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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 25 OF 2025

1. Mr. Paulo Agnelo Gustavo Barreto,
Engineer, aged about 61 years,
Having PAN Card No. XXXXXXXXXXXX,
Aadhaar Card No. XXXXXXXXXXXXXXXX
And Tel No. XXXXXXXXXXXX,
Indian National.

2. Mrs. Michelle Colaco e Barreto,
Aged about 47 years,
Having PAN Card No. XXXXXXXXXXXX
And Aadhaar Card No. XXXXXXXXXXXXXXXX
and Tel No. XXXXXXXXXXXX,
Indian National, Both R/o H. No. 12,
Ashwin Residency, Bacbhatt,
Rai, Salcete, Goa.

.... Appellants.

Versus.

1. The Special Land Acquisition Officer (S),
SIP, Water Resources Department,
Gogol, Margao, Goa.

2. The Executive Engineer,
Works Division XIV,
Irrigation Department,
Gogol, Margao, Goa.

....Respondents.

**Mr. Cleofato Almeida Coutinho, Senior Advocate
with Mr. Ivan Santimano and Mr. Makarand Govind
Dessai, Advocates for the Appellants.**

**Mr. Ajay Borkar, Additional Government Advocate
for Respondent Nos. 1 and 2.**

CORAM : VALMIKI MENEZES, J.

DATED : 20th DECEMBER, 2024.

JUDGMENT:

FACTS

1. This First Appeal impugns Judgment and Order dated 27.11.2023 passed by the District Court, South Goa at Margao in Land Acquisition Case No.2/2020. By the impugned Judgment and Order, the District Court has rejected a reference under Section 28A(3) of the Land Acquisition Act, 1894, on the ground that the same is not maintainable.

2. By a Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as “**the Act**”), dated 17.12.1992, the Respondents declared that lands belonging to the Appellants, bearing survey nos. 164/5, 164/6, 170/1, 170/2, 170/3, 170/4, 170/5, 173/2, 175/2 and 175/4 of Navelim Village of Salcete Taluka were to be acquired by the Respondents for construction of Branch Canal No. IV of District D3 of Selaulim Irrigation Project at Navelim. The Land Acquisition Officer (hereinafter referred to as the “**LAO**”), by an Award dated 18.01.1996, determined the market value of the lands surveyed under the survey numbers mentioned hereinabove at Rs.7/- per square metre for each of the holdings. This award was accepted under protest.

3. A reference was made to the District Court under Section 18 of the Act for enhancement of compensation, in

respect of properties belonging to the Appellants bearing survey nos. 164/5, 164/6, 170/3, 170/4, 170/5, 175/2 and 175/4. This reference was decided by the District Court on 31.07.2007, enhancing the compensation to Rs.68/- per square metre for the aforementioned seven holdings. Appeals against these Awards by the Land Acquisition Officer came to be dismissed by this Court on 01.09.2016.

4. Since a dispute arose on apportionment, with regard to three other contiguous holdings of the Applicant under survey nos. 170/1, 170/2 and 173/2, a reference under Section 30 of the Act was made specifically in respect of these holdings to apportion the compensation awarded by the LAO. These three properties, which are subject matter of this Appeal, were obviously not subject matter of the aforesaid reference under Section 18 of the Act.

5. The reference under Section 30, registered as Land Acquisition Case Nos. 122/99, 193/99 and 194/99, was decided by the District Court, Margao, on 21.06.2007 in favour of the Appellants, holding the Appellants as the only interested parties entitled to the compensation.

6. Since the District Court enhanced compensation to Rs.68/- on the remaining seven holdings of the Appellants, by an Award under Section 18 dated 31.07.2007, the Appellants filed an application before the LAO on 11.09.2007 under Section 28A of the Act for redetermination of compensation in respect of Survey Nos. 170/1, 170/2 and 173/2. The application

remained pending for ten years without any reference being made by the LAO under Section 28A of the Act.

The Judgment of the High Court dated 01.09.2016 confirming the Awards of the District Court under Section 18 qua Survey Nos. 164/5, 164/6, 170/3, 170/4, 170/5, 175/2 and 175/4 was produced by the Appellants before the LAO in the pending Application under Section 28A. The LAO, however, dismissed the said application by communication dated 14.07.2017 citing that a reference was already made under Section 18 before the District Court for properties acquired under the same notification, which having been adjudicated upon, barred the Appellants from moving an Application under Section 28A of the Act.

7. This decision of the LAO was challenged by the Appellants in WP No.167/2018 before this Court. By its Judgment dated 09.07.2018, this Court restored the application under Section 28A(1) in respect of survey holdings 170/1, 170/2 and 173/2 to the file of the Special Land Acquisition Officer (hereinafter referred to as the “SLAO”) for deciding the matter afresh.

8. By an order dated 14.11.2018, the said application for redetermination of the compensation, claiming an enhanced amount based on the subsequent Award of contiguous lands by the District Court, was rejected by the SLAO after conducting an inquiry. The SLAO/Collector refused to enhance the compensation by re-determining it under Section 28A. Since the Appellants did not accept the Award refusing

to enhance the compensation after redetermination, the Appellant moved the SLAO with an application under Section 28A(3) dated 20.12.2018 seeking reference to the District Court for adjudication/determination of the market value. By an order of reference dated 21.01.2020, more than a year after the application for reference was made under Section 28A(3), the Collector referred the claim to the District Court.

9. The District Court, by Judgment dated 27.11.2023, held that the said reference was not maintainable as the LAO had not passed any award under Section 28A(2), which is a prerequisite for reference under Section 28A(3) to be maintainable. The District Court rejects the reference without determining the true market value of the land under reference. The Appellants have challenged this Judgment of the District Court in the present Petition.

SUBMISSIONS

10. Shri C. A. Coutinho, learned Senior Advocate for the Petitioners, advanced the following submissions:

(i) That the District Court erred in rejecting the application on the ground that Section 28A can be specifically invoked by claimants failing to seek reference under Section 18 of the Act, without appreciating the fact that enhancement under Section 18 of the Act was not sought in respect of Survey Nos. 170/1, 130/2 and 173/2 of Navelim Village.

- (ii) That the LAO's rejection of the Appellant's claim under Section 28A(2) by order dated 14.11.2018 ought to have been construed as an Award under the said section by the District Judge for the purpose of admitting the reference under Section 28A(3) before it.
- (iii) That the District Judge should have held that the survey holdings in respect of which enhancement has been granted and the survey holdings which were subject to the apportionment proceedings are of similar nature in furtherance of which, the District Judge should have directed the LAO to grant enhancement at the same rate to the three survey holdings in question.
- (iv) That, the fact that this matter was referred by the LAO to the District Court under Section 28A(3) shall bar the LAO from contending against the maintainability of the reference.

11. Learned Senior Advocate relied on the following Judgments in support of his submissions:

- (i) ***Union of India v. Hansoli Devi***, (2002) AIR SC 3240.
- (ii) ***New Okhla Industrial Development Authority v. Harnand Singh (deceased) through LRs & Ors.***, 2024 SCC OnLine SC 1691.
- (iii) ***Rajaram Gajanan Gangal and Ors. v. Special Land Acquisition Officer and Anr.***, 2001 Bom.L.R. 495.

- (iv) ***Ananda Baburao Pawagi and Ors. v. State of Maharashtra and Ors.***, 2014 (2) AIR Bom R 534.
- (v) ***Babua Ram v. State of U.P.***, (1994) Supp 4 SCR, Page no. 180-182.

12. Shri Ajay Borkar, learned Government Advocate made the following submissions on behalf of the Respondents:

- (i) That the Appellants are ineligible for relief under Section 28A given that they had already sought a reference under Section 18 for the grant of enhanced compensation in respect of seven properties, excluding three survey holdings that were subject to apportionment proceedings under Section 30 of the Act. The Learned Counsel contended that having exercised their right under Section 18, the Appellants are barred from invoking Section 28A citing that the reference under Section 30 of the Act is pending in respect of the three survey holdings bearing Survey Nos. 170/1, 130/2 and 173/2 of the Navelim Village and that such an attempt is contrary to the Statute's purpose and would amount to improper application of the law.
- (ii) That Section 28A of the Act envisages a remedy for those who missed the opportunity to seek enhanced compensation by a reference under Section 18.
- (iii) That, the letter of the Section clearly indicates that once a party applies for a reference under Section 18, they are excluded from the purview of Section 28A.

- (iv)** That the Statement of Objects and Reasons for introducing Section 28A expressly states that the provision seeks to prevent inequality in payment of compensation for the same or similar quality of land to different interested parties by providing an opportunity to all aggrieved parties whose land is covered under the same notification to seek redetermination of compensation, once any one of them has obtained orders for payment of higher compensation from the reference court under Section 18 of the Act.
- (v)** That the appropriate course of action for the Appellant would have been to simultaneously pursue remedies under both, Section 18 and Section 30 of the Act; this approach would, in the opinion of the Learned Government Advocate, address the issues of compensation as well as that of apportionment of the three properties.
- (vi)** The Learned Government Advocate submitted that a pending reference under Section 30 would not bar the Appellant from seeking a reference under Section 18 of the Act; that a reference under 28-A would be untenable given that the Appellant has deliberately avoided a reference under Section 18.

13. Shri Ajay Borkar placed reliance on the following Judgments:

- (i) ***Mohandevi v. Special Land Acquisition Officer***, 2002 (3) MhLJ.
- (ii) ***Sri Prasada Rao Mikkileni and Ors. v. State of AP and Ors.***, (2000) 9 SCC 371.
- (iii) ***Union of India and Anr. v. Pradeep Kumari and Ors.***, (1995) 2 SCC 736.
- (iv) ***Scheduled Caste Cooperative Land Owning Society Ltd. Bhatinda v. Union of India and Ors.***, (1991) 1 SCC 174.
- (v) ***Madan v. State of Maharashtra***, (2014) 2 SCC 720.

14. The points that arise for determination in this Appeal are:

- a.** Having obtained an Award from the Court in reference under Section 18 of the Act in relation to seven survey holdings, whether the Appellant was precluded from seeking re-determination of the compensation under Section 28A of the Act, for three other holdings under the same Notification, after the title dispute with respect to these holdings was determined under Section 30 of the Act.
- b.** Whether the Order dated 14.11.2018 passed by the SLAO/Collector rejecting the application under Section 28A(1) of the Appellant for re-determination amounts to an Award refusing any enhanced compensation under Section 28A(2) of the Act.

RELEVANT PROVISIONS OF THE LAND ACQUISITION ACT AND CASE LAW.

15. The Collector, under Section 11 of the Act, is required to conduct an inquiry into the objections raised by interested parties and make an Award, containing the compensation, which in his opinion should be allowed to the land, and apportion such compensation, amongst the interested parties. The Award is therefore in the nature of a determination of what the Collector thinks is the fair market value and in the form of an offer of such compensation; being only an offer made by the LAO to the Claimant, it is not a judgment, nor does it partake of a piece of evidence. It is always open for determination by the District Court, on a reference under Section 18, if a party who is interested has not accepted the Award and has filed an application for determination of the market value of the land by the Court.

16. Subject to the limitation provided under Sub-Section 2 of Section 18, once a reference is made to the District Court, the Collector is required to send along with the reference certain information as stated in Section 19 of the Act, after which the Court proceeds to determine the compensation, on the basis of matters to be considered in Section 23. The determination of the market value by the District Court, in answer to the reference, is to culminate in an Award after considering the evidence led by the parties. Where disputes arise on contested claims to compensation awarded under Section 11, no separate application is contemplated by the parties to seek a reference to determine their dispute, and it is the Collector who is required to make a reference of the dispute (not for enhancement of compensation) to the District

Court under Section 30 of the Act. Such disputes would be determined by the District Court by an Award, deciding which of the contesting parties would be entitled to the compensation offered under the Award. The party adjudged as the interested party entitled to the compensation, would obviously be entitled to re-determination of the compensation under Section 28A based upon any enhancement granted under an Award of the District Court in relation to other lands covered by the same notification.

17. A party who was unable to seek a reference against an Award under Section 18 may seek re-determination of the compensation awarded to him under Section 28A, based upon such award that may have determined the true market value and compensation in the District Court of other lands covered under the same acquisition. This re-determination is sought under Section 28A of the Act which is quoted below:

“28-A. 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 Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-section (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 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-section (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 sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18.”

18. It would be of advantage, to consider the Statements of Objects and Reasons of the Amendment to the Act, when introducing Section 28A, on 24.09.1984. Portions of the Objects of the Amendment Act 68 of 1984 relevant to introduction of Section 28A therein are reproduced below:

“With the enormous expansion of the State's role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialisation, building of institutions, etc., has become far more numerous than ever before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual whose land is acquired, thereby often depriving him of his means of livelihood. Again,

acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community. The pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them.

2. It is necessary, therefore, to restructure the legislative framework for acquisition of land so that it is more adequately informed by this objective of serving the interests of the community in harmony with the rights of the individual. Keeping the above objects in view and considering the recommendations of the Law Commission, the Land Acquisition Review Committee as well as the State Governments, institutions and individuals, proposals for amendment to the Land Acquisition Act, 1894, were formulated and a Bill for this purpose was introduced in the Lok Sabha on the 30th April, 1982. The same has not been passed by either House of Parliament. Since the introduction of the Bill, various other proposals for amendment of the Act have been received and they have also been considered in consultation with State Governments and other agencies. It is now proposed to include all these proposals in a fresh Bill after withdrawing the pending Bill. The main proposals for amendment are as follows:-

- (i) ...*
- (ii) ...*
- (iii) ...*

(iv) ...

(v) ...

(vi) ...

(vii) ...

(viii) ...

(ix) *Considering that the right of reference to the civil court under Section 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised only 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 Section 18 of the Act.*

(x)”

19. The introduction of the Amendment through Section 28A of the Act was in the nature of a beneficial legislation to provide an interested person whose land was subject to compulsory acquisition, who had not exercised his right at the stage of passing of the Award under Section 11, by seeking a reference, to have a second chance to seek a reference, to re-determine the market value of his land under Section 28A. The introduction of Section 28A would require the Collector/LAO to conduct an inquiry and re-determine, based upon an Award

by the District Court, determining market value of a land under the same Notification. The Collector, under Section 28A, after considering and comparing the nature of the land with the land under an Award of the District Court, may reject granting an enhanced compensation or may reject the application for re-determination on any other count. In both cases, in my opinion, it would amount to undergoing the process of re-determination, though it might ultimately reject the application on a technical ground.

20. On a somewhat similar basis, a Larger Bench of the Supreme Court, in ***Hansoli Devi*** (supra) was considering a reference of the following question:

“1. In this bunch of cases, the provisions of Section 28-A of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), crop up for consideration. Two learned Judges of this Court in course of hearing of Civil Appeal No. 9477 of 1994 (Union of India & Anr. Vs. Smt. Hansali Devi & Ors.), formulated two questions to be answered by a larger Bench. The said questions are:

"1. (a) Whether dismissal of an application seeking reference under Section 18 on the ground of delay amounts to "not filing an application" within the meaning of Section 28-A of the Land Acquisition Act, 1894? (b) Whether a person whose application under Section 18 of the Land Acquisition Act, 1894 is dismissed on the ground of delay or any other technical ground is entitled to maintain

an application under Section 28-A of the Land Acquisition Act?

2.WHETHER a person who has received the compensation without protest pursuant to the award of the Land Acquisition Collector and has not filed an application seeking reference under Section 18 is "a person aggrieved" within the meaning of Section 28-A?"

....

10. ... Bearing in mind the aforesaid principle, let us now examine the provisions of Section 28-A of the Act, to answer the questions referred to us by the Bench of two learned Judges. It is no doubt true that the object of Section 28-A of the Act was to confer a right of making a reference, who might have not made a reference earlier -under Section 18 and, therefore, ordinarily when a person makes a reference under Section 18 but that was dismissed on the ground of delay, he would not get the right of Section 28-A of the Land Acquisition Act when some other person makes a reference and the reference is answered. But the Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression "had not made application to the Collector under Section 18" in Section 28-A of the Act. The aforesaid expression would mean that if the land-owner has made an application for reference under Section 18 and that reference is entertained and answered. In other words, it may not be permissible for a land owner to make a

reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a higher amount. In fact in Pradeep Kumaris case the three learned Judges, while enumerating the conditions to be satisfied, where after an application under Section 28-A can be moved, had categorically stated "the person moving the application did not make an application to the Collector under Section 18" The expression "did not make an application", as observed by this Court, would mean, did not make an effective application which had been entertained by making the reference and the reference was answered. When an application under Section 18 Is no entertained on the ground of limitation, the same not fructifying into any reference, then That would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application under Section 28 A cannot be denied. We, accordingly answer question No. 1(a) by holding that the dismissal of an application seeking reference under Section 18 on the ground of delay would tantamount to not filing an application within the meaning of Section 28-A of the Land Acquisition Act, 1894,

11. SO far as question I(b) is concerned, this is really the same question, as in question 1(a) and, therefore, we reiterate that when an application of a land owner under Section 18 is dismissed on the ground of delay then the said land owner is entitled to make an

application. Under Section 28-A) if other conditions prescribed therein are fulfilled.

12. COMING to the second question for reference the receipt of compensation with or without protest pursuant to the award of the Land Acquisition Collector is of no consequence for the purpose of making a fresh application under Section 28-A. If a person has not filed an application under Section 18 of the Act to make a reference, then irrespective of the fact whether he has received the compensation awarded by the Collector with or without protest, he would be a person aggrieved within the meaning of Section 28-A and would be entitled to make an application when some other land owners application for reference is answered by the reference Court. It is apparent on the plain language of the provisions of Section 28-A of the Act. Otherwise, it would amount to adding one more condition, not contemplated or stipulated by the Legislature itself to deny the benefit of substantial right conferred upon the owner.”

21. In ***Babua Ram*** (supra), the Supreme Court considered whether a person who had sought a reference under Section 18, and the District Court had passed an Award thereon, could file an application for re-determination of the market value of that very land, under Section 28A based upon another Award under the same acquisition; whilst holding that such person could not be held to be an “interested person” under Section 28A, the following observations were made in its Judgment:

“14. A bare reading of Sub-section (1) of Section 28-A would indicate that wherein an award under this Part, (Part III consists of Section 18 to 28), 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 other lands covered by the same Notification under s.4(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 writing make an application to the Collector within three months from the date of the award of the Court requiring that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the court. The proviso gives a right to exclude the time taken from the day on which the award was pronounced and the time required to obtain a copy of the award in computation of three months within which the application for redetermination has be made in writing to the Collector under sub-s.(1) of Section 28-A. The basis for redetermination is the award of the Court and the compensation awarded therein. Sub-section (2) thereof enjoins the Collector to issue notice to all the persons interested, i.e. the applicant, the State and the beneficiary, if any, to give them reasonable opportunity of being heard in the inquiry conducted thereon and to make the award determining the amount of compensation payable to the applicants under sub-s.(1). Sub-section (3) gives a right to the applicant either to accept the award or

to accept the compensation under protest. In the latter case he has been given a right under sub-s.(3) to make a written application to the Collector to refer the matter for determination under s.18 to the Court. The provisions of Sections 18 to 28, as far as may be, apply to such references. Thus, s.28-A is a complete Code in itself providing substantive right to an interested owner who received compensation under s.18 without protest for higher compensation, and remedy has been provided to make a written application within the prescribed period. The non-obstante clause lifts the rigour of the bar created by s.18(1) and the second proviso to s.31 and makes him eligible to be at par with his neighbour to claim parity for compensation to the land similarly situated as the land covered by the court award.

.....

36. The next question is whether an interested person who sought and secured reference under s.18 but was either unsuccessful and filed no appeal or had carried in appeal but unsuccessful, would be entitled to redetermination when the compensation was enhanced by the appellate court either under s.54 or on further appeal under Articles 132, 133 and 136 of the Constitution. In Mewa Ram's case, this Court held in paragraph 5 that s.28-A provides for the determination of amount of compensation subject to the conditions laid down therein are fulfilled. For such redetermination, the forum is the Collector and the application has to be made before

him within 30 days from the date of the award under s.26 and the right is restricted to persons who had applied for reference under s.18 of the Act. If these conditions are satisfied, the petitioner could have availed of the remedy provided under s.28-A of the Act. In *Scheduled Caste Co-operative Land Owning Society, Batinda v. Union of India and Ors.*, [1991] 1 SCC 174, this Court held that "it is obvious on a plain reading of sub-s.(1) s.28-A that it applies to only to those claimants who had failed to seek reference under s.18 of the Act. The redetermination has to be done by the Collector on the basis of the compensation awarded by the Court. In the reference under s.18 of the Act, an application in that behalf has to be made to the Collector within 30 days from the date of the award. Thus only those claimants who had failed to apply under s.18 are conferred with the right to apply to the Collector for redetermination and not all those like the petitioners who had not only sought a reference under s.18 but had also filed an appeal in the High Court". This is also clear from a reading of the scheme of the Act in Part II and III and in particular the self-contained Code in s.28-A. It is already held that an interested person who received compensation without protest becomes an aggrieved person when another person interested in the land covered by the same Notification under s.4(1) gets higher compensation for his land from the Civil Court. By operation of the non-obstante clause within s.28A(1), the embargo created by s.18(1) and the second proviso to sub-s. (2)

of s.31 is lifted and he has been given the right and remedy under s.28-A. But a person who received compensation under protest and sought and secured a reference but was unsuccessful or partially successful, does come within the embargo created by s.18(1) and the second proviso to sub-s. (2) of s.31 and the non-obstante clause in s.28A(1) does not relieve him from it. Legislature made a discriminatory policy between the poor and inarticulate as one class of person to whom the benefit of s.28-A was to be extended and comparatively affluent who had taken advantage of the reference under s.18 and the latter as a class to which the benefit of s.28-A was not extended. Otherwise, the phraseology of the language of the non-obstante clause would have been differently worded, ie. "notwithstanding that they had not made in application to the Collector under s.18 or an appeal under s.54 or under Articles 132, 133, 136 or unsuccessful etc.".... Sub-section (1) of s.28-A, therefore, by the non obstante clause made available the right and remedy to the poor and inarticulate persons interested in other lands covered by the same Notification under 5.4(1) and made no application under s.18 to avail the right and remedy under s.28-(1). But those who sought and secured reference under s.18 be the poor or others, and failed before the civil court or in appeal under s.54 or under Article 136 etc., the right and remedy provided by s.28A(1) is not available to him/them. In other words, the operation of s.28-A is confined to the award made in Part III only and not to the judgment or decree of the High Court or the

appellate court under s.54 or of this court under Article 132, 133 or 136 of the Constitution. Therefore, the unsuccessful interested persons who sought and failed in the reference under s.18 or in appeal under s.54 or under Article 136 etc., are not persons aggrieved under sub-s.(1) of s. 28-A, when other similar person had higher compensation by pursuing that remedy. Therefore, he or they, though interested in the land covered by the same Notification under s.4(1), are not entitled to make an application/applications for redetermination under sub-s.(1) s.28-A.”

22. This Court, in ***Rajaram Gangal*** (supra), considered whether, in the absence of a specific application being made by an interested party, for re-determination under Section 28A, after having received a notice under Sub-Section 2 of Section 28A from the Collector, would disentitle such person to re-determination. After considering the object of Section 28A of the Act, it has held as under:

“7. It is needless to mention that section 28-A of the Act is a beneficial legislation and needs to be so construed. From the plain language of sub-section (1) thereof, it would be seen that any person interested in the land in question is entitled to make an application under section 28-A of the Act for redetermination of the market value of the land in terms of the Award passed in respect of the neighbouring land under the same Notification issued under section 4 of the Act. The provision does not postulate that all the

interested persons should make an application for the same relief. We cannot, therefore, permit an interpretation to read this requirement into the said provision, for it would be doing violence to the legislative intent. The only restriction placed under the said provision is that the aggrieved person(s), shall make such an application within 3 months from the date of the award of the Court in respect of the neighbouring land under the same Notification on the basis of which redetermination of the market value of the land in question is sought under the said provisions. The view that we propose to take is also fortified from the language of sub-section (2) which clearly indicates that the Collector on receipt of the application made under sub-section (1) is obliged to conduct an enquiry after giving notice to all the persons interested in the land in question. The purpose of giving notice to all the interested persons with regard to the land in question is obvious, inasmuch as, all the interested persons would get reasonable opportunity of being heard and can persuade the Collector to make an Award in their favour determining the amount of compensation in terms of Award passed in respect of the neighbouring land. In other words, what appears to us is that, one of the interested person can move an application under section 28-A of the Act so as to ignite the process of redetermination of the amount of compensation on the basis of the Award passed in respect of some other land under the same Notification. This provision, obviously takes colour from the spirit of

Article 14 of the Constitution of India, for to provide equal market value in respect of all the lands under the same Notification issued under section 4 of the Act. Understood thus, the only possible view that can be taken in the context of this provision is that, one of the interested person can initiate the proceedings for redetermination of the amount of compensation under the said provisions; and if such an application is moved, it is obligatory on the Collector to give notice to all the interested persons and provide them reasonable opportunity of being heard before making an Award determining the amount of compensation payable in respect of the land in question. It would be preposterous to hold that an interested person, although entitled for a notice under sub-section (2) of the Act, before redetermination is done by the Collector, albeit at the instance of one or more interested persons, but such person who appears before the Collector in response to the notice received under sub-section (2) of the Act would be denuded of his right of being treated equally with other interested persons who only happen to be the applicants and responsible for initiating the proceedings. Such an interpretation cannot be countenanced at all, for even sub-section (3) would clearly throw light on the plain language of sub-section (3) of the Act, it would appear that any person interested in the land is entitled to carry the matter by way of reference. If the legislature wanted to restrict the benefit under the said provision only to the person who had made application

under sub-section (1), in that case, surely the legislature would not have employed the expression “any person” in sub-section (3) but would have restricted to “aggrieved applicant”. In our view, as the said provision obligates the Collector to give notice to all the interested persons before redetermination of the compensation; and once a person appears before the Collector pursuant to such notice, surely such a person cannot be deprived of the benefit of redetermination of the amount. Moreover, the redetermination of the amount is done in respect of market value of the land in terms of the award passed in respect of the neighbouring land falling under the same Notification under section 4, but not with regard to the share of the person who makes the application under the said provisions. Once redetermination is made, it is irrelevant as to at whose instance the same has been done, but the respondents/authorities are under an obligation to give benefit of the said redetermination to all the interested persons irrespective of whether they had preferred any application or not. Only this approach would fulfil the letter and spirit of section 28-A of the Act. On this interpretation, the only possible and permissible view is that, all persons who are interested in the land in question would be entitled to share the benefit arising on account of the redetermination award on pro-rata basis as per their respective entitlement and none of the interested person whether co-owner or a tenant can be deprived of the benefit merely on the ground that he had not preferred any

application under section 28(1) of the Act. The view which we have taken is consistent with the view taken by the Apex Court as noticed by this Court in the decision dated 21-1-1999 in writ petition No. 255 of 1998 which is extracted in para 4 above.”

23. In ***Pradeep Kumari*** (supra), the Supreme Court considered whether an interested person, who had not sought reference against the Award of the Collector, and who had been awarded an enhanced compensation based on an Award of the District Court, could seek further enhancement under Section 28A of the Act, on a basis of a subsequent Award of the Court granting higher compensation to lands under the same Notification. It was held in paragraph 10 of the Judgment that by restricting the benefit of Section 28A to the first Award that is made by the Court, the benefit of higher amount of compensation on the basis of subsequent awards made by a Court cannot be denied to a party. It held that such a construction cannot be given to Section 28A as it would result in perpetuating the inequality in the payment of compensation which the Legislature wanted to remove by enacting the provision.

CONSIDERATION OF SUBMISSIONS

24. The main contention of the Government of Goa, is that re-determination under Section 28A is not permissible in the facts of this case, since the Appellant did not seek simultaneous reference under Section 30 (for three holdings

in which a title dispute was raised) along with a reference under Section 18 for enhancement of the compensation offered under the Award, it is the argument for the State that the appropriate course of action which would be available for the Appellant would be to pursue a reference, both under Section 18 and Section 30 of the Act with respect to the three holdings in which there was a title dispute, and no recourse could be taken to Section 28A, the Award having been accepted insofar as compensation offered for these three holdings. It is argued that the remedy under Section 28A would be barred insofar as the Appellant is concerned, and merely because a dispute under Section 30 was pending decision on the title, the situation would not aid the Appellant.

25. Section 18 of the Act contemplates an application for reference by an interested party who does not accept the offer made under the Award under Section 11. Once such application is made, subject to the other limitations under Section 18, the Collector is bound to make a reference for such enhancement to the District Court, and has no discretion to refuse reference to the Court. Where there is no title dispute amongst co-sharers and the shares are also not in dispute, the Collector, in his Award would not only determine the market price for that holding but would also apportion the compensation based upon such undisputed title/claim.

This is not the case under Section 30 of the Act, which contemplates a situation where there is a dispute amongst the parties to the right or title to lift the compensation, which

cannot be decided by the Collector. It is only a Civil Court that has the jurisdiction to determine the issue of title amongst claimants. Where a dispute of title arises, the Collector is not empowered to apportion the compensation, as that would amount to determining the title of the rival claimants. In this case, the Collector would have the discretion, on his own motion (even in the absence of a party filing an application), to refer such title dispute for determination to the Court. The Collector may also exercise this discretion by not making a reference, and alternately, by directing the parties to have their right to claim the compensation determined through a civil suit, and based on a party declared to have a right to it.

26. In *Madan vs. State of Maharashtra*, reported in **(2014) 2 SCC 720**, the Supreme Court has considered whether an applicant whose title was decided by the Court in a reference under Section 30, was entitled to claim enhancement of compensation granted under the Award under Section 11, by seeking reference under Section 18 of the Act, after his right/title to the land was determined. In answering this question, what has been held is that the right to compensation under the Award would crystallise after apportionment is made in favour of a Claimant either on a reference under Section 30 or determined in a civil suit. The relevant paragraph of the Judgment is quoted below:

“11. A cursory glance at the provisions of Sections 18 and 30 of the Act. extracted above, may suggest that there is some overlapping between the provisions inasmuch as both

contemplate reference of the issue of apportionment of compensation to the court. But, a closer scrutiny would indicate that the two sections of the Act operate in entirely different circumstances. While Section 18 applies to situations where the apportionment made in the award is objected to by a beneficiary thereunder. Section 30 applies when no apportionment whatsoever is made by the Collector on account of conflicting claims. In such a situation one of the options open to the Collector is to make a reference of the question of apportionment to the court under Section 30 of the Act. The other is to relegate the parties to the remedy of a suit. In either situation, the right to receive compensation under the award would crystallise after apportionment is made in favour of a claimant. It is only thereafter that a reference under Section 18 for enhanced compensation can be legitimately sought by the claimant in whose favour the order of apportionment is passed either by the court in the reference under Section 30 or in the civil suit, as may be.

12. The decision of this Court in G.H. Grant v. State of Bihar would also support the above conclusion. In the aforesaid case, an award was made by the Collector on 25-3-1952. On 5-5-1952, the owner applied under Section 18 for a reference to the court for enhancement of the compensation payable to him. While the matter was so situated, by the Notification dated 22-5-1952 issued under Section 3 of the Bihar Land Reforms Act 30 of 1950, the estate of the owner vested in the

State. The possession of the land was taken over on 21-8-1952 under Section 16 of the Act. On 15-10-1952, a reference under Section 30 was sought on behalf of the State. After noticing the different situations in which the provisions of Sections 18 and 30 of the Act would apply, this Court proceeded to hold the reference sought by the State of Bihar under Section 30 of the Act to be competent in law on the ground that after the award was passed by the Collector the land had vested in the State by virtue of the Notification dated 22-5-1952 under Section 3 of the Bihar Land Reforms Act, 1950. On a logical extension of the principle laid down in G.H. Grant v. State of Bihar the State would have been entitled in law to claim enhanced compensation under Section 18 of the Act once its entitlement to receive such compensation is to be decided in its favour under Section 30. This is what has happened in the present case.”

27. The right to collect the compensation or to refuse acceptance and seek a reference under Section 18 of the Act, in a case where the title is disputed, would arise or be crystallised in the interested party only after such title is determined.

One may approach the same issue from a slightly different angle. If the party whose title was disputed is relegated to a reference under Section 30, for determining the title, and if he simultaneously seeks an enhancement in an application under Section 18, which is referred to the Court, it may well give rise to a multiplicity of proceedings and

conflicting Awards. The party whose reference under Section 18, without having determined his title to the compensation, may obtain an enhancement from the Court and lift the same, and subsequently may be declared by a reference Court under Section 30 not to have any title to the land, and consequently, have no right to lift the compensation. Such a party would obviously have no locus to claim the enhanced compensation awarded to him by the Court in a reference under Section 18. Equally, the Award granting enhancement to such person who is declared in a reference under Section 30 or a title suit to have no title, may be used by a third party whose lands were covered by the same Notification, to seek re-determination of compensation under Section 28A on the basis of such Award. This would lead to multiplicity of proceedings and conflicting Awards.

28. For the reasons stated above, I reject the contentions raised by the Respondent that the Appellant would have sought a reference for enhancement under Section 18, even though the dispute over the title of the land had been referred under Section 30, with respect to holdings under Survey Nos. 170/1, 170/2 and 173/2. I therefore answer point for determination (a) in favour of the Appellants. Their application for re-determination under Section 28A could be filed only after the title in the aforementioned three survey holdings had been determined and their rights crystallised by an Award on the reference under Section 30 of the Act.

29. The next question that arises is whether the Order dated 14.11.2018 passed by the Collector/SLAO rejecting the Appellant's application under Section 28A can be construed to be an Award. The District Court has concluded that there was no Award passed by the Collector, hence a reference under Section 28A read with Section 18 of the Act was not "maintainable".

30. To answer this question, one would have to refer to the background facts which led to the passing of the "Order" dated 14.11.2018 and events subsequent thereto.

The Appellants presented the application under Section 28A for re-determination on 11.09.2007, based on an Award dated 31.07.2007 of the Court where contiguous lands were granted compensation at Rs.68/- per square metre. The application was kept pending for ten years until a Judgment dated 01.09.2016 of this Court in Appeal, confirmed the compensation of the contiguous land to be Rs.68/-. The application came to be dismissed on 14.07.2017, holding that the Appellant was not entitled to compensation since no application under Section 18 for reference to seek enhancement had been filed by him in respect of these three survey holdings, though an application had been filed and reference had been made in respect of seven other holdings. The Order was challenged in a Writ Petition before this Court which set aside the Order on 09.07.2018, directing the Collector/SLAO to decide/re-determine the compensation under Section 28A. In this Court's Judgment, it was observed

that the SLAO had not examined whether the reference pertains to the same properties in respect of which re-determination of the compensation was sought. The SLAO was directed to re-examine the matter and restore the application for re-determination for decision in accordance with law.

31. The SLAO then conducted an inquiry and in the process of exercising jurisdiction in re-determining the compensation, held, by an order of 14.11.2018 that the Appellant was not entitled to compensation since he had not filed any application under Section 18 with respect to these three survey holdings. This, in my opinion, since the matter was specifically sent back for re-determination, would amount to rejecting the Appellants' claim for enhancement, on whatever ground, and effectively holding that he was not entitled to any enhanced compensation.

By an application under Sub-Section 3 of Section 28A dated 20.12.2018, the Appellants sought a reference, to the Court, on the ground that they were entitled to enhancement based on the subsequent Award for contiguous lands.

32. By a letter dated 29.03.2019, the SLAO forwarded the application dated 20.12.2018, filed by the Appellants under Section 28A(3) of the Act, to the Collector for adjudication. In response, the Collector, by communication dated 24.05.2019 informed the SLAO that it is the LAO who is competent to hear applications under Section 28A of the Act. Accordingly, the said Application was returned to the office of the SLAO.

Subsequently, by letter dated 25.07.2019, the SLAO once again forwarded the Application to the Collector. The Collector, vide letter dated 27.09.2019, directed the SLAO to consider and determine the said Application after due examination. It was further stated that the same may be referred to the District Court under intimation to the Collector's office. The application was accordingly returned to the SLAO. The SLAO then made a reference dated 21.01.2020 to the District Court in terms of Sub-Section 3 of Section 28A. In the Order/Letter of Reference to the District Court, the Collector/SLAO has stated that the limitation period to file a reference under Section 28A(3) being six weeks, it was the duty of the Collector to forward the same to the Court within the period of limitation. For that reason, the Collector stated that inadvertently, and due to clerical process of his office since he was holding additional charge only since 08.07.2019, there was delay in submitting the application for re-determination to the Court. It must be noted that the Court Fees submitted by the Appellant for re-determination were forwarded along with the application and reference to the District Court.

33. Looking at all the above circumstances, it is evident that though the Collector rejected the grant of any enhancement by the Order dated 14.11.2018 and there is no formal "Award" prepared, the determination that the Appellant was not entitled to enhanced compensation would amount to an Award. An Award need not have a nomenclature or title declaring it to be an Award but any order or decision, which is

a decision of an administrative nature, under Section 28A(2) of the Act, would partake of being an Award.

34. In *Mohamadsarif Hakimji Chippa & Anr v. State of Gujarat & Anr.*, reported in **1968 SCC OnLine Guj 56**, it was observed that the expression “award” means the ‘decision’ to be arrived at by the Collector on the matters mentioned in Section 11 and the said decision of the Collector under given exceptional circumstances may be contained in more than one document. It was held that as long as one or more documents constitute one compendious decision of the Land Acquisition Officer or the Collector, the mere fact that it is contained in more than one document would not amount to two or more separate awards.

35. In *Narayan Das v. Kasinath Pani & Ors.*, reported in **1967 SCC OnLine Ori 53**, the Land Acquisition Officer passed a judgment on 02.09.1963, rejecting the petitioner’s claim for compensation. The formal award was not drawn up until 12.12.1964, and the petitioner’s name was omitted from that award, which was deemed a clerical mistake that could be rectified by sending the award back for insertion of the name of the petitioner with an endorsement against his name that the compensation payable to him is nil. The Court emphasised that the petitioner’s substantive right stemmed not from the formal drawing of the award but from his participation in the acquisition process and the assertion of his claim.

36. Reference may also be made to a Judgment of a Single Judge of this Court in ***Mohandevi*** (supra), which was a proceeding impugning the correctness of an order passed under Section 18 of the Act making a reference to the District Court. The contention raised by the Petitioner was that the Respondent had a title suit pending and since the title was in question, the Collector had no jurisdiction to make a reference under Section 18 of the Act. Whilst setting aside the order of the Collector and directing the Collector to consider whether the dispute was covered by Section 18 or whether covered under Section 30 of the Act, in para 12 of the Judgment, the question of maintainability of the reference under Section 18 was kept open, and the Land Acquisition Officer was directed to make a reference in terms of Section 30 of the Act in addition to the order of reference already made under Section 18 of the Act. This Court directed the Reference Court to decide both references within a timeframe. There was no decision however on whether, in the circumstances of a case, as in the present one, a reference under Section 18 of the Act could be made simultaneously with a reference under Section 30, which would obviously bar the Appellants herein from re-determination of the compensation under Section 28A of the Act.

37. For the reasons set out above, I hold that the order dated 14.11.2018 is in the nature of an Award and shall be treated as an Award rejecting the claim for enhancement of the Appellant based upon Award dated 31.07.2007 of the District Court awarding compensation of Rs.68/- in a contiguous land.

The application under Section 28A(3) of the Act filed by the Appellant for making a reference was maintainable and a reference was in fact made to the District Court, though with a gross delay on the part of the Collector, considering that the order dated 31.07.2007 amounted to an Award.

38. The District Court has cast issues in the matter before it on 22.11.2021, the first issue being whether the Applicants prove that they are entitled for re-determination of the compensation of the three survey holdings in view of the Award dated 31.07.2007; the second issue framed was whether the Applicants prove that they are entitled to be paid sum of Rs.40,00,000/- along with statutory benefits.

Evidence was led by the Appellants who examined the Appellant No.1 as AW1 with the Awards being produced. The State chose not to lead any evidence on the comparison of the lands between the three survey holdings of the Appellant and the holdings covered under the survey numbers under Award dated 31.07.2007 passed subsequently by the District Court. Whilst passing the impugned Judgment, the District Court has not entered into the merits of the matter and has rejected the reference on the sole ground that the Collector did not make any award under Section 28A(2) of the Act but has rejected the application under Section 28A(1) of the Appellant for not fulfilling one of the conditions. It concludes that no Award was made under Section 28A(2) of the Act, hence, the reference under Section 28A(3) of the Act was not competent, or maintainable, hence, the reference was rejected. For the

reasons stated above, the Judgment dated 27.11.2023 (impugned Judgment) is hereby quashed and set aside and the matter will have to go back to the District Court for deciding LAC No.2/2020 on merits after considering the evidence on record.

39. Consequently:

- 1) The Appeal is allowed.
- 2) Impugned Judgment dated 27.11.2023 passed by the District Court, South Goa at Margao in Land Acquisition Case No.2/2020 is quashed and set aside.
- 3) Since the Reference is maintained under Section 28A (3) of the Land Acquisition Act, 1894, the case is remanded to the District Court, South Goa, which shall now decide Land Acquisition Case No.2/2020 on its merits and pass an Award after considering the evidence led by the parties before it. The file/records in Land Acquisition Case No.2/2020 shall be remitted back to the District Court. All pending MCAs. shall stand disposed of in view of this order. No costs.

VALMIKI MENEZES, J.