
(2021) 09 BOM CK 0026

Bombay High Court

Case No: Writ Petition No. 6183, 6184, 6185, 6186, 6222, 6366, 6367, 6368, 6369, 6370, 6371, 6403,, 6404, 6543, 6537, 6538, 6540, 6541, 6542, 6728, 6727, 6725, 6729, 6730, 6731, 6732, 6733, 6734, 6735, 6736, 6737, 6738, 6739, 6740, 6741, 6742, 6743, 6744, 6745, 67

Sambhaji Vikram Gotal
And Others

APPELLANT

Vs

Special Land
Acquisition Officer
Pune & Ors

RESPONDENT

Date of Decision: Sept. 14, 2021

Acts Referred:

- Land Acquisition Act, 1894 - Section 4, 4(1), 11, 15, 15(b), 18, 19, 20, 21, 22, 23, 23(1), 23(1A), 23(2), 23(b), 24, 25, 26, 26(2), 27, 28, 28A, 28A(1), 30, 30(2), 31, 34, 91
- Code Of Civil Procedure, 1908 - Section 2(2), 2(9)

Hon'ble Judges: G.S. Kulkarni, J

Bench: Single Bench

Advocate: Gaurav Potnis, Pallavi H.Potnis, Rajan S. Pawar

Final Decision: Allowed

Judgement

G.S. Kulkarni, J

1. A short but interesting question arises for consideration in this batch of petitions, in regard to the applicability of Section 28A(1) of the Land

Acquisition Act, 1894 when the land acquisition award is a modified award of the Reference Court.

2. Learned Counsel for the parties are ad idem on the commonality of the facts in relation to this batch of petitions. Hence, Writ Petition No.6747 of

2009 was considered as the lead petition as also arguments were advanced on this petition, so as to cover all the petitions. The factual antecedents

which lie in a narrow compass are not in dispute. The following facts as referred in the lead petition, are being noted:-

The lands of the petitioners were subject matter of acquisition, for the public purpose of "Submergence of Ujjani Project". A notification under

Section 4 of the Land Acquisition Act, 1894 (for short "the Act") was issued on 9 October 1969 to include several lands. Following the legal

procedure, the land acquisition proceedings concluded in a common award dated 30 November 1974 published by the Special Land Acquisition Officer

(for short "SLAO"), under Section 11 of the Act, which was to the following effect:-

"26. AWARD-

I hereby declare the award under section 11 of the Land Acquisition Act, under my own hand and certify that:-

1. The true area of the lands A. G. H.A. under this award. 1554-00 628-26
2. The total amount of Compensation Rs.12,81,341-26
3. The total amount of compensation will be apportioned as per statement "A" attached to this award.

The lands will vest in Government free from all encumbrances.

In addition, amount of Rs.625-00 will be paid as measurement fee by the Acquiring Body and credited to Government.

3. Some of the claimants (Keshav Krishaj Ajotikar and others) being aggrieved by the SLAO's Award, made an application to the Collector under

Section 18 of the Act, seeking enhancement of compensation. Such an application was referred by the Collector for adjudication by the Competent

Court, being the Court of District Judge at Pune. The proceeding was numbered as Reference Application No.8 of 1979. The learned Extra Joint

District Judge, Pune, decided such Reference by judgment and order dated 15 February 1984 in the following terms:-

“The claimant is entitled and be paid an amount of Rs.72807.07P as enhanced compensation. He is also entitled to an amount of interest at the rate of 4% p.a. from the date of dispossession till payment. Parties to bear the costs in proportion to their success or failure.”

4. During the pendency of the said reference before the Reference Court, the Central Government having regard to the Directive Principles of State

Policy enshrined in Part IV of the Constitution and to promote public welfare to bring about an equitable and indiscriminate payment of compensation

between persons who are similarly situated, under the same land acquisition notification and in recognizing the sacrifice they make in the larger public

interest, introduced a bill dated 30 September 1982 before the Parliament to amend the Act, by inter alia incorporating Section 28A. Such amendment

was intended considering the stark realities, that many poor and inarticulate owners of acquired land were not usually taking advantage of making a

reference provided by Section 18 of the Act, to seek an enhanced/adequate compensation for their acquired lands. The Statement of Objects and

Reasons of the Bill described the intention for the proposed legislation in the following words:-

“Considering that the right of reference to the civil court under Section 18 of the Act is not usually taken advantage by poor and inarticulate and is

usually exercised only by the comparatively affluent land owners and that this causes considerable inequality in the payment of compensation for the

same or similar quality of land to different interested persons, it was 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 of payment of higher compensation

from the reference court under Section 18 of the Act.

5. The 1982 Bill was followed by the enactment of the Land Acquisition (Amendment) Act, 1984 (for short the “1984 Amendment Act”), which

was brought into effect on 24 September 1984. Although, the relevant amendment for the purpose of the present proceedings is the incorporation of

Section 28A by Section 19 of the 1984 Amendment Act, providing for
determination of the amount of compensation on the basis of the award of
the Court, it would also be necessary to note some other provisions of the 1984
Amendment Act namely Section 15, Section 18 and Section 30

which would have some bearing on the issue. These provisions read thus:

15. Amendment of Section 23.-In Section 23 of the principal Act, (a) after
sub-section (1), the following sub-section shall be inserted,

namely:-

(1-A) In addition to the market value of the land, as above provided, the Court shall in
every case award an amount calculated at the rate of twelve

per centum per annum on such market value for the period commencing on and from the
date of the publication of the notification under Section 4,

sub-section

(1), in respect of such land to the date of the award of the Collector or the date of taking
possession of the land, whichever is earlier.

Explanation.-In computing the period referred to in this sub-section, any period or periods
during which the proceedings for the acquisition of the land

were held up on account of any stay or injunction by the order of any court shall be
excluded.";

(b) in sub-section (2), for the words "fifteen per centum", the words "thirty per centum"
shall be substituted.

16. Amendment of Section 24.-In Section 24 of the principal Act, (a) after
sub-section (1), the following sub-section shall be inserted,

18. Amendment of Section 28.-In Section 28 of the principal Act, (a) for the words "six
per centum", the words "nine per centum" shall be

substituted;

(b) the following proviso shall be inserted at the end, namely:-"Provided that the award of
the Court may also direct that where such excess or any

part thereof is paid into Court after the date of expiry of a period of one year from the date
on which possession is taken, interest at the rate of fifteen

per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has

not been paid into Court before the date of such expiry"".

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30. Transitional provisions (1) The provisions of sub-section (1A) of section 23 of the principal Act, as inserted by Clause (a) of section 15 of this

Act, shall apply, and shall be deemed to have applied, also to and in relation to,-

(a) every proceeding for the acquisition of any land under the principal Act pending on the 30th day of April, 1982 (the date of introduction of the Land

Acquisition (Amendment) Bill in the House of people) in which no award has been made by the Collector before that date;

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by

the Collector before the commencement of this Act.

(2) The provisions of sub-section (2) of section 23 and section 28 of the principal Act, as amended by clause (b) of section 15 and

section 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and relation to, any award made by the

Collector or Court or to any order passed, by the High Court or Supreme Court in appeal against any such award under the provisions

of the principal Act after the 30th day of April 1982 (the date of introduction of the Land Acquisition (Amendment) Bill 1982, in the

House of the People and before the commencement of this Act.

(3) The provisions of section 34 of the principal Act, as amended by section 20 of this Act, shall apply, and shall be deemed to have applied, also to,

and in relation to,

(a) every case in which possession of any land acquired under the principal Act had been taken before the 30th of April, 1982 (the date of introduction

of the Land Acquisition (Amendment) Bill 1982, in the House of the People), and the amount of compensation for such acquisition had not been paid

or deposited under section 31 of the principal Act until such date, with effect on and from that date; and

(b) every case in which such possession had been taken on or after that date but before the commencement of this Act without the amount of

compensation having been paid or deposited under the said section 31 with effect on and from the date of taking such possession. (emphasis added)

6. By virtue of the "Transitional provisions" of the 1984 Amending Act, the provisions of sub-Section (2) of Section 23 and Section 28 of the

Principal Act, as amended by clause (b) of Section 15 and Section 18 of the Amending Act, were deemed applicable, also in relation to, any award

made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of

the principal Act after 30 April 1982, being the date of introduction of the Land Acquisition (Amendment) Bill, 1982, before the Parliament and before

the commencement of the 1984 Amendment Act. These transitional provisions, according to the petitioners, become relevant for the reason that as on

30 April 1982 the land acquisition reference was pending, before the Court of learned District Judge, Pune, which eventually came to be decided on 15

February 1984.

7. The next provision and the plinth of the present proceedings, is Section 28-A which came to be inserted by Section 19 of the 1984 Amendment Act,

providing for re-determination of the amount of compensation on the basis of the award of the Court. Section 28A was brought into effect

from 24 September 1984. It reads thus:-

"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.]

(emphasis supplied)

8. As seen from the Statement of Object and Reasons of the Amending Act the legislative intent behind Section 28A was primarily to provide an

opportunity to all aggrieved parties whose lands were covered under the same notification to seek re-determination of compensation, once any one of

the interested parties had obtained orders for payment of higher compensation from the Reference Court under Section 18 of the Act. Such

amendment was intended for the reason that the right to avail of a reference to the Civil Court under Section 18 of the Act, was not usually taken

advantage by inarticulate and poor people and/or was seen to be exercised only by comparatively affluent land owners, which had resulted into an

apparent inequality in the payment of compensation, to persons falling under the same notification for the same or similar quality of land. The object of

such amendment was to bring parity in payment of compensation to persons who are similarly situated, however, who otherwise had formed two

classes, one who had approached the Reference Court and the others who were inherently deprived of approaching the Reference Court for want of

economic resources. The legislature in its wisdom considered it appropriate to provide an advantage of payment of a higher compensation if so

determined by the Reference Court to those who although were aggrieved by the award of the SLAO, however, due to economic constraints could

not approach the Reference Court, in terms of what was envisaged in Section 28A.

9. Having noted the intervening legislative developments which had taken place, when the Reference proceedings before the Court of learned District

Judge, at the behest of some persons were pending, the further factual developments that took place are required to be noted:

The Reference applicants being aggrieved by the award/judgment dated 15 February 1984 (supra) rendered by the learned District Judge on the land

acquisition reference, preferred Miscellaneous Application No.369 of 1986 praying for review and modification of such award/judgment. The learned

District Judge by an order dated 5 September 1994 disposed of the review application by modifying the original award/judgment dated 5 February

1984, enhancing the compensation as originally awarded, by granting benefit of enhanced solatium as per the amended provisions inserted by the 1984

Amendment Act. The relevant extract of the modified award of the learned District Judge is required to be noted, which reads thus:-

“5. I have verified that, the Collector has passed an award on 30-11-74, but the court has passed an award on 15-2-84 i.e. after 30-4-82. I have

also seen original judgment (Ex.29) in L.R.No.8/79 which does show that, the applicant has been awarded enhanced compensation to the tune of

Rs.89,934.07 ps. In view of the provisions of the amended Act mentioned above, the applicant is entitled to get additional reliefs and I therefore, pass

the following order.

Order

1. The opponent do pay an amount calculated at the rate of 12% p.a. on the sum of Rs.89,934.07 ps. (72,807.07 ps. ₹ 17127) from the date of

publication of the notification under Sec. 4(1) of the L.A.Act, till the date of taking over the possession of the land vide Sec.23(1-A) of the Act.

2. The opponent do pay interest at the rate of 9% p.a. on the enhanced amount of Rs.89,934.07 ps. from the date of taking over possession of the land

till the period of one year and at the rate of 15% p.a. from the date of expiry of the said period of one year till the date of payment into court, vide

Sec. 34 of the L.A.act. However, while so making the payment of interest, the opponent shall deduct the amount of interest paid to the applicant as

per the award in L.R.No.8/79.

3. The opponent do pay additional solatium at the rate of 15% p.a. on the sum of Rs.72807.07 pa. and the opponent do pay further solatium at the rate

of 30% p.a. on the enhanced amount of Rs.17,727/- to the applicant vide Sec.23(2) of the L.A. Act.

4. Parties to bear their own costs of this application.

Dt. 1-9-94

(A.V.Karnik)

Extra Jt. District Judge Pune.

Resumed again:

Section 23(1-A) reads thus:-

“In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per

centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Sec.4, sub-

section 91, in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.”

In the instant case, the Collector has declared his award on 30/11/74 and therefore, additional component at the rate of 12% p.a. which has been

inadvertently awarded in my earlier order dated 1/9/94, would not be payable.

Hence, I pass the following order:

Order

Para No.1 of the final order dated 1.9.94 stands deleted, and the opponent shall pay only the amounts as mentioned in detail in para Nos.2 & 3 of the

final order dated 1.9.94.

Dt. 5/9/94

(A.V.Karnik)

Extra Jt.District Judge,Pune.

10. After the review judgment was pronounced by the Reference Court on 5 September 1994, the petitioners applied for its certified copy on 28

October 1994. The certified copy was kept ready for delivery on

14 December 1994. Thereafter, on 6 January 1995 the petitioners filed an application under Section 28A(1) of the Act praying for re-determination of

the amount of compensation on the basis of the award of the Court. By the impugned communication dated 18 September 2008 the Collector rejected

such application of the petitioners primarily on two grounds, firstly assigning a reason that the original award being dated 15 February 1984, the

provisions of 28A could not be availed by the petitioners as the said provisions would not have a retrospective operation; and secondly, even if the date

of the modified award was considered to be 1 September 1994 (sic 5 September 1994), the petitioners' application was barred by the limitation of

three months, as prescribed by sub-section (1) of Section 28A. The impugned order reads thus:-

“(Translation of a copy of an Order, typewritten in Marathi.)

Read :- 1. Application of the Applicant under section 28 A and the documents enclosed therewith.

A. Decision dated 15/02/1984 in Land Reference No. 8/79.

B. Decision dated 01/09/1994 in Miscellaneous Application No. 369/86.

2. Section 28 A of the Land Acquisition Act, 1894.

3. Opinion- Letter No. G/8/5096/08 dated 16/09/2008 of the District Government Pleader, Pune.

4. Sanctioned Noting dated 17/09/2008 of the Collector, Pune.

Special Land Acquisition Officer No.6,

Collector Office Premises,

No. S. L. A. O. No. S.R./49/2008.

Pune,

Date- 18/09/2008

ORDER

Applicant Sambha Vikram Gutal had submitted application under section 28 A of the Land Acquisition Act, 1894 on the date 06/01/1995 to this Office.

The said application is in respect of the land bearing Survey No. 34/1 acquired for the Ujani Dam at village Ajoti, Tal. Indapur, Dist. Pune and the

Award in respect thereof is bearing No. is SPL/LAQ/UPD/SR/3/1967 dated 21/03/1975.

Considering the said application and the documents annexed therewith, decision dated 15/02/1984 in Land Reference No. 8/79 and the decision dated

01/09/1994 in Miscellaneous Application No.369/86 as well as the legal provisions in the documents referred to hereinabove at Serial No. 1 to 5, the

belowmentioned facts are noticed.

The decision in Land Reference No. 8/79, annexed with the application, has been declared on the date 15/02/1984 and thereafter, the decision on

Miscellaneous Application No. 369/86 has been declared on the date 01/09/1994. The provision of Section 28 A in the Land Acquisition Act, 1894 has

come into existence on the date 24/09/1984 and the Award and the decision under Section 18 of the District Court in respect of the Land Reference in

this matter are of the date prior to coming into existence of the legal provision, and therefore, the said section does not apply to the aforesaid Award.

Moreover, as per the provisions of Section-28-A, the said Application was required to be within a period of three months from the date of the Award

in respect of the Land Reference. However, the same has been filed on the date 06/01/1995 within a period of three months from the date of decision

dated 01/09/1994 on the Miscellaneous Application No. 369/86 (?)

As per the opinion bearing No. G-8/5096/2008, dated 16/09/2008 of the District Government Pleader thereon, the said Application has not been filed

within the time limit from the date of Award in respect of the Land Reference.

Considering the aforesaid documents and the legal points, the said Application under Section 28-A is rejected.

The aforesaid decision should be intimated to the persons concerned.

Special Land Acquisition Officer No.6

Pune-1

11. Mr.Potnis, learned Counsel for the petitioners in assailing the impugned order passed by the Collector would submit that the Collector has failed to

take into consideration that the original Award of the Reference Court dated 15 February 1984 rendered on the reference application stood modified

by the subsequent judgment and order dated 5 September 1994 passed by the Reference Court on the review application. It is his submission that for

the purposes of an application made by the petitioners under Section 28A(1), the relevant award of the Reference Court was the award dated 5

September 1994 (award on review), and not the original award dated 15 February 1984. According to him, for the purposes of the claim as made by

the original claimants, the final award in favour of the original claimants was the award dated 5 September 1994 rendered on the review application,

which gave rise to a cause of action in favour of the petitioners to invoke the beneficial provisions of Section 28A of the Act. He submits that the

impugned order is required to be held illegal on both the reasons it attributes, to reject the petitioners applications. Mr. Potnis submits that the Collector

could not have overlooked the award made by the Reference Court on the review application. Thus, according to him, there was no question of any

retrospective application of the provisions of Section 28A of the Act in the facts of the present case, merely for the reason that the original award

(prior to the review) was dated 15 February, 1984 (i.e. prior to the provisions of Section 28A were brought into force). Mr. Potnis submits that such

reason as set out in the impugned order, is not only factually erroneous being oblivious to the final award dated 5 September 1994 but also overlooks

the application of Section 30 of the 1984 Amendment Act namely the “transitory provisions”, which clearly conferred the benefit of the amended

provisions of Section 23(2) and Section 28 of the Principal Act (by virtue of Sections 15 and 18 of the 1984 Amendment Act), to matters which were

pending adjudication before the reference Court. In support of this submission, Mr. Potnis has placed reliance on the decision of the Supreme Court in

Union of India Vs. Raghubir Singh (1989) 2 SCC. 754.

12. The next submission of Mr. Potnis referring to the decision of the Supreme Court in Union of India & Anr. Vs. Pradeep Kumari & Ors. (1995)2

SCC 736 is to the effect that the Supreme Court has construed the words “an award” used in Section 28-A(1) of the Act, to hold that the object

underlying the said provision would be better achieved by giving such expression its natural meaning, namely, a meaning that the award that is made

by the Court under Part III of the Act. Mr. Potnis submits that the Supreme Court has set out six conditions which need to be satisfied for a person to

be entitled to seek re-determination of the amount of compensation payable to him under Section 28A of the Act which according to him were

satisfied by the petitioners.

13. On the second ground on which the petitioners application under Section 28A(1) was rejected by the Collector, Mr.Potnis would submit that even

in calculating the period of limitation, there is an apparent illegality committed by the Collector as, according to him, although the Collector had noted

with relevance the review award dated 5 September 1994 on the basis of which the petitioners had submitted their application, however, the Collector

overlooking "the proviso" below sub-section (1) of Section 28A, which provides that in calculating the period of limitation as prescribed by sub-

section (1) the time which was taken from the date of pronouncement of the award (in the present case the review award) and obtaining a copy of

such award would stand excluded. Mr.Potnis would, hence, contend that the impugned order on both the counts, is rendered illegal and is required to

be quashed and set aside.

14. On the other hand, Mr.Pawar, learned Assistant Government Pleader has supported the impugned orders. It is his submission that the Collector is

correct in his reasoning that the provisions of Section 28A cannot have retrospective operation as according to him when the reference Court

originally decided the reference on 15 February 1984, the amended Section 28A was not in existence. In support of this contention Mr.Pawar has

relied on the decision of the Supreme Court in Babua Ram & Ors. Vs. State of U.P. & Anr.. (1995)2 SCC 689 to contend that in such decision the

Supreme Court has held that the provisions of Section 28A do not have retrospective application and that Section 28A was a complete code in itself.

Mr.Pawar, however, would have no answer to the petitioners case that for the application as made by the petitioners under the provisions of Section

28A(1), the proviso to sub-section (1) was relevant and was required to be noticed by the Collector in considering such applications, and more

particularly when the Collector in the impugned order not only refers but also notices the modified award of the reference Court dated 5 September

1994. Mr. Pawar submits that the petitions do not warrant consideration and deserve to be dismissed.

Reasons and conclusions

15. There ought not to be any dispute on the proposition that by virtue of the order dated 5 September 1994 passed by the Reference Court on the review application of the claimants, the original award/judgment (dated 15 February 1984) on the land acquisition reference stood modified. In other words, the judgment and order dated 15 February 1984 stood merged in the review orders/award passed on the review application, by application of the doctrine of merger. The principles in this regard are well settled, namely, that when an application for review of a decree is allowed, it results in vacating of the decree earlier passed. The decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one. To appreciate the concept of the doctrine of merger, reference can be made to the decision of the Supreme Court in *Kunhayammed & Ors. Vs. State of Kerala & Anr.* (2000)6 SCC 359 as also the decision in *Special Deputy Collector & Ors. Vs. Chakali Linga & Ors.* (2005)13 SCC 404

16. In *Kunhayammed & Ors.* (supra) the Supreme Court has held that the doctrine of merger is neither a doctrine of constitutional law nor a doctrine statutorily recognised. It is a common law doctrine founded on principles of propriety in the hierarchy of justice delivery system. The logic behind such doctrine being that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time.

17. In the context of the Land Acquisition Act such principle has been recognized by the Supreme Court in *Chakali Linga & Ors. Vs. State of Kerala & Anr.* (supra). In this case, the Supreme Court was seized with an issue in regard to the benefit being claimed by Chakali Linga under the provisions of Section 23(2) of the Act, for award of solatium at 30%. An award was made by the land acquisition officer on 29 December 1975 against which a reference was made by some claimants before the learned District Judge who enhanced the compensation by his judgment and order dated 31 March 1979. A review

application came to be made in the year 1982 praying for further enhancement in respect of the trees which were subject matter of acquisition. The

review application was decided in favour of the original claimants by an order dated 31 December 1983. In the year 1991, Chakali Linga filed an

interlocutory application before the reference Court claiming benefit under Section 23(2) of the Act as amended by the 1984 Amendment Act. It was

Chakali Linga's case that the judgment and decree passed by the reference Court was reviewed by its order dated 31 December 1983 by granting

enhanced compensation in respect of trees. Thus, according to Chakali Linga the decree finally passed by the Reference Court was the one passed on

31 December 1983 namely on the review application, which modified the original award/decreed dated 31 March 1979. Taking recourse to the doctrine

of merger, Chakali Linga claimed that since the decree was passed by the Reference Court on 31 December 1983, applying the provisions of sub-

section (2) of Section 30 of the 1984 Amendment Act, Chakali Linga was entitled to solatium at the rate of 30% of the market value instead of 15%

as earlier awarded. This contention of Chakali Linga was accepted by the Reference Court and confirmed by the High Court. The Special Deputy

Collector, however, felt aggrieved by the concurrent findings namely that of the Reference Court and the High Court, hence, approached the Supreme

Court. The Special Deputy Collector contended before the Supreme Court that decree of the Reference Court had attained finality so far as

compensation payable for the land was concerned, and the review order merely modified the compensation for trees, hence according to him, Chakali

Linga could not have claimed higher solatium on compensation payable in respect of the land. It is in such context, the Supreme Court reiterating the

settled principle of law and referring to the decision in *Sushil Kumar Sen Vs. State of Bihar* (1975) 1 SCC 774 and *Kunhayammed & Ors.* (supra) held

that the law is well settled that the effect of allowing an application for review of a decree is to vacate the decree passed. It was held that the decree

that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original

one. Applying such principles of law, the Court repelled the contention of the Special Deputy Collector and dismissed the appeals, upholding Chakali

Linga's contention. In my opinion, this decision is squarely applicable to the facts of the present case, to accept the petitioners' contention that

the original award of the Reference Court dated 15 February 1984 had merged with the modified award dated 5 September 1994.

18. In the context of merger, another decision of the Supreme Court in DSR Steel (Private) Ltd. Vs. State of Rajasthan & Ors. (2012) 6 SCC 782

needs to be noted. In this decision, the Supreme Court held that when a Court makes an order allowing a review petition, it results into the

decree/orders under review being reversed or modified. The modified order then becomes a composite order whereby the Court not only vacates the

earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one made

earlier. It was held that it is only the decree so vacated, reversed or modified becomes the decree that is effective for the purposes of a further

appeal, if any, maintainable under law. The relevant extract of the said decision reads thus:-

“25.2. The second situation that one can conceive of is where a Court or Tribunal makes an order in a review petition by which the review petition

is allowed and the decree/order under review reversed or modified. Such an order shall then be a composite order whereby the Court not only vacates

the earlier decree or order but simultaneous with such vacation of the earlier decree or order, passes another decree or order or modifies the one

made earlier. The decree so vacated reversed or modified is then the decree that is effective for purposes of a further appeal, if any, maintainable

under law.” (emphasis supplied)

19. Adverting to the above settled principles of law in their application to the facts of the present case, it becomes abundantly clear that by application

of the doctrine of merger, it is the judgment and order of the Reference Court dated 5 September 1994 on the review application, which would be

required to be considered as the new award/decreed on the Land Acquisition Reference in question, which superseded the original judgment and award

dated 15 February 1984 rendered by the reference Court. By virtue of sub-section (2) of Section 26 of the Act every award made by the Reference

Court is deemed to be a decree and the statement of grounds of every such award a judgment within the meaning of Section 2, Clause (2), and

Section 2, Clause (9), respectively of the Code of Civil Procedure, 1908.

20. The principle of merger is thus implicitly recognised by the provisions of Section 26(2) of the Act, whereunder an award of the learned District

Judge would be deemed to be a decree and such award would be a judgment within the meaning of Section 2, Clause (2), and Section 2, Clause (9) of

the Code of Civil Procedure, 1908. Hence, in the facts of the present case, for the purposes of an application under Section 28A(1) of the Act, it was

the review judgment and award dated 5 September 1994 of the Reference Court which was relevant for the petitioners, to take recourse to the

beneficial provisions of Section 28A of the Act.

21. In my opinion, the approach of the Collector in rejecting the petitioners' application under Section 28A(1) was thus ex facie illegal for more

than one reason. Firstly, the Collector proceeded on an assumption that only the original award on the reference application dated 15 February 1984

was relevant for the petitioners application to be maintainable under Section 28A(1) of the Act. The Collector referring to the date of the original

award observes that the provisions of Section 28A(1) were not brought into force when such award was made, he hence held that as the provision is

not applicable retrospectively, the petitioners application could not be entertained. The fallacy in such reasoning can be instantly noted, namely, the

Collector completely overlooking the legal consequence emerging on the reference Court modifying the original award dated 15 February 1984 by its

orders passed on the review application on 5 September 1994. It is not possible to conceive that once the original award itself stood merged in the

review award, the original award could still be considered of any relevance and utility without it being read with the modified award, which would be

the real award for all relevant purposes even to the original claimants for the benefits accrued to them for receiving compensation under the Act. In

any case, in view of the modified award/orders passed by the Reference Court on the review application, no efficacy could be attributed to the original

award also by application of the doctrine of merger as discussed above. The Collector, therefore, fell in a patent error in overlooking the legal

consequences as brought about by the modified award, for the petitioners to maintain their applications under Section 28A(1) of the Act.

22. The second ground on which the petitioners' application was rejected by the Collector is on limitation. The Collector held the petitioners

application to be time barred when in fact he proceeded to calculate the limitation by referring to the judgment/award of the reference Court on the

review application. According to the Collector as the Reference Court passed its order on the reference application on 1 September 1994 (sic 5

September 1994) and as the petitioners' application was filed on 6 January 1995, the same was time barred being filed beyond the prescribed

limitation of three months as provided under sub-section (1) of Section 28A. In attributing such reason, the Collector has fallen in an apparent error and

an illegality inasmuch as the Collector turned a blind eye to proviso below Section 28A(1) which ordains that in computing the period of limitation of

three months as prescribed under sub-section (1), the day on which the award was pronounced and the time requisite for obtaining a copy of the

award, shall be excluded. As noted above the petitioners had made an application for certified copy of the review award on 28 October 1994, and the

review award was kept ready for delivery on 14 December 1994. Thus the period between 28 October 1994 upto 14 December 1994 stood excluded

in calculating the limitation, when the petitioners filed their Section 28A application on 6 January 1995. Thus there is total non-application of mind by

the Collector to the legal requirements as stipulated by the proviso to sub-section (1) of section 28A.

23. Apart from the above discussion, the principles of law as laid down by the Supreme Court in interpreting Section 28A(1) needs to be noted.

Considering these decisions, what was relevant for applicability of Section 28A(1) was the award made by the reference Court under Part III, after

coming into force of Section 28A. A two judge Bench of the Supreme Court in Babua Ram & Ors. (supra) held that the period of three months

prescribed for making an application for re-determination of compensation under Section 28A should be computed from the date of making of the first

award. It was held that limitation begins to run from the date, the award was pronounced by the Court under Section

26. It was thus held that re-determination of compensation can be made only on the basis of the first award that was made after coming into force of

Section 28A of the Act. Such view was reiterated by a co-ordinate Bench of the Supreme Court in Karnail Singh (supra) which again held that the

cause of action for making an application under section 28-A would arise when an award was made by the Civil Court, on a reference under section

18, enhancing the compensation over and above the amount awarded by the Collector in his award under section

11 and that the earliest of the successive awards would furnish the starting period of the limitation of three months as provided in the proviso to section

28- A(I). Such was held to be the interpretation of the provisions of sub-section (1) of Section 28A. It was reiterated that Section 28A(1) was

applicable prospectively with effect from 24 September 1984 and hence, it did not furnish any right to the claimants to make any application after the

Act had come into force and when the award of the reference Court was prior to the commencement of the 1984 Amendment Act. The decisions in

Babua Ram & Ors. (supra) and Karnail Singh (supra) were however overruled by a three Judge Bench of the Supreme Court in Union of India &

Anr. Vs. Pradeep Kumari & Ors. (supra). In such decision, the Supreme Court considering the statement of object and reasons of the 1984

Amendment Act observed that the object underlying the enactment of Section 28A was 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 Section 18 of the Act. It was observed that parity was sought to be achieved by providing an opportunity to all aggrieved parties whose

land is covered by the said notification to seek re-determination once "any of them" had obtained orders for payment of higher compensation from

the reference Court under Section 18 of the Act. It was observed that Section 28-A was in the nature of a beneficial provision intended to remove

inequality and to give relief to the inarticulate and poor people who are not able to take advantage of the right of reference to the Civil Court under

Section 18 of the Act. Applying the well-settled principles in interpreting beneficial legislations, namely that while construing such legislation, the Court

should adopt a construction which advances the legislative policy to extend the benefit, rather than a construction which has the effect of curtailing the

benefit the provisions would confer. The Supreme Court accordingly held that the right to make the application under Section 28-A arises from the

award of the Court on the basis of which the person making the application is seeking re-determination of the compensation. It was held that there is

nothing in sub-section (1) of Section 28-A to indicate that this right is confined in respect of the earliest award that is made by the Court after the

coming into force of Section 28-A. It was observed that by construing the expression 'where in an award under this Part' appearing in sub- section (1)

of Section 28-A to mean 'where in the first award made by the court under this Part, the word 'first', which is not found in sub-section (1) of Section

28-A, was being read in the said provisions, whereby the amplitude of the said provision was being curtailed so as to restrict the benefit conferred by

it. It is for such reason the Court observed that the view taken in Babua Ram & Ors. (supra) and Karnail Singh (supra) that an application under

Section 28A can be made only on the basis of the first award was not correct and accordingly overruled the said decisions. The Court further clarified

that the benefit of Section 28A can be availed on the basis of any one of the award that has been made by the Court after coming into force of

Section 28A provided that an application seeking such benefit was made within the prescribed period of three months from the making of the award

on the basis of which such redetermination of compensation is sought. The relevant observations of the Court are required to be noted:-

“7. After giving our thoughtful consideration to the aforementioned reasons we are unable to persuade ourselves to take the view that the period of

limitation for making an application under Section 28-A of the Act has to be computed from the date of the making of the first award after the coming

into force of Section 28-A and any subsequent award has no bearing on the right conferred by Section 28-A.

9. A perusal of the provisions contained in sub-section (1) of Section 28-A of the Act would show that after an award is made under Part III whereby

the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, a right accrues to a

person interested in the other land covered by the same notification under sub-section (1) of Section 4 who is also aggrieved by the award of the

Collector but who had not made an application to the Collector under Section 18, to move an application before the Collector for re-determination of

the amount of compensation payable to him on the basis of the amount of compensation awarded by the court. This application for re-determination of

compensation is required to be made within three months from the date of the award of the court. The right to make the application under Section 28-

A arises from the award of the court on the basis of which the person making the application is seeking re-determination of the compensation. There

is nothing in sub-section (1) of Section 28-A to indicate that this right is confined in respect of the earliest award that is made by the Court after the

coming into force of Section 28-A. By construing the expression 'where in an award under this Part' in sub- section (1) of Section 28-A to mean

'where in the first award made by the court under this Part, the word 'first', which is not found in sub-section (1) of Section 28-A, is being read therein

and thereby the amplitude of the said provision is being curtailed so as to restrict the benefit conferred by it. In the matter of construction of a

beneficient provision it is not permissible by judicial interpretation to read words which are not there and thereby restrict the scope of the said

provision. [See : Jnan Ranjan Sen Gupta v. Arun Kumar Bose, [1975] 2 SCC 526,530.]

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 Section 28-A 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 Section 28-A to the

first award that is made by the court after the coming into force of Section 28-A 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 Section 28-A 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 Section 28-A. There is nothing in the wordings of Section 28- A to indicate that the legislature intended to confer such a limited benefit under

Section 28-A. Similarly, there may be a situation, as in the present case, where the notification under Section 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 Section 28-A and awards in those references are made by the court on different dates. A person who is entitled to apply

under Section 28-A 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 Section 28-A 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 case of inarticulate and poor people who cannot be expected to keep track of all the references

that were pending in court on the date of coming into force of Section 28-A 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 Section 28-A. By holding that the award referred to in Section 28-A(I) is

the first award made after the coming into force of Section 28-A, such persons would be deprived of the benefit extended by Section

28-A. Such a construction would thus result in perpetuating the inequality in the payment of compensation which the legislature wanted

to remove by enacting Section 28-A. The object underlying Section 28-A would be better achieved by giving the expression ""an

award"" in Section 28-A 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 Section 28-A. If the said expression in Section 28-A(I) 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 Section 28-A;

(ii) By the said award the amount of compensation in excess of the amount awarded by the Collector under Section 11 has been allowed

to the applicant in that reference;

(iii) The person moving the application under Section 28-A is interested in other land covered by the same notification under Section

4(1) to which the said award relates;

(iv) The person moving the application did not make an application to the Collector under Section 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 Section 28-A for re- determination of compensation by an applicant.

11. Since the cause of action for moving the application for re-determination of compensation under Section 28-A arises from the award on the basis

of which re-determination of compensation is sought, the principle that ""once the limitation begins to run, it runs in its full course until its running is

interdicted by an order of the court"" can have no application because the limitation for moving the application under Section 28-A will begin to run only

from the date of the award on the basis of which re-determination of compensation is sought.

12. We are, therefore, unable to agree with the view expressed in Babua Ram (supra) and Karnail Singh (supra) that application under Section 28-A

for re-determination of compensation can only be made on the basis of the first award that is made after the coming into force of Section 28-A. In our

opinion, the benefit of re-determination of amount of compensation under Section 28-A can be availed of on the basis of any one of the awards that

has been made by the court after the coming into force of Section 28-A provided the applicant seeking such benefit makes the application under

Section 28-A within the prescribed period of three months from the making of the award on the basis of which re-determination is sought, The first

contention urged by Shri Goswamy in support of the Review Petitions is, therefore, rejected.

24. For the aforesaid reasons, Mr.Pawar is not correct in his contention that the petitions involved retrospective application of the provisions of Section

28A of the Act, relying on the decision of the Supreme Court in Babua Ram & Ors. (supra) as in the present case the modified award itself is dated 5

September 1994 which formed the basis of the petitioners application under section 28A, by virtue of which there was no question of any retrospective

application of Section 28A of the Act.

25. Mr.Potnis would also be correct in his contention relying on the decision of the Supreme Court in Union of India Vs. Raghubir Singh (supra) that

the provisions of Section 30 (Transitory provisions) of the 1984 Amendment Act in any case had become applicable even to the pending references.

26. As a sequel to the above decision, the Collector could not have rejected the petitioners application on both the grounds as recorded in the impugned

order, namely, of retrospective application of Section 28A, when there was none as also on the second ground of the petitioners application being time

barred. The impugned order is manifestly illegal and is liable to be set aside. It is thus clear to me that the applications under Section 28A(1) as filed by

the petitioners, were maintainable and they ought to have been processed further as per the requirement of sub-section (2) of the Act.

27. In view of the above deliberation, the petitions need to succeed. They are accordingly allowed in terms of the following order:-

ORDER

(I) The impugned orders passed by the Collector rejecting the petitioners' applications under Section 28A(1) of the Land Acquisition Act, 1894

stand quashed and set aside.

(II) The applications of the petitioners under Section 28A are restored to file of the Collector to be processed further in accordance with the provisions

of sub-section (2) of Section 28A of the Act.

(III) As the acquisition itself is of the year 1969, the Collector is directed to complete the inquiry under sub-section

(2) of Section 28A of the Act within a period of six months from today and make appropriate award in re-determining compensation payable to the

petitioners.

(IV) All contentions of the parties on merits of their respective claim applications are expressly kept open.

(V) Rule is made absolute in the above terms. No costs.