

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 4464 of 1993**  
**With**  
**SPECIAL CIVIL APPLICATION No. 4465 of 1993**  
**To**  
**SPECIAL CIVIL APPLICATION No. 4469 of 1993**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE KSHITIJ R.VYAS**

**HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?

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**RAMABHAI LAVJIBHAI - Petitioner(s)**  
**Versus**  
**STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**

NOTICE SERVED for Petitioner(s) : 1,  
 MR SP HASURKAR Ld. AGP for Respondent(s) : 1 - 2.  
 MS RUPA RANE Ld. ADVOCATE for MR SN SHELAT for Respondent(s) : 3,  
 =====

**CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS**  
**and**  
**HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**  
**Date : 31/01/2006**

**COMMON ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)**

In this is group of petitions, common question of law is involved and,

therefore, they are heard together and now they are being disposed of by this common judgment. Before we commence our discussion on the subject, it is necessary to note that these petitions were filed by Mr. P.B. Majmudar (as he then was) as an advocate for the petitioners of these petitions. However, he has now been elevated to the Bench of this Court and as per the practice followed by this court, the office has issued notices to the concerned petitioners intimating them about elevation of Mr. Justice P.B. Majmudar to the Bench of this Court. The Notices have been served but the petitioners have not made any alternative arrangement to represent them at the hearing nor they have remained personally present. To err on the safe side, we had summoned Mr. S.P. Majmudar, Id. Advocate who normally looks after the matters of Mr. Justice P.B. Majmudar, to ascertain from him whether he had received any instructions from the present petitioners, but he had informed us that neither he is appearing in these matters nor he has received any instructions in the matters from the petitioners. He had, however, requested us to grant him some time to establish contact with them and to obtain proper instructions and authority to enabling him to appear in these matters which was granted by us. Today, he states that despite his writing letters to them, no one has responded and hence, he expresses his inability to conduct the matters on behalf of the petitioners. These matters are of the year 1993. Notices have been served on the petitioners long back. Mr. SP Majmudar has not received any response from them. In view of the same, it is now necessary for us to infer that the petitioners are no more interested in the proceedings and we must decide these petitions in their absence.

The petitioners are the agriculturalists and they owned agricultural lands, details of which, are stated below:

Petition No.	Survey No.	Hector	Acres	Sq. mtrs.
4464/93	731	0	82	86

	733	0	92	67
4465/93	725	8	13	83
	727	1	12	30
4466/93	283/3	0	45	53
4467/93	734	0	88	0.2
4468/93	732	0	83	97
4469/93	16	0	71	83
	20	0	54	63

However, their lands were required for the purpose namely setting up Instrual establishment and Notification under sec. 4 of the Land Acquisition Act was issued to commence acquisition proceedings and it was published on 17.3.1986 in the Govt. Gazette. Thereafter, declaration under sec. 6 of the Act was also made and published on 27.2.1987 in the Govt. gazette. On completion of the proceedings, award was declared by respondent no. 2 on 22.2.1989. The petitioners received the compensation , the details of which are also stated below:

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Petition No.	Amount of compensation
1. SCA No. 4464/1993	5,51,897-30ps
2. SCA No. 4465/1993	4,23,289-90ps
3. SCA No. 4466/1993	1,35,224-10ps
4. SCA No. 4467/1993	2,76,371-45ps
5. SCA No. 4468/1993	2,62,680-45ps
6. SCA No. 4469/1993	4,01,631-10ps

It is almost an admitted position that the petitioners received compensation

under protest and the application that was made under sec. 18 of the Act requesting the Collector to make reference to the District Court was done after expiry of the stipulated period under the Act namely six weeks, however, the only grievance that appears to have been made by the petitioners is that copy of the award was not given to them which respondents were required to do under the provisions of sec. 51 of the Act . It is their say that even if there was any delay, in view of the fact that the copy of the award was not made available to them, the respondents ought to have condoned the delay that was caused in submitting the application by the petitioners under sec. 18 of the Act by virtue of sec. 5 of the Limitation Act.

We have perused the contents of the petitions. No other ground has been made out to substantiate their case for enhancement of the compensation or to accept their request for condonation of delay. The petitions have been contested by the respondents. Respondent no. 3 has filed affidavit-in-reply. It is the case of the respondents that since the petitioners were present at the time of declaration of the award and they had accepted the amount under protest, they were required to submit application under sec. 18(2) clause(a) of the Act within six weeks from the date of the award, but they have not done so. The applications have been filed after the expiry of the time limit prescribed under the Act. It is, therefore, submitted that these petitions may be dismissed.

We have heard Ms. Rupa Rane Id. Advocate and Mr. SP Hasurakr Id. AGP for the respondents. They have, by way of their submissions, reiterated the contentions raised in the affidavit-in-reply. Ms. Rane has also drawn our attention to our judgment rendered in Special Civil Application NO. 3092 of 1992 in the case of Memon

Ibrahim Haji Latif Sukhedwala vs. Officer of Special Duty & Ors., dated 13.6.2005, and submitted that the Collector has no power to condone the delay.

We have carefully considered the submissions made on behalf of respondents. We have also carefully gone through the contents of the said judgment, which has been delivered by this very Bench. While delivering the judgment, we have considered the judgment of this Court, reported in **1996 GLR Vol. 37(2) p. 626**. It is a decision by the Apex Court. The Apex Court, while deciding the case has held as under:

“It is to remember that the Land acquisition (Amendment Act (68 of 1984) was enacted prescribing the limitation to exercise the power under section 4, 6 and 11 and also excluded the time occupied due to stay granted by the Courts. Taking cognizance of the limitation prescribed in proviso to sub-section (2) of section 18, the provisions of the Limitation Act were not expressly extended. Though section 29(2) of the Limitation Act is available, and the limitation in proviso to sub-section (2) of Land Acquisition (Amendment ) Act, the act specifically maintains only statutory duties under the Act, including one while making reference under section 18. It is difficult to construe that the Collector/L.A.O. While making reference under section 18, as statutory authority still acts as a Court.

Though hard it may be, in view of the specific limitation provided under proviso to section 18(2) of the Act, we are of the considered view that sub-section (2) of section 29 cannot be applied to the proviso to sub-section (2) of section 18. The Collector/L.A.O. , therefore, is not a Court when he acts as a statutory authority under section 18(1). Therefore, section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to sub-section (2) of section 18. The High Court, therefore, was not right in its finding that the Collector is a Court under Section 5 of the Limitation Act.”

We have also referred to the decision of the Full Bench of this Court rendered in the case of **Special Land Acquisition Officer, Himatnagar vs. Nathaji Kacharaji, reported in 2001(3) GLH 312**. In para-8 of our judgment, while discussing the judgment of the Full Bench, we have said as under:

“In another decision in the case of **Special Land Acquisition Officer, Himatnagar v. Nathaji Kacharaji, reported in 2001 (3) GLH 312**, the Full Bench of this Court adequately dealt with the controversy involved in the case.

It shows that the said case was essentially related to proviso (b) of sub-section (2) of section 18 of the Act. However, the Court took into consideration both the eventualities that have been described in the proviso (a) and first part of proviso (b) of sub-section (2) of section 18 of the Act. It has also considered the question whether the time required for furnishing the copy of the award to the claimant is required to be excluded while computing the period of limitation. In the opinion of the Full Bench, such time cannot be excluded while computing the period of limitation. The Court has placed reliance on an earlier decision as well as the provisions of section 28A of the Act to make a comparative study of both the provisions i.e. Section 18(2) and 28A of the Act. The court has taken into consideration the fact that under the provisions of section 28A (1), in particular proviso to sub-section (1) of the said section it is provided that the time spent for obtaining the copy of the award of the court should be excluded while computing the period of limitation. No such specific provision is made in section 18(2) of the Act. In view of the same, the Full Bench has held as under:

“Under sub-section (1) of section 28A, a person seeking reference through the Collector of his case on the basis of award of another land-owner covered by the same notification, has to make application within the prescribed three months' period of limitation from the date of award. The proviso to sub-section (1) of section 28A expressly allows exclusion of date of passing of the award by the court and time requisite for obtaining copy of the award of the court for computing the period of limitation. What is noticeable is that such exclusion of time of date of passing of the award and obtaining copy of the award is not to be found in section 18 of the Act which enables land owner to seek reference by making application to the Collector within prescribed period of limitation, i.e. Six weeks or six months as the case may be. Obviously, therefore, as has been rightly pointed out by the learned Judges of the Division Bench who have made this Reference to the Full Bench, the proviso below section 28A of the Act cannot be made applicable directly or by implication to the proviso to section 18 of the Act, as doing so would be violence to the provisions of section 18 under consideration.”

We have also said that when the Full Bench of this court has held that the decision of the Apex Court referred to above applies to both the proviso i.e. Proviso (a) and (b) to sub-section (2) of section 18 and it is held that the time spent for obtaining copy of the award made available to the claimant cannot be excluded while computing the period of limitation, there is no reason for us to deviate from the proposition of law laid down by the aforesaid decision. In view of the aforesaid, we cannot accede to the request made by the petitioners in these petitions and grant the

reliefs as prayed for. These petitions, therefore, stand dismissed. Rule discharged in each petition.

(KSHITIJ R. VYAS, J.)

(AKSHAY H. MEHTA, J.)

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