

**(2002) 04 BOM CK 0060**

**In the Bombay High Court**

**Case No :** Writ Petition No's. 3027, 3037 and 3465 of 2001

Mohd. Rafique

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

**Date of Decision :** 16-04-2002

**Acts Referred:**

Land Acquisition Act, 1894 — Section 18, 18(2), 18(3), 19

**Citation :** (2002) 4 ALLMR 496 : (2002) 5 BomCR 260 : (2002) 2 BOMLR 808 :  
(2002) 4 MhLj 754 : (2002) 4 MhLj 745

**Hon'ble Judges :** P.S. Brahme, J;J.N. Patel, J

**Bench :** Division Bench

**Advocate :** Nemade, for the Appellant; Wandile, A.G.P., for the Respondent

## Judgement

J.N. Patel, J.—Rule returnable forthwith. Heard the learned counsel for the parties.

2. These three writ petitions can be disposed of by common judgment as the only question involved in these three petitions is whether the Collector has any jurisdiction to adjudicate upon an application made by a person interested who has not accepted the Award, so as to determine the correctness of the compensation awarded by the Land Acquisition Officer under the Land Acquisition Act 1894 (hereinafter referred to as the said Act). The land of the petitioners in these petitions came to be acquired for rehabilitation of the project affected persons from the village Kumbharkinh, Taluka Darwaha, District Yavatmal, the particulars of which are as under:

Sr. No. Name S.No. Area Situated at

1. Mohd. Rafique s/o Abdul Rajjak 159/3 4.5 H Darwaha.
2. Mohd. Suffi s/o Abdul Rajjak 159/1 1.5 H Darwaha.
3. Mohd. Suffi s/o Abdul Rajjak & 3 others. 159(2) 4.5 H Darwaha.
3. The proceedings were initiated vide Land Acquisition Case No. 35/47/97-98 of

Darwha and the respondent No. 2 passed the Award u/s 11 of the said Act, which was communicated to the petitioners by notice u/s 12(2) on 14-12-1999. The petitioners received the amount of compensation under protest and being dissatisfied by the said Award, made a written application to the Collector as required u/s 18 of the said Act, requesting that the matter be referred back by the Collector for the determination of the Court for the correct valuation and to grant enhanced compensation.

4. The respondent Collector, rather than making a reference as provided under Sections 18 and 19 of the said Act, informed the petitioners by his letter dated 30-4-2001 that as per the circular of Revenue and Forest Department of Maharashtra State No. LQN/18/2000/Case No. 103/A-2 dated 26-12-2000, the Collector has taken a decision that the Award passed on 18-1-2000 is appropriate and, therefore, the application filed by the petitioners u/s 18 of the said Act, is dismissed, and accordingly the same was communicated to the petitioners by the respondent No. 2. This is how the petitioners were constrained to approach this Court by invoking its extraordinary jurisdiction and seeking quashing of the said order with a direction that the respondents should make reference of their applications to the competent Civil Court of law for its appropriate decision on merits.

5. In their affidavits in reply, the respondent have placed reliance on the said notification dated 26-12-2000 and justified his decision in deciding the merits of the application made by the petitioners for making reference to the Civil Court and that he has rightly directed to reject the claim as per the said circular dated 26-12-2000. In the second para of the very affidavit the Collector has gone to say that due to the decision of the High Court, the Government has withdrawn the said circular and, therefore, necessary directions will be give to the respondent No. 2 to submit the reference to the competent Civil Court.

6. Part III of the Land Acquisition Act 1894 provides for reference to Court and procedure thereon. Sections 18 and 19 read as under :

"18. Reference to Court. -- (1) 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 he 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 u/s 12, Sub-section (2); or within six months from the date of the Collector's award, whichever period shall first expire.

(3) Any order made by the Collector on an application under such section shall be subject to revision by the High Court as if the Collector were the Court subordinate to the High Court within the meaning of Section 115 of the CPC 1908."

19. Collector's statement to the Court. -- (1) In making the reference, the Collector shall state, for the information of the Court, in writing under his hand -

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reasons to think interested in such land;

(c) the amount awarded for damages and paid or tendered under Sections 5 and 17, or either of them, and the amount of compensation awarded u/s 11;

(cc) the amount paid or deposited under Sub-section 3(A) of Section 17; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement, shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by the parties interested, respectively."

Section 18 of the Act vests in any person who is interested in the land which has been acquired under the said Act and who has not accepted the award whether his objection be to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested by a written application to the Collector, which the Collector required to refer for the determination of the Court and if the application is in order, the Collector is bound to make reference of it to the Court, subject to the proviso to Sub-section (2) of Section 18 which prescribes a period of limitation within which time, such an application can be made to the Collector. Therefore, the landholder is conferred with the statutory right to have determined the compensation by the reference to the Court in case he is not satisfied in the matter of passing of the Award of compensation for the various reasons as contemplated u/s 18 of the said Act. Section 19 of the said Act enjoined upon the Collector while making a reference to state for the information of the Court the particulars contemplated under Clauses (a) to (d) of Section 19(1). The scheme envisaged in Part III of the Land Acquisition Act as regards the reference to the Court and procedure therefore, does not vest in the Collector with any power to determine the objection raised by the landholders as regards the Award passed as that is the function which is left to the Civil Court. The

Collector merely has to scrutinize the written applications made by the landholders and can only take a decision as to whether it has been made within the stipulated time as provided in the proviso to Section 18(2) of the said Act, and in case the Collector rejects an application for making reference to the Court, it is then the aggrieved landholder can, under Sub-section (3) of Section 18 of the said Act, prefer a revision to the High Court. The State Government misconstrued the provisions of Sub-section (3) of Section 18 of the said Act and vested in the Collector power to determine reference made by the landholders on merits, which is not at all contemplated u/s 18 of the said Act. The only manner in which the finality of the award of the Land Acquisition Officer can be called in question is by resort to provisions of Section 18 of the said Act. The question of exercising the jurisdiction by the Court to redetermine the amount of compensation arises solely on the basis of the reference made to it by the Collector u/s 19 of the said Act and, therefore, the impugned order will have to be quashed and set aside.

7. In the affidavit in reply filed by the Collector, it has been categorically stated that necessary directions will be given to the respondent No. 2 to submit the petitioner's reference to the competent Civil Court, but this is only when the petitioners approached this Court and sought to challenge the impugned order which was communicated by the respondent No. 2 on the direction of the respondent No. 1, putting the petitioners not only to inconvenience, but also to suffer litigation expenses. We, therefore, quash and set aside the impugned orders with cost which we quantify as Rs. 1,000/- in each case to be paid by the respondents within a period of four weeks from the date of passing of this order, to the land owners.

Rule is made absolute in the above terms.