what the claimant prayed for before the Collector was payment of amount equal to the rate as awarded in L.A.R. No. 22/83. But subsequently, he produced the award in L.A.R. No. 161/85 and the judgment in L.A.A. No. 289/88, on 5.9.92 and claimed the land value awarded as per the said documents. But, the Collector, awarded only Rs. 1700/- per cent, equal to that had been awarded by the court in L.A.R. 22/83. The claimant, so, sought for reference under S. 28(A)(3). On reference, the court, taking also into account, the award in L.A.R. 161/85 and the judgment in L.A.A. 289/88, granted further additional land value of Rs. 750/- per cent. The net land value thus awarded became Rs. 2,450/- per cent. This is in excess of the rate awarded in L.A.R. No. 22/83 which forms the basis of S. 28(A)(1) application. Therefore, the appeal by the State. The claimant did not get the amount awarded in L.A.R. 161/85 though there was an enhancement of Rs. 750/-. So he preferred the cross objection."

Learned counsel for the claimant contended that court on a reference under Section 28A(3) has the same power of the reference court under Section 18, hence subsequent events which have proximity to the issue was also to be taken

into account for the purpose of awarding compensation. Contentions raised by the appellant are in paragraph 10 of the judgment which is to the following effect:

"10. Learned counsel for the claimant has referred to a decision of the Supreme Court in *C. Hargovinddas v. Spl. Land Acquisition Officer, Poona* (, AIR 1988 SC 1652) and contended that, "even post notification instances can be taken into account (1) if they are very proximate (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects". It is contended that as the court on reference under S. 28(A)(3) has the same power of the reference court under S. 18, necessarily, the subsequent events which has proximity to the issue involved shall also be taken note of for the purpose of awarding compensation. Therefore, the amount awarded in L.A.R. 161/85 and L.A.A. 289/88 though made subsequent to the application under S. 28(A)(1) and produced later before the Collector, can be taken as the basis while re-determining the land value. It need not therefore always be solely based on the judgment referred to 28(A)(1) application."

20. The Division Bench rejected the above submission of the claimant and held that although Section 28A(2) contemplates an enquiry, the said enquiry is for the purpose of ascertaining whether the land covered by the award and the land acquired from the appellant situate on similar circumstance to apply the award of the court for the purpose of determination. In paragraphs 11 to 14, the following were observed:

"11. We are unable to appreciate this contention on behalf of the counsel for the claimant. Of course, the court in appropriate situation can take into account the post notification instances as well. All those are for the purpose of awarding the land value claimed. Here, the land value claimed as seen from 28(A)(1) application was the same rate awarded in L.A.R. 22/83. Of course, S. 28(A)(2) contemplates an inquiry by the Collector concerned. This is for the purpose of ascertaining whether the land covered by the award of the court and the land acquired from the claimant are situated in a similar circumstance to apply the award of the court for the purpose of re-determining the land value in respect of the land acquired from the claimant. In such an inquiry, the parties including the claimant are free to adduce any evidence. The award in L.A.R. No. 161/85 and the judgment in L.A.A. No. 289/88 subsequently produced by the claimant can only be thus the evidence to substantiate the claim in the application dated 3.7.1987. The claim in the application, as mentioned above, is to pay in equal rate as awarded in L.A.R. No. 22/83. Therefore, by adducing evidence on the strength of award in L.A.R. No. 161/85 and the judgment in L.A.A. No. 289/88 wherein the court has awarded more land value than as awarded in L.A.R. No. 22/83, the claimant can only substantiate his case in his application dated 3.7.1987 based on the award in L.A.R. No. 22/83. Those documents will not enable the claimant to claim the land value awarded in those subsequent awards. As held by the Supreme Court in *Union of India and Another v. Pradeep Kumari*

and Others (, AIR 1995 SC 2259), there cannot have two applications. There was only one application by the claimant. That was on 3.7.1987. That was based on the award in L.A.R. No. 22/83. At that time, the award in L.A.R. No. 161/85 had not been passed. Therefore, the basis for the claim in application dated 3.7.87 was the award in L.A.R. No. 22/83 and what was claimed was payment in same rate. That application has never been amended at any point of time. In such circumstances, one cannot get any amount over and above what has been claimed in the application for re-determination, even if there had been a subsequent award by the court, granting land value in excess of the award which forms basis for S. 28(A)(1) application.

12. It is further contended by the counsel, again relying on the decision in Union of India v. Pradeep Kumari (, AIR 1995 SC 2259) that always the first award alone need not be taken as the basis. The award relied on in an application under S. 28(A) need not always be the first award passed by the Court in a case relating to a particular acquisition covered by a notification. It can even be a subsequent award wherein the respective claimants had adduced real evidence and obtained real compensation eligible for the land. In such circumstances, it is possible for any person who has entitlement to make a claim for re-determination under S. 28(A)(1) to point out that subsequent award for enhanced compensation. Such claim cannot be defeated by the Land Acquisition Officer contending that the basis for re-determination shall only be the first award and not subsequent award. That is really possible. But, when what is relied on in the claim for re-determination is the first award, any further enhanced amount granted in a subsequent award will not enable him to claim the amount awarded in that subsequent award. In such circumstances, it will only be a piece of evidence to substantiate his claim mentioned in the application, especially when no amendment of the application was sought for based on any subsequent award. The awards newly produced were dated 3.1.89 and 8.4.92. It was beyond the period of limitation provided for. Therefore, it was impossible to claim the amount awarded in award in L.A.R. No. 161/85 as well as the judgment in L.A.A. No. 289/88. Thus, on any count, the amount claimed in the application for re-determination shall be the final limit beyond which the Collector cannot award any additional value. The Collector has awarded the land value equal to the rate awarded in L.A.R. No. 22/83, as claimed by the appellant. In such circumstances, the reference court could not have awarded any more amount than what had been claimed by the claimant in his application dated 3.7.87.

13. The Court also cannot grant any amount in excess of the claim in the re-determination application. Even in a reference case under S. 18, whatever be the evidence on record before the Court regarding the land value, the reference court can answer the reference only to the extent of the claim made by the claimant. The reference court even if it had been proved that the land in question had a particular value at the relevant point of time, cannot award it when it is in excess of the claim made by the claimant before the Land Acquisition Officer as the value entitled to him. As seen from sub-s. (3) of S. 28(A), the procedure to

be followed in reference under S. 28(A)(3) is the same provided for reference under S. 18. In such circumstances, the reference court under S. 28(A)(3) cannot award more amount than what had been claimed in the application for re-determination. The Court does not have any power to grant more amount than what had been claimed in the application under S. 28(A)(1). Therefore, the additional land value of Rs. 750/- awarded by the court below as per the impugned judgment has to be set aside.

14. Another aspect covered by the appeal is with reference to the extent of the land. It is stated in the judgment impugned that the area acquired is 1.30 acres whereas actual extent is only 1.25 acres. This aspect has been admitted by the claimant himself. In such circumstances, the claimant will be entitled to the additional land value awarded by the Collector only for 1 acre 24.946 cents."

Thus the Division Bench in *State of Kerala v. Kumaran Nair* (supra) has after considering the provisions of Section 28A(1), (2) and (3) and the object of the provisions has categorically negated the contention that reference court under Section 28A(3) can grant compensation in excess of the amount awarded which is the basis of the claim on the strength of any subsequent award of the court.

21. In *Madahavi v. Special Tahsildar* (, 2003 [1] KLT 813), learned Single Judge after noticing the contentions as laid down by the Apex Court in *Union of India v. Pradeep Kumari* (supra) laid down the following in paragraph 10:

"10. It is true that Clause.(vi) quoted from para 11 of the judgment of the Apex Court aforementioned specifies that only one application can be moved under S. 28A for re-determination of compensation by an applicant. If we look at that observation from the perspective already mentioned above what would be clear is that the reference therein is obviously to a valid application so that a person who gets the benefit of S. 28A through one application should not approach the Court when a more beneficial decision, say with reference to a property of better potential or proximity, comes to his notice later on. According to me the bar in condition No. (vi) aforementioned will not stand in the way of an applicant like the petitioner seeking the benefit of S. 28A for the first time through a valid application. To put it differently, the words, "one application" used by the Apex Court has to be seen as "one valid application"."

Learned Single Judge held that when in one application applicant gets benefit he is debarred from making another application if any other award comes to his notice Which may be more beneficial.

22. Another learned Single Judge in *Thankappan Nair v. State of Kerala* (, 2014 [1] KLT 38) has held that when a previous application under Section 28A(1) was turned down on merits, second application by the claimant based on the judgment in another reference is barred. In paragraph 5 the following was stated:

"5. Whatever be the reason for rejection of his earlier application moved under S. 28A of the Act, its incorrectness cannot be set forth as a ground to entertain a

second application based on a judgment in another reference by the Court. Any challenge against the order rejecting the application under S. 28A of the Act, necessarily, has to be canvassed before the appropriate forum, seeking a reference under S. 28A(3) of the Act. When that has not been done and the Order passed on previous application has become final, there is no merit in the challenge canvassed against the order impugned in the appeal based on the decision rendered by this Court in Madhavi's case referred to above. Previous application of the claimant was rejected on merits, whatever be the reasons to do so, and it was not a case of rejection as time barred. S. 28A of the Act carves out a special remedy to a person whose land had been acquired under the Act even when he failed to take advantage of the right of reference to a Civil Court under S. 18 of the Act. But that beneficent provision can be invoked only on satisfaction of some conditions, which are

- (i) An award has been made by the Court under Part III after the coming into force of S. 28A;
- (ii) By the award passed by the Court compensation in excess of the amount awarded by the Collector has been allowed to the applicant in that reference;
- (iii) The person moving the application under S. 28A has interest in another land covered by the same notification in which the award allowing excess amount of compensation was passed by the Court.
- (iv) The applicant has not moved any application to the Collector under S. 18 of the Act.
- (v) The application under the Section has been moved within three months from the date of the award on the basis of which re - determination of the amount is sought.
- (vi) Only one application can be moved under S. 28A for re - determination of compensation."

The Apex Court in *Kendriya Karmachari Sehkari Garh Nirman Samiti Ltd. v. State of U.P.* (, [2009] 1 SCC 754) had occasion to consider the provisions of Section 18 and 28A of the Act. Referring to the object of Section 28A, the following was laid down in paragraphs 32 to 38:

"32. The provision came up for consideration before this Court in several cases. In the leading case of *Mewa Ram (Deceased) by his Lrs. and Others v. State of Haryana through The Land Acquisition Collector, Gurgaon*, , 1986 (4) SCC 151, this Court held that having regard to the Statement of Objects and Reasons of the Amendment Act, it is clear that S. 28A is intended and meant for the inarticulate and poor people who by reason of their poverty and ignorance have failed to take advantage of the right of Reference to Civil Court under S. 18 of the Act. It was also held that the provision was not intended to reopen an Award which had attained finality and was of binding nature.

33. Again, in *The Scheduled Caste Cooperative Land Owning Society Ltd., Bhatinda v. Union of India and Others*, , 1991 (1) SCC 174, the Court held that once a claimant has sought and secured a Reference under S. 18 of the Act and an order is passed, he cannot thereafter invoke S. 28A of the Act for re-determination of compensation.

34. In the well known decision in *Babua Ram and Others v. State of U.P. and Another*, , 1995 (2) SCC 689, this Court considered the question in detail. It was held that before S. 28A of the Act can be invoked, a person must show that he is person interested and is aggrieved as in respect of other lands covered by the same notification under S. 4, higher compensation has been awarded. An aggrieved person who had not made an application for Reference under S. 18 of the Act thus becomes entitled to apply under S. 28A of the Act. The right to an aggrieved person under S. 28A arises only when the Reference Court grants compensation in excess of the amount awarded by the Collector under S. 11.

35. In *Babua Ram* case It was also observed that such an application can be made in writing by any "aggrieved" person. The said expression would cover any interested person who had failed to make an application for Reference under S. 18 and would not be confined to those who received compensation under protest. It was also indicated that S. 28A is a "complete Code" in itself providing substantive right to "an aggrieved person" to claim compensation equal to that awarded to his neighbour covered by the same notification under S. 4(1).

36. In *Union of India and Another v. Pradeep Kumari and Others*, , 1995 (2) SCC 736, this Court discussed the object underlying S. 28A of the Act and observed that such object would be better achieved by giving the expression "an award" in S. 28A its natural meaning as meaning the award that is made by the court in Part III of the Act after the coming into force of S. 28A. If the said expression in S. 28A(1) is thus construed, a person would be able to seek re-determination of the amount of compensation payable to him provided the following conditions are satisfied;

(i) An award has been made by the court under Part III after the 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 make an application to the Collector under S. 18;

(v) The application is moved within three months from the date of the award on the basis of which the re-determination of amount of compensation is sought; and

(vi) Only one application can be moved under S. 28A for re-determination of compensation by an applicant.

37. A Constitution Bench of this Court in *Union of India (UOI) and Another v. Hansoli Devi and Others*, 2002 (7) SCC 273 held that dismissal of an application seeking reference under S. 18 on the ground of delay also would not come in the way of the claimant for re-determination of compensation under S. 28A of the Act. Such person can be said to be a "person aggrieved" and would be entitled to make an application to receive compensation provided the conditions of the said section are complied with.

38. From the aforesaid decisions, in our judgment, the law is well settled and it is that against an award, if the Reference Court allows the applicant and awards any amount of compensation in excess of the amount awarded by the Land Acquisition Officer under S. 11 of the Act, any person interested in the land covered by the same notification may make an application under S. 28A of the Act within the period specified in the said section and may seek the same relief which has been granted to other landowners by the Reference Court."

The Apex Court in the above case has held that when award has been made by the court in excess of the compensation awarded by the Land Acquisition Officer under Section 11, an application can be made by a person who has not earlier made any reference under Section 18 seeking the same relief which has been granted to other land owners. The above observations indicate that the object is to extend the same relief to an applicant who has made application under Section 28A(1). In *V. Ramakrishna Rao v. Singareni Collieries Co. Ltd.* (, [2010] 10 SCC 650), the Apex Court had occasion to consider Sections 18 and 28A(1), (2) and (3). In the above case, application was filed by the claimant under Section 28A(1) for seeking compensation fixed by the court by order dated 17.07.2000 in a reference under Section 18. The Land Acquisition Officer by order dated 31.12.1990 held that the appellant is entitled to receive compensation on par with other land owners. Appellant filed on the same day application under Section 28A(3) for making a reference to the court. Land Acquisition Officer referred the matter to the Collector, who accorded permission for making a reference to the court. Respondent No. 1 challenged the reference made to the court, in the High Court. Writ Petition was dismissed by the learned Single Judge. However, the Division Bench allowed the appeal and set aside the order of the learned Single Judge holding that a person who get benefit of Section 28A(1) cannot file application under Section 28A(3). Question arose as to whether the reference was maintainable under Section 28A(3). After referring to Section 28A, the Apex Court observed, represents the Legislature's 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. The following was observed in paragraphs 11, 13 and 15:

"11. The above reproduced provision represents the Legislature's determination to ensure that the goal of equality enshrined in the Preamble of the Constitution

and Art. 38, Art. 39 and Art. 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. S. 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 i.e. the "agriculturist" of their only source of livelihood. The scheme of S. 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 S. 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 S. 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, S. 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 S. 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.

13. In *Union of India v. Munshi Ram* (supra), a two-Judge Bench considered the meaning of the word "re-determination" appearing in S. 28A and held that compensation payable to the applicant under S. 28A should be at par with what is finally payable to those who sought reference under S. 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 S. 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 S. 28A must be commensurate with the compensation payable to those who had sought reference under S. 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 S. 28A must be asked to refund the excess amount.

15. If sub-section (3) of S. 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 S. 28A(2) can make an application to the Collector under S. 28A(3) for making a reference to the Court as defined in S. 3(d) of the Act and this right cannot be frustrated merely because as a result of re-determination made under S. 28A(2) read with S. 28A(1) the applicant becomes

entitled to receive compensation at par with other land owners. There is nothing in the plain language of S. 28A(3) from which it can be inferred that a person who has not accepted the award made under S. 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 S. 28A(3) will have to bear in mind that a person who has not sought reference under S. 18 cannot get compensation higher than the one payable to those who had sought reference under that section."

The Apex Court in the above case held that there is nothing in the plain language of Section 28A(3) from which it can be inferred that the person who has not accepted the award made under Section 28A(2) is precluded from making an application to the Collector. However, the Apex Court also made a pertinent observation that "of course the court to which reference is made under Section 28A(3) will have to bear in mind that 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." Thus even if the Collector allows the application under Section 28A(2) and grants amount awarded and claimed by the appellant, reference is permissible, but reference court is also precluded from awarding any amount in excess of the amount claimed in the award which is clearly laid down by the Apex Court in the above said case.

23. Keeping in view of the foregoing discussion and analysing the scope and object of Section 28A, the following conclusions are inescapable:

(i) Section 28A(1) gives an option to the land owner who had not made an application under Section 18 to file an application for re-determination on the basis of any of the award of the court under Section 18 arising out of the same notification. This clearly means that the land owner has an option to claim parity with any award given by the court under Section 18 which is more beneficial to him. The Apex Court in *Union of India v. Pradeep Kumari* (, 1996 [1] KLT 93 (SC) has laid down that only one application can be filed under Section 28A(1) by a land owner who wanted to take benefit of the award under Section 18 and who has not earlier filed an application under Section 18. Once the land owner has chosen an award from which he wanted to claim parity, he cannot be permitted to rely on another award since that shall be indirectly permitting him to file many applications under Section 28A(1) based on different awards, which is not permissible.

(ii) The scope of Section 28A(2), i.e., enquiry by Collector has to be for the purposes of finding out as to whether the claim of the claimant based on the award is justified and he is entitled for enhancement of compensation to the same extent. The Collector under Section 28A(2) has no freedom to award compensation in excess of the amount claimed by the applicant. Whether the claimant can be given the benefit of the award claimed and whether his land is comparable are the questions which are to be gone into by the Collector. The right has been given to seek a reference under Section 28A(3) to the court if he

feels aggrieved by the determination under Section 28A(2).

(iii) The reference court while deciding an application under Section 28A(3) has to keep in mind that the scope of reference is confined to the claim of the applicant under Section 28A(1) which is based on an award given by the Court under Section 18. Scope of Section 28A(3) cannot be treated to empower the court to award compensation in excess of the award which is the basis of the claim. In case it is accepted that under Section 28A(3) court is entitled to grant higher compensation to one granted under Section 18, Section 28A(3) can be utilised for different and higher compensation to those who had not even filed application under Section 18 proceeding which shall lead to inequality and injustice to the original claimants who got only a particular amount. Legislature has never intended a situation where under Section 28A(3) court exceeds the amount originally granted under Section 18. Thus, although the provisions of Sections 18 to 28 are applicable in proceeding under Section 28A(3), they are applicable as far as possible. In event a claimant under Section 28A(3) is permitted to rely on other awards of the court under Section 18, which was not the basis under Section 28A(3) it shall be permitting him to file several applications under Section 28A(1) based on different awards delivered in different point of time which is not permissible in view of the law laid down by the Apex Court in *Union of India v. Pradeep Kumari* (supra).

24. The above can be demonstrated by taking into consideration the facts in the present appeal. In the present case the application under Section 28A(1) was filed relying on the award in L.A.R. No. 124 of 1987 dated 26.07.1989 by which Rs. 800/- per cent was awarded. In proceeding under Section 28A(3) three other awards by courts were relied. In the award dated 06.02.1988 L.A.R. Nos. 157 and 158 of 1987 the court granted Rs. 2000/- per cent. Application by the appellant in the present case under Section 28A(1) was filed on 13.03.1990. Appellant's application under Section 28A(1) based on the award dated 06.02.1988 thus would have been clearly barred by time. Hence she could not have filed the application under Section 28A(1) on the basis of the award in L.A.R. Nos. 157 and 158 of 1987, the same would have been rejected as barred by time. Thus what is not directly permissible for her cannot be permitted to be done indirectly. Thus those awards could not have been relied on by the appellant. Coming to the award in L.A.R. No. 120 of 1987, Sub Court, Payyannur decided on 03.09.1997. The said award is subsequent to the filing of the application under Section 28A(1). Appellant can file only one application under Section 28A(1) which she had already filed on 13.03.1990, on the principle that the second application is barred, she cannot also place reliance on the award in L.A.R. No. 120 of 1987 decided on 3.9.1997. Thus we are of the view that reliance by the appellant on the award in L.A.R. No. 157, 158 and 120 of 1987 were wholly misplaced and the learned Sub Judge has rightly refused to place reliance on the said awards and confined the claim to the awarded in L.A.R. No. 124 of 1987 which was the basis of the claim.

25. Learned counsel for the appellant has placed reliance on the judgment of the Apex Court in *Ambya Kalya Mhatre v. State of Maharashtra* (, [2011] 9 SCC 325). The above case was a case where the Apex Court was considering as to whether in a proceeding under Section 18 of the Act a claimant can amend his reference enhancing his original claim which he had taken before the Land Acquisition Officer. Whether for amending the claim the limitation as prescribed under Section 18 shall come into play. Questions which were up for consideration and noted in paragraph 10 are to the following effect:

"10. On the contentions raised, the following questions arise for our consideration:

(i) Whether in a reference made to the Reference Court under S. 18 of the Act, the land owner is barred from amending the amount claimed in the reference application and seeking higher compensation; and even if he could seek amendment, whether such application should be made within the period of limitation mentioned in S. 18 of the Act?

(ii) Where the landowner has sought increase in compensation for only the land, in the application under S. 18 of the Act, whether he can seek increase in compensation for the trees or structures also, before the Reference Court?

(iii) Where compensation is awarded for the land, whether no compensation can be awarded for trees or well separately?

The Apex Court considered the provisions of Section 18 and opined that it is permissible to amend the claim under Section 18 due to reasons as mentioned in the judgment. The Apex Court looking into the scheme of the Act held that a proceeding under Section 18 is an original proceeding and not an appeal against the award by the Land Acquisition Collector. The following was observed by the Apex Court in 20 to 23 and 26 to 29:

"20. The assumption made by the High Court that when a reference is sought objecting to the amount of compensation, the claim for increase will have to be frozen with reference to the amount claimed in the application under S. 18 of the Act and therefore the quantum of the claim cannot subsequently be revised or increased is misconceived. Similarly, the assumption that if the claim for increase in an application for reference (relating to an acquisition involving a property consisting of land, building and trees), was only in regard to the compensation for the land, the land owner cannot thereafter make a grievance seeking increase in regard to the building or trees in the pleadings before the Reference Court and that in such a case, the Reference Court gets the jurisdiction to determine only the market value in regard to the land and not in regard to the building and trees, is also not correct.

21. Section 18 does not require a land owner objecting to the amount of compensation, to make a claim for any specific amount as compensation, nor does it require him to state whether the increase in compensation is sought only

in regard to the land, or land and building, or land, building and trees. A land owner can seek reference to civil court, with reference to any one or more of the four types of objections permissible under S. 18 of the Act, with reference to the award. His objection can either be in regard to the measurement of the acquired land or in regard to the compensation offered by the Collector or in regard to persons to whom it is shown as payable or the apportionment of compensation among several claimants. Once the land owner states that he has objection to the amount of compensation, and seeks reference to the civil court, the entire issue of compensation is open before the Reference Court. Once the claimant satisfies the Reference Court that the compensation awarded by the Land Acquisition Officer is inadequate, the Reference Court proceeds to determine the compensation, with reference to the principles in S. 23 of the Act.

22. As the Act does not require the person aggrieved/landowner to specify the amount of compensation sought, when objecting to the amount of compensation and seeking a reference, mentioning of the amount of compensation sought is optional. As there is no obligation to specify the amount in the application for reference, it can be specified in the claim statement filed before the Reference Court. The period of limitation in S. 18 of the Act has nothing to do with specifying the amount of compensation claimed. It therefore follows that if the reference is in regard to objection to the amount of compensation, the Reference Court can permit any application for amendment of the claim relating to compensation.

23. The High Court has lost sight of the scheme of the Act. When a land is acquired, the Land Acquisition Officer makes an offer on behalf of the state government, in regard to the compensation. The offer made by the Land Acquisition Officer is not an adjudication of the market value or the compensation payable to the land owner. When such offer is made, the land owner has the choice of either accepting the compensation in full and final satisfaction or to seek a reference to the civil court for determination of the amount of compensation. Where the land owner does not seek a reference within the time specified in S. 18 of the Act, he is deemed to have accepted the award and the award of the Land Acquisition Officer attains finality under S. 12 of the Act.

26. When the reference is received, the court causes notice specifying the date of hearing for determining the objection of the land owner/person aggrieved (S. 20 of the Act). The Reference Court has to call upon the claimants to file their statement of claim and call upon the Collector to file his objections to the claim statement and then proceed with the matter. Where the application under S. 18 contains the necessary particulars, the Reference Court may treat the application for reference under S. 18 and the Collector's statement under S. 19 of the Act as the pleadings. The land owner is entitled to specify the amounts claimed by him as compensation and the heads of compensation for the first time in such claim statement before the Reference Court. He can also file an application amending

the claim. What is not permitted after the expiry of the period of limitation specified in S. 18 of the Act, is changing the nature of objections from one category to another. If the reference had been sought with reference to objection to amount of compensation, the land owner cannot after the period of limitation, seek amendment to change the claim as objection to measurement or objection to apportionment.

27. A land owner, particularly a rural agriculturist, when he loses the land may not know the exact value of his land as on the date of the notification under S. 4(1) of the Act. When he seeks reference he may be dissatisfied with the quantum of compensation but may not really know the actual market value. Many a time there may not be comparable sales, and even the courts face difficulty in assessing the compensation. There is no reason why a land owner who has lost his land, should not get the real market value of the land and should be restricted by technicalities to some provisional amount he had indicated while seeking the reference. As noticed above, the Act does not require him to specify the quantum and all that he is required to say is that he is not satisfied with the compensation awarded and specify generally the grounds of objection to the award. Under the scheme of the Act, it is for the court to determine the market value.

28. The compensation depends upon the market value established by evidence and does not depend upon what the land owner thinks is the value of his land. If he has an exaggerated notion of the value of the land, he is not going to get such amount, but is going to get the actual market value. Similarly if the land owner is under an erroneous low opinion about the market value of his land and out of ignorance claims lesser amount, that can not be held against him to award an amount which is lesser than the market value. When the Act does not require the land owner to specify the amount of compensation, but he voluntarily mentions some amounts, and subsequently, if the market value is found to be more than what was claimed, the land owner should get the actual market value. We fail to see why the land owner should get an amount less than the market value, as compensation. Consequently, it follows that if the land owner seeks amendment of his claim, he should be permitted to amend the claim as and when he comes to know about the true market value. When the Act is silent in regard to these matters, to impose any condition to the detriment of an innocent and ignorant land owner who has lost his land, would be wholly unjust.

The Collector making the offer of compensation on behalf of the state is expected to be fair and reasonable. He is required to offer compensation based on the market value. Unfortunately Collectors invariably offer an amount far less than the real market value, by erring on the safer side, thereby driving the land owner first to seek a reference and prove the market value before the reference court and then approach the High Court and many a time this Court, if he does not get adequate compensation. In most land acquisitions, the land acquired is the only source of his livelihood of the land owner. If the compensation as offered by the

Collector is very low, he cannot buy any alternative land. By the time he fights and gets the full market value, most of the amount would have been spent in litigation and living expenses and the price of lands would have appreciated enormously, making it impossible to buy an alternative land. As a result, the land owner seldom has a chance of acquiring a similar land or an equal area of similar land. It would be adding insult to injury, if the land owner should be tied down to a lesser value claimed by him in the reference application, even though he was not required by law to mention the amount of compensation when seeking reference. The Act contemplates the land owner getting the market value as compensation and no technicalities should come in the way of the land owner getting such market value as compensation."

26. A Division Bench of this Court had also occasion to consider the above question in *Yamuna and Other v. Special Tahsildar* (ILR 2007 [3] Kerala 422). The Division Bench expressed the same view that claimant can enlarge his claim for compensation before the reference court. The Division Bench has referred to the provisions of Section 25, unamended and amended. It is useful to refer paragraphs 4, 5 and 7:

"4. It is now settled law by the celebrated decision of the Supreme Court in *C. Hargovinddas v. Spl. Land Acquisition Officer, Poona*, , AIR 1988 SC 1652 : 1988 (3) SCC 751 that a reference under S. 18 of the Land Acquisition Act is not an appeal against the award and that the award of the Land Acquisition Officer is not to be treated as judgment of the Trial Court. The award is merely an offer made by the Land Acquisition Officer. It is also held by the Apex Court in the decision that "the Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the materials produced before it." Still further, it is held therein that the claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court.

5. A reference to the Civil Rules of Practice, Kerala would also be profitable in this context. R. 378 deals with the procedure for trial of references. The rule, to the extent relevant reads as follows:

"378. Service of notice and trial of references.--(1) The service of notice shall be as provided in S. 49 of the Land Acquisition Act.

(2) Subject to these rules, the procedure to be followed for the trial of a reference shall be that prescribed by the Code in respect of original suits.

(3) The application before the Collector for reference shall be treated as the plaint, and the investigation shall be with reference to the claim made therein.

(4) The claimants may, and, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement setting out their claim in full.

(5) The Collector, the company and the local authority may, and if so required by

the Court, shall, file a statement in reply.

(6) The statement filed under sub-rules (4) and (5) shall, together with the application for a reference, constitute the pleadings in the case, and the rules in O. 7 and 8 of the Code shall apply mutatis mutandis to such statements."

The rules clearly indicate that the application made by the claimant before the Land Acquisition Officer is treated as the plaint and the claimant is also at liberty to present a statement setting out his claim in full. The investigation by the Reference Court is to be made with reference to the claim made before the Reference Court. The statement filed under sub-rules 4 and 5, by virtue of sub-rule 6, together with the application for reference constitute the pleadings in the case and the rules in O. 7 and O. 8 of the Code of Civil Procedure should apply to such statements. In the instant case, it is seen from the judgment itself that the appellants/claimants had filed a statement "in which they contend that at the time of acquisition their property ought to have fetched at least at the rate of Rs. 35,000/- per cent." It may be noted that before the Land Acquisition Officer, the claim of market value was only at the rate of Rs. 20,000/- per cent. Thus, the Reference Court is bound to make an investigation with reference to the claim made by the claimants before the Reference Court, viz., at the rate of Rs. 35,000/- per cent.

7. We are also persuaded to hold so, by a Full Bench decision of the Karnataka High Court in Special Land Acquisition Officer (NHW) Dharwad v. Kallangouda (FB), , AIR 1994 Karnataka 112, wherein it has been held as follows:

"S. 25 as amended does not either by implication or explicitly limit the compensation amount that could be claimed by a Claimant. The Section, on the other hand, makes it plain that under no circumstance the award made by the Court should be less than the amount awarded by the Collector. By implication it means that the Court can award higher compensation than what was awarded by the LAO. Significantly the Section remains untrammelled by any conditions enjoining the making of a claim higher than what was sought for before the LAO. In other words the Section does not forge a connecting link between the claim made before the LAO and a claim made before the Court. The result is the claimant will be free to claim any amount before the Court as compensation and this liberty to claim any amount in Court remains totally uninhibited by any claim made before the LAO even if there was a great disparity between the two claims i.e. the one made before the LAO and the one made before the Court. The Section itself being silent about any barriers that either prohibit making of a higher claim before Court vis-a-vis the claim made before the LAO, there is no need at all for the claimant to offer any explanation whatsoever as to why he made a lower claim before the LAO while hiking it up before the Court. The law does not enjoin offering of any such explanation. The lands being taken away under the Act without the consent and much against the wish of the land owner, the humanising factor in the law has thought it fit to remove all hurdles and humps in the way of the claimant getting a compensation which is deemed just

and adequate. While the law of course expects him to make good the claim made before Court by producing ample evidence, it has nonetheless thought fit to remove all barriers that may prevent or preclude him from claiming the market value of the land. This is more so as the reference made to a Court under S. 18 of the Act is an original proceeding requiring the Court to determine the market value of the property on the basis of the material produced before it treating the claimant as the dominus litis occupying the position of the plaintiff."

Thus, under the amended Land Acquisition Act of 1984, a claimant is entitled to claim land value before the Reference Court, in excess of what he claimed before the Land Acquisition Officer and the Court is bound to independently investigate the claim on the basis of the materials available on record. However, in view of the position under the Civil Rules of Practice, Kerala discussed above, unless a higher claim is made before the Reference Court, the claimant will not be entitled to value in excess of the value claimed before the Land Acquisition Officer, since the Reference Court is to investigate on the claim before it."

In view of the above there cannot be any dispute that the claimant can amend his claim under Section 18. However the said proposition shall not be applicable with regard to proceedings under Section 28A since the purpose and object of Section 28A is different and the proceeding under Section 28A(1) is not one where the award of the court under Section 18 has to be given a go-by and the Collector or the reference court is to embark on fresh enquiry for finding out the market value of the land on its estimation. We have already noted above, the reasons based on which the claimant cannot be permitted to rely on any other award except the award which is the basis of the claim.

27. We however are of the view that in a proceeding under Section 28A(3) claimant is not debarred from producing any evidence including other awards of the court to buttress his claim that he is entitled for enhancement of compensation to the extent which has been awarded by the court in the award which is basis of the claim. Thus other evidences including subsequent or earlier awards of the court may be relevant only for the limited purpose to examine as to whether the appellant is entitled for grant of the claim as raised in Section 28A(1) or not.

28. One more judgment which has been relied by the learned counsel for the appellant is SLP No. 34444 of 2013 (Koyyodan Cheriya Kannan & Ors. v. District Collector, Kannur and Ors.) decided on 02.12.2014. The Apex Court in the above said case has set aside the order of the Land Acquisition Officer where application under Section 28A(1) was rejected since it was not in Form 22A. The Apex Court also held that the judgment of the High Court dismissing the said Writ Petition on account of laches was not correct exercise of the discretion. The Apex Court has set aside the order of the High Court and Special Land Acquisition Officer and directed for determination of compensation under Section 28A(3). However, the question which has arisen before us were not before the Apex Court in the said case and hence is not applicable.

29. In view of the foregoing discussion, We answer the reference as follows:

(i) The view expressed by the Division Bench of this Court in *State of Kerala v. Kumaran Nair* (, 2001 [1] KLT 539) lays down the correct law which is approved. Divergent views expressed in *Raghava Poduval v. Special Tahsildar* (2003 [3] KLT 261) and *Purushan v. State of Kerala* (, 2010 [1] KLT 623) have to be disapproved. The said decisions are overruled.

(ii) The Court deciding reference under Section 28A(3) cannot award compensation exceeding the amount awarded by the court on the basis of which application for re-determination under Section 28A(1) has been made.

(iii) Judgment of the Division Bench of this Court in *State of Kerala v. Kumaran Nair* (, 2001 [1] 539) requires no reconsideration on the basis of the Apex Court judgment in *Ambya Kalya Mhatre v. State of Maharashtra* (, [2011] 9 SCC 325).

30. In view of what has been said above, we do not find any infirmity in the judgment of the Sub Court, Payyannur in L.A.R. No. 50 of 2004 dated 31.07.2006.

This Appeal is dismissed.

The parties shall bear their own costs.

A.K. Jayasankaran Nambiar, J.—31. I have gone through the judgment of the learned Chief Justice and for the reasons that are set out in detail hereinafter I find myself unable to agree with the views expressed therein.

32. This case has been posted before us pursuant to a reference order dated 13.08.2015, wherein, the reference court was of the view that on account of conflicting views on the point, the following issue needed to be answered by a Full bench:

Whether a claimant in a reference under Section 28A(3) of the Land Acquisition Act, 1894, can lead evidence to claim land value more than what is reflected in the judgment relied upon in the application preferred by him under Section 28A(1) of the Act.

33. The brief facts relevant for a decision on the issue are that: An extent of 0.0400 hectare of land comprised in Sy. No. 277/8 and some other plots of land belonging to the appellant and her mother were acquired for the establishment of "Naval Academy". The Land Acquisition Officer gave an award under Section 11 of the Land Acquisition Act, 1894 [hereinafter referred to as "the Act"] at the rate of Rs. 1,15,200/- per hectare [Rs. 466.40 per cent]. The appellant did not seek a reference under Section 18 of the Act. However, certain other land owners whose lands were acquired by the same Notification had made application for reference under Section 18 of the Act. Land Acquisition reference No. 124 of 1987 was decided on 26.07.1989 by the Sub Court, Payyannur enhancing land value to Rs. 800/- per cent. Appellant and her mother filed application under Section 28A(1) on 13.03.1990 for re-determination of the compensation. The

Land Acquisition Officer allowed the application under Section 28A(1) enhancing compensation payable to the appellant also at the rate of Rs. 800/- per cent. Appellant made an application for making reference under Section 28A(3) of the Act on which L.A.R. No. 50 of 2004 was registered before the Sub Court, Payyannur. In the above reference, appellant filed certified copies of judgment dated 06.02.1988 in L.A.R. Nos. 157 and 158 of 1987, judgment dated 26.07.1989 in L.A.R. No. 124 of 1989 and judgment dated 03.09.1997 in L.A.R. No. 120 of 1987. Oral evidence was also adduced by the appellant before the Sub Court, Payyannur. Before the Sub Court, the appellant and her mother claimed that in L.A.R. Nos. 157 and 158 of 1987, an amount of Rs. 2,000/- per cent has been granted as enhanced compensation and in L.A.R. No. 120 of 1987, an amount of Rs. 1,500/- per cent was granted, hence the appellant is also entitled for the same enhancement. It was pleaded that the land of the appellant is similar to that of L.A.R. No. 120 of 1987. The Sub Court, Payyannur decided L.A.R. No. 50 of 2004 by judgment dated 31.07.2006. It was held that application of the appellant having been filed on the basis of the judgment in L.A.R. No. 124 of 1989 where compensation was granted at the rate of Rs. 800/- per cent, she is not entitled to claim any other amount on the basis of L.A.R. Nos. 120, 157 and 158 of 1987. The Sub Court, however directed for payment of interest at the rate of 9% for one year from the date of taking possession and thereafter at the rate of 15% till the date of realisation. Aggrieved by the order passed by the Sub Court, Payyannur, appellant filed this appeal before this Court.

34. As per the provisions of the Land Acquisition Act, 1894, as it stood prior to its amendment in 1984, once there was a determination of compensation in respect of lands acquired under Section 11 of the Act, a claimant could prefer an application for enhancement of compensation only in terms of Section 18 thereof. In a reference under Section 18 of the Act, the reference court was to re-determine the compensation payable to the claimant by applying the principles laid down in Sub-sections 23, 24 and 25 of the Act. A person aggrieved by an award of the reference court could carry the matter in appeal before the High Court and then the Supreme Court.

35. In 1984, Section 28A was inserted into the 1894 Act. The statement of objects and reasons for the amendment Act, which inter alia indicated the purpose and object behind inserting Section 28A, reads as follows:

"Considering that the right of reference to the Civil Court under S. 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised by the comparatively affluent landowners and that this causes considerable 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 S. 18 of the Act."

Section 28A, as inserted by the Amendment Act, reads as follows:

"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 S. 11, the persons interested in all the other land covered by the same notification under S. 4, sub-s.(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 S. 18, by written application to the Collector within three months from the date of the award of the Court requires 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-sec. (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and made an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-s.(2) may, by written application to the Collector, requires that the matter be referred by the Collector for the determination of the Court and the provisions of S. 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under S. 18."

36. It will thus be seen that, post the 1984 amendment, a person whose land had been acquired pursuant to a notification under the Act could, notwithstanding that he had not preferred a claim under Section 18 of the Act, act on the basis of an award passed in relation to another person whose land was also acquired under the same notification, to claim a higher compensation than what was granted for his land under Section 11, by relying on the award passed in favour of the said other person. It is relevant to note, at this juncture, that the words used in Section 28A are "re-determination of the amount of compensation on the basis of the amount of compensation awarded by the Court". In my view, the plain words of the above statutory provision, when read against the backdrop of the objects and reasons that prompted its introduction, provide an opportunity to a person whose land has been acquired, and who did not prefer a claim for enhanced compensation under Section 18 of the Act, to rely on the fact of award of higher compensation to another person, in respect of land similar to that acquired from him and covered by the same notification, to prefer a fresh claim for enhancement of compensation by pointing to the award passed in respect of the said other person. The provision does not state that the applicant must be granted the same compensation as granted to the other person but only that the amount of compensation payable to him be re-determined on the basis of the

amount of compensation awarded by the court to the other person. Here, the word "compensation" refers to the total amount found payable to a person in respect of the lands acquired from him whereas "the basis of the amount of compensation" refers to the unit land value fixed in respect of the land acquired from the said other person. The "re-determination" that is carried out necessitates an enquiry into the extent of land that is acquired from the applicant, the similarity of the said land with that acquired from the other person and then an application of the land value fixed in respect of the other person to the extent of land found to have been acquired from the applicant. Thus, while the "basis of the amount of compensation" will be the same in respect of the applicant and the said other person, the actual amount of compensation in respect of the lands acquired from them may be different based on the extent of lands acquired from each. This aspect of Section 28A was dealt with by a Division Bench of this Court in *Indira Devi v. Special Tahasildar* - [1991 (1) KLT 33] - where at paragraphs 62 and 63, this Court observed as follows:

62. We may also briefly advert to the basis on which the re-determination of the compensation is to be made under the section. There is no automatic re-determination of the amount of compensation on the mere passing of an award by the Court, and the application being made under S. 28A. The Collector has to apply his mind to the facts of the case and adjudicate whether the said award is liable to be applied to the case of the applicant. There is also no total setting aside of the original award or re-opening of the matters covered by it, merely on the basis of the award of the court. On the other hand, what the provision contemplates is a re-determination of the amount of compensation, and compensation alone, on the basis of the award of the Court. In other words, what the section requires is to treat the award as an additional item of relevant evidence and to have the compensation re-determined accordingly, taking that also into account.

63. The relevancy and applicability of the court's award will arise in a variety of circumstances like the similarity of the lands or their being neighbouring ones, adoption of same basis for fixing the compensation earlier, adoption of a different multiplier by court for capitalisation and others. The true basis of the re-determination will be to ask: What would have been the compensation the Collector would have awarded had the award of the Court been available at the time he made his original award? That will be the re-determined compensation payable to the applicant. It does not mean that compensation should be fixed at the same rate as awarded by the court in every case. To put it differently, the Collector has to relate the award of the Court back to the date on which he made his original award and ascertain what amount he would have awarded as compensation if this piece of evidence had also been available to him at that time".

37. The issue that then arises is whether, once a process of re-determination is set in motion through the filing of an application, and by relying upon a specific

award passed in respect of another person, the applicant can rely upon other awards subsequently passed under Section 18 of the Act, in respect of similar lands covered by the same notification? Looking once again to the purport and object behind the introduction of Section 28A in the Land Acquisition Act, I am of the view that the reference court cannot shut its eyes to an award passed under Section 18 in respect of like land where a higher unit land value has been fixed for such land covered by the same notification. The legislative intention being that, all lands of similar nature, and covered by the same notification, should be treated equally for the purpose of award of compensation, the reference court would be abdicating its statutory responsibilities if it does not consider the award passed under Section 18 in respect of similar lands while re-determining the compensation payable to the applicant before it. Further, in considering the said subsequent award, and awarding compensation on the basis of the amount of compensation awarded therein, the reference court cannot be seen as granting the applicant a relief that he has not claimed because the claim of the applicant in such cases is only for a "re-determination" of the compensation payable to him on the basis of the amount of compensation in the award relied upon in the application. Essentially, the claim preferred by the applicant under Section 28A must be seen as a claim for "at least" the land value awarded in the relied upon award and not as one for "nothing more than" the land value awarded in the relied upon award. The subsequent award under Section 18 can indeed be relied upon as a piece of admissible evidence in the re-determination process, more so when a consideration of such evidence would be in furtherance of the very object that was sought to be achieved through the introduction of the statutory provision. The only limiting feature in the re-determination process would be that the applicant couldn't be granted a unit land value that is more than what is arrived at in respect of similar lands in an award passed under Section 18 of the Act. In other words, the reference court cannot, through a process of re-determination under Section 28A(3), grant an applicant a unit land value that is higher than what was awarded under Section 18 in respect of similar land covered by the same notification.

38. It would be relevant, in this context, to take note of the decision of the Supreme Court in *Amba Kalya Mhatre v. State of Maharashtra* - [(2011) 9 SCC 325] where, while considering the issue of whether, in a proceeding under Section 18 of the Act, a claimant can amend his reference by enhancing his original claim made before the Land Acquisition Officer, the Court observed as follows in paragraphs 21, 22, 27 and 28:

21. Section 18 does not require a land owner objecting to the amount of compensation, to make a claim for any specific amount as compensation, nor does it require him to state whether the increase in compensation is sought only in regard to the land, or land and building, or land, building and trees. A land owner can seek reference to civil court, with reference to any one or more of the four types of objections permissible under S. 18 of the Act, with reference to the award. His objection can either be in regard to the measurement of the acquired

land or in regard to the compensation offered by the Collector or in regard to persons to whom it is shown as payable or the apportionment of compensation among several claimants. Once the land owner states that he has objection to the amount of compensation, and seeks reference to the civil court, the entire issue of compensation is open before the Reference Court. Once the claimant satisfies the Reference Court that the compensation awarded by the Land Acquisition Officer is inadequate, the Reference Court proceeds to determine the compensation, with reference to the principles in S. 23 of the Act.

22. As the Act does not require the person aggrieved/landowner to specify the amount of compensation sought, when objecting to the amount of compensation and seeking a reference, mentioning of the amount of compensation sought is optional. As there is no obligation to specify the amount in the application for reference, it can be specified in the claim statement filed before the Reference Court. The period of limitation in S. 18 of the Act has nothing to do with specifying the amount of compensation claimed. It therefore follows that if the reference is in regard to objection to the amount of compensation, the Reference Court can permit any application for amendment of the claim relating to compensation.

27. A land owner, particularly a rural agriculturist, when he loses the land may not know the exact value of his land as on the date of the notification under S. 4(1) of the Act. When he seeks reference he may be dissatisfied with the quantum of compensation but may not really know the actual market value. Many a time there may not be comparable sales, and even the courts face difficulty in assessing the compensation. There is no reason why a land owner who has lost his land, should not get the real market value of the land and should be restricted by technicalities to some provisional amount he had indicated while seeking the reference. As noticed above, the Act does not require him to specify the quantum and all that he is required to say is that he is not satisfied with the compensation awarded and specify generally the grounds of objection to the award. Under the scheme of the Act, it is for the court to determine the market value.

28. The compensation depends upon the market value established by evidence and does not depend upon what the land owner thinks is the value of his land. If he has an exaggerated notion of the value of the land, he is not going to get such amount, but is going to get the actual market value. Similarly if the land owner is under an erroneous low opinion about the market value of his land and out of ignorance claims lesser amount, that cannot be held against him to award an amount which is lesser than the market value. When the Act does not require the land owner to specify the amount of compensation, but he voluntarily mentions some amounts, and subsequently, if the market value is found to be more than what was claimed, the land owner should get the actual market value. We fail to see when the land owner should get an amount less than the market value, as compensation. Consequently, it follows that if the land owner seeks

amendment of his claim, he should be permitted to amend the claim as and when he comes to know about the true market value. When the Act is silent in regard to these matters, to impose any condition to the detriment of an innocent and ignorance land owners who has lost his land, would be wholly unjust.

The Collector making the offer of compensation on behalf of the state is expected to be fair and reasonable. He is required to offer compensation based on the market value. Unfortunately Collectors invariably offer an amount far less than the real market value, by erring on the safer side, thereby driving the land owner first to seek a reference and prove the market value before the reference court and then approach the High Court and many a time this Court, if he does not get adequate compensation. In most land acquisitions, the land acquired is the only source of his livelihood of the land owner. If the compensation as offered by the Collector is very low, he cannot buy alternative land. By the time he fights and gets the full market value, most of the amount would have been spent in litigation and living expenses and the price of lands would have appreciated erroneously, making it impossible to buy an alternative land. As a result, the land owner seldom has a chance of acquiring a similar land or an equal are of similar land. It would be added insult to injury, if the land owner should be tied down to a lesser value claimed by him in the reference application, even though he was not required by law to mention the amount of compensation when seeking reference. The Act contemplates the land owner getting the market value as compensation and no technicalities should come in the way of the land owner getting such market value as compensation."

39. Though rendered in the context of Section 18 of the Act, I am of the view that the principles stated in the said decision, to the extent applicable, would apply even in respect of an application preferred under Section 28A of the Act. The Act being a beneficent legislation, the law is well settled 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. In the case of rights under the Land Acquisition Act, 1894, one cannot also overlook the fact that compulsory acquisition of property of a private individual is a serious matter having great repercussions on his constitutional right under Article 300A and therefore every effort must be taken to ensure that the person who has been deprived of his land is granted compensation that is not less than what other owners of similar land have received for acquisition of their land.

40. It might also be relevant to note that a Division Bench of this Court in *State of Kerala v. Kumaran Nair* - [2001 (1) KLT 539] took the view that a claimant under Section 28A cannot get any amount over and above what has been claimed in the application for re-determination even if there had been a subsequent award by the court granting land value in excess of the award which forms the basis for the application under Section 28A(1). The reasoning of the Bench is found in paragraphs 10, 11, 12 and 13 of the said decision which read

as follows:

10. Learned counsel for the claimant has referred to a decision of the Supreme Court in *C. Hargovinddas v. Spl. Land Acquisition Officer, Poona* (, AIR 1988 SC 1652) and contended that, "even post notification instances can be taken into account (1) if they are very proximate (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects". It is contended that as the court on reference under S. 28(A)(3) has the same power of the reference court under S. 18, necessarily, the subsequent events which has proximity to the issue involved shall also be taken note of for the purpose of awarding compensation. Therefore, the amount awarded in L.A.R. 161/85 and L.A.A. 289/88 though made subsequent to the application under S. 28(A)(1) and produced later before the Collector, can be taken as the basis while re-determining the land value. It need not therefore always be solely based on the judgment referred to 28(A)(1) application.

11. We are unable to appreciate this contention on behalf of the counsel for the claimant. Of course, the court in appropriate situation can take into account the post notification instances as well. All those are for the purpose of awarding the land value claimed. Here, the land value claimed as seen from 28(A)(1) application was the same rate awarded in L.A.R. 22/83. Of course, S. 28(A)(2) contemplates an inquiry by the Collector concerned. This is for the purpose of ascertaining whether the land covered by the award of the court and the land acquired from the claimant are situated in a similar circumstance to apply the award of the court for the purpose of re-determining the land value in respect of the land acquired from the claimant. In such an inquiry, the parties including the claimant are free to adduce any evidence. The award in L.A.R. No. 161/85 and the judgment in L.A.A. No. 289/88 subsequently produced by the claimant can only be thus the evidence to substantiate the claim in the application dated 3.7.1987. The claim in the application, as mentioned above, is to pay in equal rate as awarded in L.A.R. No. 22/83. Therefore, by adducing evidence on the strength of award in L.A.R. No. 161/85 and the judgment in L.A.A. No. 289/88 wherein the court has awarded more land value than as awarded in L.A.R. No. 22/83, the claimant can only substantiate his case in his application dated 3.7.1987 based on the award in L.A.R. No. 22/83. Those documents will not enable the claimant to claim the land value awarded in those subsequent awards. As held by the Supreme Court in *Union of India & Anr. v. Pradeep Kumari & Ors.* (, AIR 1995 SC 2259), there cannot have two applications. There was only one application by the claimant. That was on 3.7.1987. That was based on the award in L.A.R. No. 22/83. At that time, the award in L.A.R. No. 161/85 had not been passed. Therefore, the basis for the claim in application dated 3.7.87 was the award in L.A.R. No. 22/83 and what was claimed was payment in same rate. That application has never been amended at any point of time. In such circumstances, one cannot get any amount over and above what has been claimed in the application for re-determination, even if there had been a

subsequent award by the court, granting land value in excess of the award which forms basis for S. 28(A)(1) application.

12. It is further contended by the counsel, again relying on the decision in *Union of India v. Pradeep Kumari* (, AIR 1995 SC 2259) that always the first award alone need not be taken as the basis. The award relied on in an application under S. 28(A) need not always be the first award passed by the Court in a case relating to a particular acquisition covered by a notification. It can even be a subsequent award wherein the respective claimants had adduced real evidence and obtained real compensation eligible for the land. In such circumstances, it is possible for any person who has entitlement to make a claim for re-determination under S. 28(A)(1) to point out that subsequent award for enhanced compensation. Such claim cannot be defeated by the Land Acquisition Officer contending that the basis for re-determination shall only be the first award and not subsequent award. That is really possible. But, when what is relied on in the claim for re-determination is the first award, any further enhanced amount granted in a subsequent award will not enable him to claim the amount awarded in that subsequent award. In such circumstances, it will only be a piece of evidence to substantiate his claim mentioned in the application, especially when no amendment of the application was sought for based on any subsequent award. The awards newly produced were dated 3.1.89 and 8.4.92. It was beyond the period of limitation provided for. Therefore, it was impossible to claim the amount awarded in award in L.A.R. No. 161/85 as well as the judgment in L.A.A. No. 289/88. Thus, on any count, the amount claimed in the application for re-determination shall be the final limit beyond which the Collector cannot award any additional value. The Collector has awarded the land value equal to the rate awarded in L.A.R. No. 22/83, as claimed by the appellant. In such circumstances, the reference court could not have awarded any more amount than what had been claimed by the claimant in his application dated 3.7.87.

13. The Court also cannot grant any amount in excess of the claim in the re-determination application. Even in a reference case under S. 18, whatever be the evidence on record before the Court regarding the land value, the reference court can answer the reference only to the extent of the claim made by the claimant. The reference court even if it had been proved that the land in question had a particular value at the relevant point of time, cannot award it when it is in excess of the claim made by the claimant before the Land Acquisition Officer as the value entitled to him. As seen from sub-s. (3) of S. 28(A), the procedure to be followed in reference under S. 28(A)(3) is the same provided for reference under S. 18. In such circumstances, the reference court under S. 28(A)(3) cannot award more amount than what had been claimed in the application for re-determination. The Court does not have any power to grant more amount than what had been claimed in the application under S. 28(A)(1). Therefore, the additional land value of Rs. 750/- awarded by the court below as per the impugned judgment has to be set aside."

41. It will be seen, therefore, that it was the view of the court that even in a reference under Section 18, whatever be the evidence on record before the court regarding land value, the reference court can answer the reference only to the extent of the claim made by the claimant, that led it to take a similar view in respect of a claim under Section 28A, by parity of reasoning. As already noted above, this view has since been rejected by the Supreme Court in Amba Kalya Mhatre's case [supra] where the court held that a claimant under Section 18 can amend his reference by enhancing his original claim made before the Land Acquisition Officer. In the light of the decision in Amba Kalya Mhatre's case [supra] the decision in Kumaran Nair's case [supra] can no longer be considered as good law.

In the light of the foregoing discussion, I am of the view that once an application under Section 28A is preferred, within the time limit specified therein, then in the process of re-determination that is to follow, the applicant's claim cannot be limited to the unit land value awarded in the relied upon award, but must be seen as extending to the basis of the amount of compensation i.e. unit land value granted in any other award under Section 18 passed in relation to similar land covered by the same notification. I, would therefore, set aside the judgment dated 31.07.2006 of the Sub Court, Payyannur, in L.A.R. No. 50 of 2004 and allow this appeal. No costs.

By the Court

In view of the opinion of the majority of Judges, the reference is answered in the following manner.

(i) The view expressed by the Division Bench of this Court in State of Kerala v. Kumaran Nair (, 2001 [1] KLT 539) lays down the correct law which is approved. Divergent views expressed in Raghava Poduval v. Special Tahsildar (2003 [3] KLT 261) and Purushan v. State of Kerala (, 2010 [1] KLT 623) have to be disapproved. The said decisions are overruled.

(ii) The Court deciding reference under Section 28A(3) cannot award compensation exceeding the amount awarded by the court on the basis of which application for re-determination under Section 28A(1) has been made.

(iii) Judgment of the Division Bench of this Court in State of Kerala v. Kumaran Nair (, 2001 [1] 539) requires no reconsideration on the basis of the Apex Court judgment in Ambya Kalya Mhatre v. State of Maharashtra (, [2011] 9 SCC 325).

In the result, the Land Acquisition Appeal is dismissed.

The parties shall bear their own costs.