

(2021) 06 BOM CK 0060

Bombay High Court

Case No: Writ Petition No. 3110 Of 2016

Umadevi Rajkumar
Jeure & Ors

APPELLANT

Vs

District Collector,
Solapur & Ors

RESPONDENT

Date of Decision: June 24, 2021

Acts Referred:

- Land Acquisition Act, 1894 - Section 3(d), 4, 4(1), 6, 11, 12(2), 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 28A, 28(1), 89
- Legal Services Authorities Act, 1987 - Section 19, 19(5), 19(5)(ii), 20, 20(1), 21
- Negotiable Instruments Act, 1881 - Section 138

Hon'ble Judges: A.A. Sayed, J; S.C. Gupte, J

Bench: Division Bench

Advocate: Ashok B. Tajane, Ashutosh A. Kumbhakoni, Akshay Shinde, Madhubala Kajle, B. Panel, Pushapalata Diwan

Final Decision: Dismissed

Judgement

S.C. Gupte, J

1. This petition challenges an order passed by Sub-Divisional Officer, Solapur on an application under Section 28A of the Land Acquisition Act, 1894

and seeks directions for conducting a fresh inquiry under that Section. The petition raises a substantial question of law, namely, whether an award

passed by a Lok-Adalat can be considered an award of the court under Part III of the Land Acquisition Act for the purposes of Section 28A of that

Act.

2. The Petitioners' land along with several other lands was acquired by the State for a storage lake. An award dated 26 February 2010 was made

under Section 11 of the Land Acquisition Act, 1894 (LA Act) in respect of the acquired lands. Compensation was paid to landholders including

the Petitioners herein after duly issuing notices under Section 12(2) of the LA Act. Sometime later, a Land Acquisition Reference (LAR No.18 of

2011) was filed before the Joint Civil Judge, Senior Division, Solapur by one of the landholders, one Sangappa Irappa Dabare. The LAR was taken

before a Lok Adalat. By a compromise entered into on 13 December 2014, an award was made by the Lok Adalat for payment of enhanced

compensation by the State towards acquisition of the Applicant's land (Gat No.179/5 admeasuring 1.20 H at Village Karjgi, Taluka Akkalkot,

District Solapur) together with solatium and interest. Based on this award, on or about 2 March 2015, the Petitioners made an application for enhanced

compensation under Section 28A(1) of the LA Act for their properties, being Gat Nos.243/2 admeasuring 2H and Gat No.243/5 admeasuring 2H 50 R

at Karjgi, Taluka Akkalkot, District Solapur, which were covered by the same notification. By his order dated 10 November 2015, the Sub-Divisional

Officer rejected that application on the ground that the decision in LAR No.18 of 2011 was restricted to that case alone. The SDO also held that the

land in LAR No.10 of 2011 was from non-agricultural Group No.2, whereas the Petitioners' lands were from Group No.3.

3. The Petitioners challenge the order of the Sub-Divisional Officer on the ground that the award of the Lok Adalat in Sangappa's case was a

deemed decree of the reference court under Section 21 of the Legal Services Authorities Act and accordingly, Section 28A of the Act could be

invoked by other landholders, whose lands were covered by the same acquisition notification, such as the Petitioners herein, for re-determination of

compensation in their own cases. Learned Counsel for the Petitioners relies on Vasudave vs. Commissioner and Secretary, Government, Revenue

Department LEX(KAR) 2007 855, All Gujarat Jaher Bhandhkam Majoor Mandal vs. State of Gujarat LEX(GJH) 2014 1228, Shamshad Ali vs. State

of UP 2020 SCC OnLine All 641 , Komaramjeri Pdamunuswamy vs. Government of Andhra Pradesh LEX(APLH) 2005 111 and Rambhau

Mahadeorao Tembhurkar vs. State of Maharashtra 2015 SCC OnLine Bom 6331 in support of his case.

4. It is not in dispute that the lands, for re-determination of compensation for which the Petitioners had applied to the Sub-Divisional Officer, were

covered by the same notification under Section 4 of the LA Act as in the case of the land included in the compromise award made by the Lok Adalat.

(In fact, they were covered by the very same original award of Special Land Acquisition Officer under Section 11 of the LA Act.) So also, the

Petitioners' application was within time. The question, thus, arising in the matter, is a pure question of law, and may be stated thus:

"Whether an award passed by a Lok Adalat, under Section 21 of the Legal Services Authority Act, 1987, can be considered an award of the

court made under Part III of the Land Acquisition Act, 1894 for the purpose of Section 28A of that Act so as to enable persons interested in any

other land covered by the same notification under Section 4 of that Act to apply for re-determination of the amount of compensation?"

5. Section 28A is as follows :

"28A Re-determination of the amount of compensation on the basis of the award of the Court.-(1) Where in an award under this Part, the Court

allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under 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.

6. Section 28A is comprised within Part III of the LA Act. Its opening words, "Where in an award under this Part, make it clear, as a matter of

principle, that an award under Part III is a pre-requisite for invoking Section 28A for re-determination of compensation in case of other landholders.

There is also ample authority to support this. One of the early Supreme Court decisions on the point is the case of Jose Antonio Cruz Dos R.

Rodriguese vs. Land Acquisition Collector (1996) 6 SCC 746 That was a case where lands were acquired for a public purpose by a notification issued

under Section 4 of the LA Act. After taking over its possession, and making and publishing a declaration under Section 6 of the LA Act, the Land

Acquisition Officer awarded compensation for the lands at rates ranging from Rs.0.75 to Rs.2.50 per sq.m. for different plots comprised within the

acquired lands. A reference made thereafter by some landholders was disposed of by the reference court by revising the rate to Rs.5 per sq.m. In

two other awards made for different plots within the acquired lands, the rates were revised to Rs.9 and Rs.10 per sq.m. In appeal, the High Court

reduced the rate to Rs.5 per sq.m. Thereafter, the appellants before the Supreme Court in that case applied under Section 28A of the LA Act for re-

determination of compensation for their lands covered by the same notification. The State opposed the application on the ground of the time-bar

provided under Section 28A (i.e three months from the date of the award of the court). The issue before the Supreme Court was whether time should

run from the date of the award of the reference Court or from the date of the order of the High Court (as the appellate court). The Supreme Court

held that as prescribed by the plain language of Section 28A, three months' period of limitation was to be reckoned from the date of the award by

the court disposing of the reference under Section 18 and not the appellate court dealing with an appeal against the award of the reference court. (The

question as to whether each successive award would give rise to a cause of action for filing of an application under section 28A, was left open by the

Supreme Court.) This position was once again affirmed by the Supreme Court in Ramsingbhai (Ramsangbhai) Jerambhai vs. State of Gujarat²⁰¹⁸

SCC OnLine SC 561.

7. It cannot, accordingly, be gainsaid that as a prerequisite for an application of Section 28A, the award must be by a "Court". The expression

"Court" is defined in Section 3(d) of the LA Act as follows :

"(d) the expression "Court" means a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed (as it is

hereby empowered to do) a special judicial officer within any specified local limits to perform functions of the Court under this Act."

The definition makes it clear at once that the expression having been defined to mean "Court", and not "include" such and such, the definition is

prima facie restrictive and exhaustive (See, Vanguard Fire & General Insurance Co.Ltd., Madras vs. Fraser & Ross 8AIR 1960 SC 971). There is

nothing in the scheme of the LA Act, and in particular, in Part III thereof, to suggest otherwise.

8. The net result of the above discussion is that Section 28A of the LA Act can be invoked and applied only when an award has been passed under

Part III of the LA Act by a principal Civil Court of original jurisdiction (unless the appropriate Government has appointed a special judicial officer

within the specified local limits to perform functions of the court under the LA Act, which, anyway, is not the case here).

9. This narrows down our controversy to the following issue: whether an award passed by a Lok Adalat, to which a reference is made under Section

19(5) of Legal Services Authorities Act, 1987 (‘‘LSA Act’’), and which passes an award under Section 21 of that Act, can be termed as an award

passed by a Court under Part III of the LA Act. The Petitioner relies on the language of Section 21 of the LSA Act, which makes it clear that every

‘‘award of the Lok Adalat shall be deemed to be a decree of a Civil Court or, as the case may be, an order of any other court’’, and submits that

by this deeming fiction, the award of a Lok Adalat is a decree of the court within the meaning of Section 28A of the LA Act. Learned Counsel for the

Petitioner submits that Section 21 makes such decree final and binding as between the parties, and no appeal from that decree lies before any court of

law. The learned Advocate General, on the other hand, would have us restrict the legal fiction created by Section 21 of the LSA Act to the purpose

for which it has been created and not beyond that. He submits that the purpose of this fiction is only to make an award of a Lok Adalat enforceable as

a decree of a civil court and final and binding on all parties to the dispute so that no appeal may be made from it before any court. He submits that this

legal fiction cannot be extended so as to make the award of a Lok Adalat an award by a principal Civil Court of original jurisdiction made under Part

III of the LA Act.

10. As a matter of principle, in our view, Mr. Advocate is right. It has been a settled position of law that when a statute creates a legal fiction, it must

not be extended beyond the purpose for which it has been created or beyond the language of the statute by which it has been so created. The

Supreme Court noted this principle in the case of State of W.B. vs. Sadan K. Bormal . (2004) 6 SCC 59 in the following words :

“25. So far as interpretation of a provision creating a legal fiction is concerned, it is trite that the Court must ascertain the purpose for which the

fiction is created and having done so must assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to

the fiction. In construing a fiction it must not be extended beyond the purpose for which it is created or beyond the language of the Section by which it

is created. It cannot be extended by importing another fiction. These principles are well settled and it is not necessary for us to refer to the authorities

on this subject. The principle has been succinctly stated by Lord Asquith in East End Dwelling Co. Ltd. V. Finsbury Borough Council, (1951) 2

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences

and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you

must imagine a certain state of affairs; it does not say that, having done so, you must cause or permit your imagination to boggle when it comes to the

inevitable corollaries of that state of affairs”.

11. Our inquiry must be directed, accordingly, to the following two aspects : (i) what was the purpose for which the legal fiction of Section 21 of the

LSA Act was created; and (ii) whether treating of an award passed under Section 21 by a Lok Adalat in a Land Acquisition matter as an award

passed by the principal Civil Court of original jurisdiction under Part III of the LA Act can be said to be an inevitable corollary or consequence flowing

from, or accompanying, such legal fiction, having regard to its purpose.

12. As the statement of Objects and Reasons for the LSA Act indicates, even before the LSA Act was brought into force, for some time, Lok

Adalats were being constituted at various places in the country for disposal in a summary way and through a process of settlement, of a large number

of cases expeditiously and with lesser costs. The institution of Lok Adalat was then (i.e. before the LSA Act came into force) functioning as a

voluntary and conciliatory agency without any statutory backing for its decisions, though it had proved to be quite popular in providing a speedier

system of administration of justice. In view of its growing popularity, there had been a demand for a statutory backing to the institution and its awards.

The Bill was said to achieve this object as one of its purposes. Let us now see how the LSA Act seeks to do so. It provides, in Chapter VI, for

“Lok Adalats”. Section 19 of that Chapter provides for organisation of Lok Adalats at such intervals and places and for exercising such

jurisdiction and for such areas as provided in it, and the experience and qualifications of such Lok Adalats. Sub-section (5) of Section 19 provides for

jurisdiction of Lok Adalat in respect of (i) any case pending before, or (ii) any matter which is falling within, the jurisdiction of, but is not brought

before, any court for which such Lok Adalat is organised. As required by Section 20 of the LSA Act, a case may be referred to a Lok Adalat for

settlement under clause (i) above (a) if the parties agree or one of the parties makes an application to the court for so referring the case and if the

court is prima facie satisfied that there are chances of settlement in the case; or (b) if the court is satisfied that the matter is appropriate to be

referred. As for the matters referred to in clause (ii) of Section 19(5), the authority or committee organising the Lok Adalat may itself refer a matter

to the Lok Adalat on receipt of an application in that behalf from any of the parties. The Lok Adalat may then proceed to dispose of the case or

matter by a compromise or settlement between the parties. Section 21 of the LSA Act provides as follows :

“21. Award of Lok Adalat.”

(1). Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a

compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the court-fee paid in such

case shall be refunded in the manner provided under the Court Fees Act, 1870.

(2). Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the

award. 13. This scheme of the LSA Act, and particularly, Chapter VI thereof, makes the following clear:

(a). Any reference to Lok Adalat is a matter of volition of the parties or any one of them;

(b). Such reference either can be made (i) by a court before whom the case or matter has been brought or (ii) directly by the authority or committee

organising the Lok Adalat;

(c). Determination of the case or a matter in pursuance of such reference is exclusively by a compromise or settlement between the parties, which the

Lok Adalat seeks to arrive at;

(d). Once a compromise or settlement is made into an award of the Lok Adalat, it is deemed to be a decree of a civil court; and

(e). Every such award is final and binding on all parties to the dispute, and cannot be appealed from.

14. All this indicates that determination of a dispute by a Lok Adalat has consequences exclusively for the parties to the dispute. The referring court or

the court for which such Lok Adalat is organised does not come into the picture so far as such determination is concerned. In fact, in the case of a

reference under clause (ii) of Section 19(5) of the LSA Act, it is the authority or committee organising the Lok Adalat, which itself refers the case or

matter to the Lok Adalat. The court, for which such Lok Adalat is organised, is not concerned even at the stage of the reference. The award made by

the Lok Adalat does not have to go back to that court to enable it to make it a part of its decree. The award itself is final and binding (and not

appealable) as between the parties. It is deemed to be a decree of a civil court and executable as such. There is nothing in this scheme of things for

treating an award passed by a Lok Adalat as a deemed decree of that court which made the reference to the Lok Adalat or for which the Lok Adalat

was organised. In the context of the LA Act, and particularly for the purposes of Section 28A, the fiction of "decree of a civil court" will not only

have to be extended to a decree of the court referring the matter to Lok Adalat or for which such Lok Adalat is organised, but such court having

passed it under Part III of the LA Act, so as to have consequences for third parties. There is nothing to suggest that if the award is in a compensation

dispute in a land acquisition matter, any third party should thereby be entitled to apply for re-determination of its compensation under Section 28A of

the LA Act. As a matter of principle, it is not possible to say that that eventuality (i.e. entitlement of a third party to apply for re-determination of its

own compensation after passing of the award by the Lok Adalat) inevitably follows as a corollary or consequence from such award.

15. Section 28A was initiated in the LA Act by the Law Acquisition (Amendment) Act, 1984. The statement of objects and reasons of the Amended

Act puts the object of the section thus :

"(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 of them has obtained orders for payment of

higher compensation from the reference court under section 18 of the Act.

16. On the other hand, the object of Lok Adalats constituted under the LSA Act is to promote settlement of disputes through a conciliatory

mechanism. As the Supreme Court observed in the case of State of Punjab Vs. Jalour Singh (2008) 2 Supreme Court Cases 660 , Lok Adalats have

no adjudicatory or judicial functions; their functions relate purely to conciliation. No Lok Adalat has the power to "hear" parties to adjudicate

cases as a court does. It discusses the subject matter with the parties and persuades them to arrive at a just settlement. As the Supreme Court put it in

Jalour Singh, “When the LSA Act refers to ‘determination’ by the Lok Adalat and ‘award’ by the Lok Adalat, the said Act does not

contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at

by the parties, with guidance and assistance from the Lok Adalat. The

‘award’ of Lok Adalat does not mean any independent verdict or opinion

arrived at by any decision-making process. The making of the award is merely an administrative act of incorporating the terms of settlement or

compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat.”

17. It is difficult to say that the Parliament, in introducing this authority of the Lok Adalat and treating its administrative act as an executable order

under the signature and seal of the Lok Adalat, meant to lend the status of an award of a reference court so as to kick in the provisions of Section

28A for the benefit of other landholders whose lands were covered by the same acquisition notification. We are, thus, of the view that the award of

the Lok Adalat, through an executable decree binding between the parties to it, does not amount to a determination of the reference court so as to

enable other similarly situated landowners to seek re-determination of compensation under Section 28A of the LA Act.

18. There is no binding authority so far as this court is concerned requiring us to take a contrary view. If anything, the burden of authorities of the

Supreme Court on various aspects of the subject commends us to take the view, which we have taken and which we find to be in line with the

scheme of the LSA Act. The Supreme Court in the case of K.N. Govindan Kutty Menon vs. C.D. Shaji . (2012) 2 SCC 51 held that even if a matter

is referred to Lok Adalat by a criminal court under Section 138 of the Negotiable Instruments Act, 1881, by virtue of the deeming provision of Section

21 of the LSA Act, the award of Lok Adalat has to be treated as a decree capable of being executed by a civil court and not an order of the criminal

court referring the matter to Lok Adalat. If that is so, there is nothing to follow inferentially from an award of Lok Adalat in a land acquisition

reference brought before it, made on a compromise between the parties to that reference, that it is an award of that court (i.e. the reference court

which sent the matter to the Lok Adalat or for which the Lok Adalat was organised) under Part III of the LA Act. It is simply a deemed decree of a

civil court and is executable as such as between the parties. It is only this consequence that is in consonance with the purpose of the LSA Act and

there is no consequence from the standpoint of Section 28A of the LA Act, following as an inevitable corollary. Whilst using the authority of K.N.

Govindan Kutty Menon for arriving at our above conclusion, we are mindful that a judgment of a higher court is an authority for what it actually

decides and not what follows from it. But then, we have referred to the judgment of K.N. Govindan Kutty Menon only to show that there is no logical

inevitability in treating the award of a Lok Adalat as an award of the referring court simply because it was that court which referred the matter to the

Lok Adalat or it was that court for which Lok Adalat was organised.

19. If this consequence, namely, the award of Lok Adalat having to be treated as an award of the reference court under Part III, does not follow as

an inevitable sequitur, to come to such consequence the legal fiction contained in Section 21 of the LSA Act will have to be actually extended to

import two other fictions, namely, that the award of Lok Adalat should be deemed (i) "a decree of the court which has referred the matter to the

Lok Adalat", and (ii) "a decree passed under Part III of the Land Acquisition Act, 1894". That, we are afraid, is impermissible under the law

stated by the Supreme Court in *Sadan K. Bormala's case* (supra). It would be an artificial extension of the legal fiction and not a necessary

corollary of the original statutory fiction; it would be extending the original fiction beyond its statutory purpose.

20. The judgments of Karnataka, Gujarat and Allahabad High Courts have indeed taken a contrary view. Karnataka High Court in Vasudave (supra)

has, relying on the provisions of the LA Act, CPC and LSA Act, and in particular, the amendment to the CPC by introduction of Section 89, held that

the award of a Lok Adalat made on a reference brought before it falls within the expression "award of the court" under Section 28A of the LA

Act. So also, Gujarat High Court in All Gujarat Jaher Bhandhkam Majoor Mandal (supra) has taken a view that as per Section 21 of the LSA Act, not

only is an award in a land acquisition matter made by Lok Adalat a decree of a Civil Court but an executable award of the Reference Court and could

be relied on for the purpose of Section 28A of the LA Act. On more or less the same footing, even Allahabad High Court has taken the same view in

Shamshad Ali (supra). We respectfully differ with these views for the reasons which we have set out above. Neither of the decisions appears to have

considered the purpose of the legal fiction of Section 21 of the LSA Act and the ratio of the Supreme Court in Sadan K. Bormal (supra).

21. The judgment of Andhra Pradesh High Court in Komaramjeri Pedamunuswamy (supra), cited by Mr. Tajane, appearing for the Petitioner, is

distinguishable on facts. There, it was the Reference Court which had passed an award based on a compromise arrived at between the parties before

a Lok Adalat. The application for re-determination of compensation made under Section 28A of the LA Act was, thus, on the basis of an award made

by the Reference Court under Part III of the LA Act; there was no question of extending the deeming provision of Section 21 of the LSA Act to an

award of a Lok Adalat.

22. The case of Rambhau Mahadeorao Tembhurkar (supra) cited by Mr. Tajane is on an altogether different point. It holds, on a principle of equality

before law, that it was impermissible to accord different treatments to owners of similar lands based on two different acquisition statutes (namely, the

LA Act and the Maharashtra Industrial Development Act, in that case). Relying inter alia on the statement of law in Girnar Traders (3) vs. State of

Maharashtra¹², the Division Bench of our court in that case held that the provisions of Section 28A of the LA Act would apply to acquisitions under

the MID Act. The ratio of this judgment has no application to the facts of our case.

23. Accordingly, we find no infirmity with the impugned order of the Sub-Divisional Officer by which he refused to entertain the Petitioner's

application under Section 28A of the LA Act based on the award of Lok Adalat in LAR No.18 of 2011. The award of Lok Adalat in that LAR cannot

be construed as an award of the court made under Part III of the LA Act. The writ petition accordingly is dismissed.