

**(2017) 12 BOM CK 0017**  
**In the Bombay High Court**  
**Case No : 5754 of 2016**

The Executive Engineer

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

**Date of Decision :** 18-12-2017

**Acts Referred:**

<a href=5681>Land Acquisition Act, 1894</a>, <a href=5681-28A>Section 28A</a>  
- Re-determination of the amount of compensation on the basis of the award of the Court

**Citation :** (2017) 12 BOM CK 0017

**Hon'ble Judges :** Ravindra V. Ghuge

**Bench :** SINGLE BENCH

**Advocate :** B.R.Surwase, D.S.JapeAnsingkar, A.B.Kale, R.K.Shingnapure, Brijesh P. Patil, Keshav Natke

## **Judgement**

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The Petitioner in all these petitions is the same Acquiring Body, which has acquired various portions of lands individually owned and possessed by the respective original Claimants/ Respondent No.4 in all these matters, for the construction of the Kasura Large Minor Irrigation Project at village Shrishti, Taluka Partur, District Jalna.
3. Since an identical issue is involved and since all the litigating sides are identical, notwithstanding the distinct and different portions of the lands owned by the original Claimants, all these petitions are heard together by the consent of the parties.
4. The identical prayers at clauses 16B and 16C put forth by the Petitioner Acquiring Body read as under: "B) This Hon'ble Court be pleased to issue writ of certiorari or order or direction like the nature that the award under Section 28A passed by the Deputy Collector, Land Acquisition Krushna Khore, Jalna in File No.CR/84/98/28A dated 30.06.2013 in favour of the respondents/ claimants of

Rs.57,05,484/be quashed and set aside.

C) Pending hearing and final disposal of this writ petition, the award passed by Deputy Collector, Land Acquisition Krushna Khore, Jalna in File No.CR/84/98/ 28A dated 30.06.2013 in favour of the respondents/ claimants of Rs.57,05,484/be stayed."

5. Under the orders of this Court dated 02.11.2017, the original records from the office of the Land Acquisition Officer were directed to be produced.

6. I have considered the strenuous submissions of the learned Advocates for the litigating sides. The Petitioner has relied upon the following judgments : (a) Anjebhau s/o Anna and others vs. State of Maharashtra and another, 1994 (2) Mh.L.J. 1414.

(b) State of Andhra Pradesh and another vs. Marri Venkaiah and others, 2003 (4) ALL MR 347 (SC).

(c) Popat Bahiru Goverdhane and others vs. Special Land Acquisition Officer and another, (2013) 10 SCC 765 .

(d) Parasmal s/o Kunjilal Jain vs. The State of Maharashtra and another, 2015 (7) ALL MR 320.

7. The learned counsel for the original Claimants has relied upon the following judgments : (a) Babaji alias Baban Keru Phapale vs. State of Maharashtra and another, 2008 (4) Mh.L.J. 101.

(b) Dasu Manikrao Shingate vs. State of Maharashtra and another, 2001 (4) Mh.L.J. 942.

8. Notwithstanding the fact that the learned Advocates for the respective sides have strenuously canvassed their submissions on 14.12.2017 and 15.12.2017, the issue raised in these petitions for my determination, turns on the aspect of limitation which is an inbuilt provision under Section 28A of the Land Acquisition Act, 1894. In that regard, the admitted dates and sequence of events would be decisive and for which purpose, I do not have to reproduce the lengthy submissions of the learned Advocates in this judgment.

9. Section 28A of the Land Acquisition Act, 1894 reads as under: "28A. Redetermination of the amount of compensation on the basis of the award of the Court:

(1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under section 11, the persons interested in all the other land covered by the same notification under section 4, subsection (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require

that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the Court: Provided that in computing the period of three months within which an application to the Collector shall be made under this subsection, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under subsection (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants. (3) Any person who has not accepted the award under subsection (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18."

10. The following dates and events are germane to the cause of action : (a) The judgment dated 14.10.2011 was delivered by the learned Third Joint Civil Judge, Senior Division at Jalna in the LAR No.113/2010 (old No.175/2005) of two claimants whose various portions of lands were acquired from the same area, under Section 18 of the Land Acquisition Act, 1894. (b) Only one out of the 42 claimants moved an application on 15.11.2011 for seeking the certified copy of the judgment dated 14.10.2011. (c) He received the certified copy, admittedly, on 05.12.2011. (d) Nine out of the 42 claimants, inclusive of the claimant who made the application for certified copy, filed their applications under Section 28A on 13.01.2012 before the Collector, Jalna for redetermination of the compensation. (e) There is no dispute that these nine claimants had moved their applications on 13.01.2012 and within the limitation of 03 months from 15.10.2011 till 14.01.2012. (f) Since 20 days were consumed for receiving the certified copy, the limitation period from 15.10.2011 till 13.01.2012, minus the 20 days period, rendered these nine applications within limitation as they were filed on the 65th day. (g) The 32 claimants in these writ petitions are said to have filed their individual applications on 31.01.2012 which were not accompanied by either the certified copy of the judgment dated 14.10.2011 or by a photostat copy of the said judgment. (h) It is conceded that none of these 32 claimants moved an application for seeking certified copy of the judgment dated 14.10.2011, under the proviso to Section 28A.

11. I have myself perused the record and proceedings in these matters in the open court. Though the Petitioner/ Acquiring Body now states that it is presuming that the applications filed by these 32 claimants are dated 31.01.2012, I find that the following factors cannot be ignored by the Court and I cannot turn a blind eye to certain aspects which are as under : (a) On all these 32 applications, there is a stamp affixed which is normally used by the Inward Section of the Land Acquisition Office.

(b) None of the inward stamps on these 32 applications bear the date of receipt

or the signature of the clerk from the Inward Section or the Inward Number. As such, it is quite suspicious as to whether, these applications were actually filed on 31.01.2012 or they may have been filed even thereafter because one register placed before me indicates a remark of May, 2012 by the Land Acquisition Office, raising suspicion about the date of filing.

(c) The Sub Divisional Officer, Partur and the Sub Divisional Officer, Jalna, who were present in the Court on 15.12.2017, have instructed the learned AGP to make a statement before me that the inward register from 21.08.2011 is missing and the register in which the filing of the 32 applications should have been recorded as entries in the said register, is not traceable.

(d) The Written Statements by the Petitioner/ Acquiring Body were filed in these 32 matters on 08.02.2013 which indicate that the notices may have been issued after May, 2012 considering the remark recorded as above.

(e) Several documents have been cited before me wherein, the competent authority of the Aurangabad Irrigation Circle had raised queries as to when were these 32 applications filed and whether, they were filed within limitation.

(f) One communication dated 04.04.2014 by the Godavari Marathwada Irrigation Development Corporation addressed to the Superintending Engineer, Aurangabad Irrigation Circle, mentions that only 10 applications were received on 13.01.2012, 22 applications were received on 31.01.2012 and rest of the nine applications do not indicate any date of filing.

(g) Ten applicants, who had filed their applications within limitation, were paid their entire redetermined compensation.

12. I find it quite conspicuous as to how could the Inward Registers go missing or whether, such Inward Registers have been held back from the Court. I would be failing in my duty if I do not direct the District Collector, Jalna to initiate an enquiry into this aspect since this is not a minor issue keeping in mind that if there is any suspicious act or conduct on the part of any person in charge of receiving the applications, it would lead to payment of enhanced compensation under Section 28A to some of the claimants, who are parties to such a mischief.

13. While dealing with the acts, which amount to deviation from the rule of law, in the matter of Chairman and Managing Director, Food Corporation of India and others vs. Jagdish Balaram Bahira and others, (2017) 8 SCC 670, the Honourable Supreme Court has concluded in paragraph 68 as under:" 68. .... The fault lines of our system, be it in education, health or law, are that its lethargy and indolence furnish incentives for the few who choose to break the rules to gain an unfair advantage. In such a situation, the court as a vital institution of democratic governance must be firm in sending out a principled message that there is no incentive other than for behaviour compliant with rules and deviance will meet severe reprimands of the law." I am, therefore, ordering the District Collector, Jalna to institute an enquiry into this matter so as to unearth the fraud,

if any and initiate appropriate disciplinary action against such employees of the State or the limb of the State, if they have participated in the said fraud.

14. Notwithstanding the above, since the Petitioner has proceeded on the premise that the Applicants before this Court had filed their applications on 31.01.2012, I am considering the said date for the purposes of deciding these petitions keeping in view that the Applicants also contend that the applications were filed on 31.01.2012 under Section 28A.

15. I have considered the judgments cited by the litigating sides. In Babaji (supra), this Court has concluded that the limitation prescribed under Section 28A is of three months and not 90 days. In the instant case, as the judgment was delivered under Section 18 on 14.10.2011, the three months would be reckoned from 15.10.2011. It is further held that the period spent in applying and obtaining the copy of the award has to be excluded from the limitation period. The nine applications (or ten applications as per the letter dated 21.04.2014 referred to above), were filed on the 70th day, which is not an issue before me.

16. Insofar as the present 32 applicants are concerned, if the period of obtaining certified copy of 20 days is excluded, their applications will be deemed to have been filed on the 88th day. This calculation is permissible if they had applied for the certified copy as like the earlier applicants, who had applied on 15.11.2011 and had received the certified copy on 05.12.2011. These 20 days, therefore, could be excluded.

17. However, none of these 32 applicants claim to have applied for the certified copy. Reliance is placed upon the judgment of this Court in Dasu Manikrao Shingate (supra) wherein, this Court has concluded in paragraph 7 as under:" 7. .... But, merely because the petitioner has not annexed a copy of the court award along with the application under Section 28A, that by itself cannot be a justification for rejection of his application. Besides, if such an award is filed required for perusal by the court or necessary for enquiry under subsection (2) of Section 28, then certainly the Collector could call upon the applicants to produce the copy thereof. .... The provisions of law contained in Section 28A no where makes it compulsory for the applicants to file any such copy of court award along with the application itself."

18. If the above ratio is to be made applicable to this case as per the contention of the Applicants, then they cannot seek the advantage of the period consumed by one successful applicant (none amongst these 32) who had himself applied for the award on 15.11.2011 and had received the copy on 05.12.2011. If these applicants desire to seek advantage of the exclusion of the periods spent for acquiring the certified copy, under the proviso to Section 28A, then they have to specifically demonstrate whether, they had applied for certified copy and if yes, when did they receive the certified copy. It is an admitted position in these petitions that none of these 32 applicants had moved any application for

obtaining the certified copy. If this be so, then the limitation period for these 32 applicants would commence from 15.10.2011 and the three months period would expire on 14.01.2012. As it is admitted by the applicants that they have applied under Section 28A on 31.01.2012, their applications were clearly barred by limitation.

19. The Honourable Apex Court, in the matter of the State of Andhra Pradesh (*supra*), has laid down the law that redetermination of the value of land for compensation under Section 28A would start from the date of passing of the award and not from the date of knowledge of passing of the award. It requires no debate that the proviso to Section 28A reproduced above, enables the exclusion of the days consumed from the date of filing of the application for certified copy till obtaining a copy thereof.

20. The conclusions of the Honourable Apex Court in paragraphs 7, 8, 9, 10, 11, 12 and 13 read as under: "7. Plain language of the aforesaid Section would only mean that the period of limitation is three months from the date of the Award of the Court. It is also provided that in computing the period of three months the day on which the award was pronounced and the time requisite for obtaining the copy of the award is to be excluded. Therefore, the aforesaid provision crystallizes that application under Section 28A is to be filed within three month from the date of the award by the Court by only excluding the time requisite for obtaining copy. Hence, it is difficult to infer further exclusion of time on the ground of acquisition of knowledge by the applicant.

8. Further, the judgment rendered by the High Court is contrary to the decision rendered by this Court in *Tota Ram v. State of U.P. and Ors* [1997] 6 SCC 280, wherein this Court held that limitation begins to run from the date of the award and as per the proviso the time taken for obtaining the certified copy of the award and the decree is to be excluded in computing the period of three months. The Court held that in view of the express language the question of knowledge does not arise and, therefore, the plea of the petitioner that limitation of three months begins to start from the date of the knowledge is clearly unsustainable and cannot be accepted. Same view is expressed by this Court in *Union of India and Ors. v. Mangatu Ram and Ors* [1997] 6 SCC 59 and *Jose Antonio Cruz Dos R. Rodriguese and Anr. v. Land Acquisition Collector and Anr.*, [1996] 6 SCC 746.

9. However, the learned counsel for the respondents submitted that Section 28A is a beneficial provision and that applicants being non parties to the reference proceedings initiated by some other land owners, they would not have any knowledge of the date of the award or its contents, therefore the interpretation given by the High Court to the provisions of Section 28A of the Act does not call for any interference, and in any case, the question involved be referred to a larger bench.

10. In our view, with regard to first contention that Section 28A is a beneficial provision, there cannot be any dispute. However, the advantage of the benefit,

which is conferred, is required to be taken within the stipulated time. A land owner may be poor or illiterate and because of that he might not have filed reference application but that would not mean that he could be negligent in not finding out whether other landowners have filed such applications. Whosoever wants to take advantage of the beneficial legislation has to be vigilant and has to take appropriate action within prescribed time. He must at least be vigilant in making efforts to find out whether other landowner has filed any reference application and if so what is the result. If that is not done then law cannot help him. Admittedly, in the present case, award enhancing the compensation was pronounced by the civil court by order dated 29th November 1984 and applications were filed on 27th November, 1989 i.e. after lapse of 5 years. In such case, as the applicant was having an opportunity of knowing the award and/or he was required to make efforts of knowing about such proceedings, he must be presumed to have had knowledge of the award. If the contention of the learned counsel for the respondents is accepted, it will create total vagueness and uncertainty as landowners can claim that they have come to know of the award after long lapse of time and, therefore, the application even though beyond time may be entertained. If such applications are entertained, there may not be any finality to the award and payment of compensation. Result may be that such proceedings may adversely affect where land is acquired by the Government for a project, which is to be carried out by local bodies.

11. The learned counsel for the respondents relied upon the decision of this Court in *Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and Anr.*, [1962] 1 SCR 676, which is approved by three Judge Bench in *State of Punjab v. Mst. Qaisar Jehan Begum and Anr.*, [1964] 1 SCR 971. In that case the Court interpreted the proviso to Section 18 of the Act and held that clause (a) of proviso was not applicable in the said case because person making application was not present or was not represented before the Collector at the time when he made his award. The Court also held that notice from the Collector under Section 12(2) was also not issued, therefore, that part of clause (b) of the proviso would not be applicable. The Court, therefore, referred to second part of proviso which provide that such application can be made within six months from the date of the Collector's award. In the context of the scheme of Section 18 of the Act, the Court held that the award by the Land Acquisition Officer is an offer of market price by the State for purchase of the property. Hence, for the said offer, knowledge actual or constructive of the party affected by the award was an essential requirement of fairplay and natural justice. Therefore, second part of the proviso must mean the date when either the award was communicated to the party or was known by him either actually or constructively.

12. Aforesaid reasoning would not be applicable for interpretation of Section 28A because there is no question of issuing notice to such applicant as he is not party to the reference proceeding before the Court. The award passed by the Court cannot be termed as an offer for market price for purchase of the land. There is no duty cast upon the Court to issue notice to the landowners who have not

initiated proceedings for enhancement of compensation by filing reference applications; may be that their lands are acquired by a common notification issued under Section 4 of the Act. As against this, under Section 18 it is the duty of the Collector to issue notice either under Section 12(2) of the Act at the time of passing of the award or in any case the date to be pronounced before passing of the award and if this is not done then the period prescribed for filing application under Section 18 is six months from the date of the Collector's award.

13. In this view of the matter, we do not think that the judgment rendered by this Court in Tota Ram (supra) requires reconsideration."

21. The Honourable Apex Court once again dealt with a similar issue in Popat Bahiru (supra) and held that after the exclusion of the period for obtaining certified copy of 12 days, the delay was of only two days, and as the Land Acquisition Collector is not a court, but a quasi judicial authority, the applications filed by the applicants were barred by limitation.

22. In the matter of Parasmal Kunjilal Jain (supra), the learned Division Bench of this Court concluded that Section 5 of the Limitation Act was not applicable to the proceedings under Section 28A as the Collector/ Land Acquisition Officer was not a court. It was thus, concluded that the delay, if any, even after the exclusion of the period for obtaining the certified copy, was not condonable.

23. I have perused the impugned orders passed by the Deputy Collector, Land Acquisition dated 30.06.2013. I find that the concerned Authority has not dealt with the above issues and has failed to consider the above aspects. The money from the State exchequer, which is the taxpayers hard earned money, cannot be distributed as a bounty. As such, the impugned orders in these petitions are perverse, erroneous and against the tenets of law. The failure on the part of the said officer to consider the aspect of delay, is against the settled principles of law.

24. In the light of the above, all these Writ Petitions are allowed in terms of prayer clause (B) reproduced above. Rule is made absolute accordingly. No costs.

25. The District Collector, Jalna, shall submit his investigation report, as directed in paragraphs 12 and 13 above, to the learned Registrar (Judicial) of this Court on or before 30.06.2018. The said report shall then be placed before the Court on or before 31.07.2018.