

**THE HIGH COURT OF MADHYA PRADESH, JABALPUR****M.P. No.2493/2021****Kewal Kumar Jaggi & others****Versus****State of Madhya Pradesh & others**

Date of Order	<b>17.11.2021</b>
Bench Constituted	Single Bench
Order delivered by	<b>Hon'ble Mr. Justice Sanjay Dwivedi</b>
Whether approved for reporting	<b>Yes</b>
Name of counsel for parties	For petitioner: Mr. Manoj Sharma, Advocate and Mr. Quazi Fakhruddin, Advocate. For Respondent No.1/State: Mr. Darshan Soni, Government Advocate. For Respondent No.3/Caveator: Mr. Vikram Singh, Advocate.
Law laid down	Reference at the instance of local authority or the Company for whose benefit the land is acquired, is not maintainable, except on the ground of fraud, corruption or collusion.
Significant Para Nos.	9, 10, 13, 14 and 18.

**Reserved on : 21.10.2021****Delivered on :17.11.2021****(O R D E R)****(17.11.2021)**

Since pleadings are complete, therefore, with the consent of learned counsel for the parties, the matter is heard finally.

2. By means of this petition filed under Article 227 of the Constitution of India, the petitioners are calling in question the validity of the order dated 26.07.2021 (Annexure-P/18) whereby the Reference Court rejected the preliminary objections raised by them.

3. For resolving the controversy involved in the instant

case, the facts adumbrated in nutshell are that the petitioners owned 51.35 acres of land in Village Gadheri, District Jabalpur and over a part of the said land, a mining lease was granted by the State Government in favour of the petitioners to run a stone crusher which was the sole source of their income. In the year 2012, the Defence Authorities started pressurizing the petitioners, their staff and the labourers working on the said stone crusher to stop the activities of the stone crushing and gradually everybody was stopped to even step over the said land.

**(3.1)** Left with no option, the petitioners approached the High Court by filing a petition i.e. W.P. No.21481/2013 making a prayer therein that the Defence Authorities be restrained from interfering/disturbing the petitioners' peaceful possession over the said land. In the meantime, a notification dated 06.05.2016 was published under Section 3 of the Works of the Defence Act, 1903 (in short the 'WODA') imposing restrictions as mentioned under Section 7(b) of the WODA w.e.f. 14.05.2016. However, in the above backdrop, vide order dated 30.08.2017, W.P. No.21481/2013 was disposed of with directions to the respondents to take appropriate steps for determining the damages/compensation within a period of six months and the petitioners were also given the liberty to take action in accordance with law, if the compensation is not paid to them within the stipulated period.

**(3.2)** However, when the order passed in the above petition was not complied with then the petitioners filed first contempt petition i.e. Conc No.1014/2018 which vide order dated 06.04.2018 was disposed of granting further six months' time to the respondents for

complying with the order passed in the W.P. No.21481/2013.

- (3.3) Despite completion of further period of six months when nothing was done then second contempt petition i.e. Conc No.2959/2018 was filed by the petitioners and during pendency of the said contempt petition as many as four different awards ranging from Rs.10.55 crores to Rs.1.97 crores were passed. Since the award was passed, therefore, the High Court vide order dated 21.11.2019 dismissed the Conc No.2959/2018 giving liberty to the petitioners to approach the appropriate forum in case their grievance is not redressed.
- (3.4) Despite the undertaking of the counsel appeared for the Defence Authorities that a proposal was sent to the Defence Ministry for disbursement of the amount to the petitioners and for which three months' time was sought for, but when the amount of compensation was not paid to the petitioners then they again filed third contempt petition i.e. Conc No.708/2020 and in the said contempt petition, the presence of the Defence Authorities was ordered even through Video Conferencing to explain as to what steps have been taken to comply with the order passed by this Court. As the Defence Authorities wanted exemption from appearance even through Video Conferencing, therefore, they agreed to deposit the awarded amount on their own volition within six weeks before the Collector and pursuant thereto, the order of personal appearance of the Defence Authorities was recalled.
- (3.5) During pendency of third contempt petition, a reference under Section 18 of the WODA was moved by the Defence Authorities before the Collector,

Jabalpur, who in a very mechanical manner even without dealing with the aspect of limitation and other issues pertaining to maintainability, referred the same to the District Court wherein the same was registered as MJC No.283/2021 and presently, it is pending in the Court of Tenth Additional District Judge, Jabalpur. Although, the reference was sent to the District Court, but no notice was received by the petitioners during this period. However, the petitioners' third contempt petition was disposed of vide order dated 24.06.2021 directing the Collector to disburse the amount to the petitioners.

**(3.6)** Thereafter, the Defence Authorities by filing SLP before the Supreme Court had challenged the order dated 24.06.2021 passed in Conc No.708/2020 which, later on, was converted into civil appeal and ultimately, the Supreme Court after setting aside the order dated 24.06.2021 passed in the above contempt petition, disposed of the civil appeal with following directions:-

- “(a) The reference petition pending before the 29th Additional District Judge, Jabalpur in Case No. MJC/6337/2020 CNR:MP200L0195912020 filed by the appellants against the determination of compensation amount by the Collector, Jabalpur, be decided expeditiously and in accordance with law. Before proceeding with the said reference on merits, the court may examine the preliminary objection of the respondents that reference at the instance of the appellants being beneficiary, is not maintainable.
- (b) The respondents would be also at liberty to file a reference before the District Judge for enhancement of the compensation.
- (c) The reference filed by appellants be decided uninfluenced by the fact that the appellants had failed to pass any order under Section 3 of the 1903 Act or that the order dated 02.07.2021 has been passed post the impugned order.
- (d) It will be open to the appellants to apply for stay against disbursement of the compensation

amount lying deposited with the Collector, Jabalpur. Equally, it will be open to the respondents to approach the Collector for release of the amount to them. Such applications be decided on its own merits and in accordance with law. All contentions and further remedies available to both sides are left open.

- (e) We clarify that we have not commented on any of the above aspects or on the question of computation of compensation as the said issue has to be determined in the reference.”

As per the petitioners, the directions contained in Clauses-(a), (b) and (c) pertain to proceeding in the Reference Court wherein it had been directed to decide the pending reference expeditiously on merit. The Reference Court had further been directed to decide the preliminary objections as had been raised by the respondents (petitioners herein) with regard to maintainability of the reference at the instance of the Defence Authorities. As per the petitioners, the Defence Authorities were also directed that they may apply for stay against disbursement of compensation amount lying with the Collector, Jabalpur. However, the petitioners were at liberty to approach the Collector, Jabalpur for releasing of the compensation amount by filing an appropriate application which shall be decided by the said Authority on its own merit. As per the petitioners, the Supreme Court in Clause-(e) of direction clause had not commented anything on the question of computation of compensation as the same has to be determined in the reference itself.

- (3.7)** In pursuance to the directions given by the Supreme Court, the Reference Court decided the application/objections raised by the petitioners and passed an order on 26.07.2021 (Annexure-P/18). The first objection which was decided by the Reference

Court was as to whether the reference at the instance of the Defence Authorities is maintainable or not because as per the petitioners, the reference made by the Defence Authorities under Section 18 of the WODA is not maintainable for the reason that as per the definition of person interested given in Section 2(b) of the WODA, they were not the person interested in respect of the award passed by the Collector. As per the petitioners, the Reference Court despite the directions given by the Supreme Court for the deciding the preliminary objections raised by them, had not decided their other objections. As per the petitioners, they had also raised an objection in respect of applicability of the WODA in the matter of computation of compensation saying that the same has to be determined as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short the 'Act, 2013'), but the said objection had also not been decided by the Reference Court. It is also contended by the petitioners that the objection regarding maintainability of reference as the same was barred by time, was also not answered by the Reference Court.

4. Mr. Sharma, learned counsel for the petitioners is criticising the impugned order mainly on the ground that the preliminary objection decided by the Reference Court in respect of maintainability of reference at the instance of the Defence Authorities is illegal because the same was not considered by the Reference Court in an appropriate manner. He has argued that the award passed by the Competent Authority was also not proper because the compensation was to be determined in view of the provisions of the Act, 2013. He

has further urged that the Collector while making the reference had not considered the aspect that the reference made to him was barred by time and as such, an application under Section 5 of the Limitation Act was annexed along with the reference, but that was also not decided by the Collector and without giving any finding thereof, he referred the matter to the Reference Court. Learned counsel for the petitioners submits that if the provisions of Section 18 of the WODA are seen then it is clear that the provisions of the reference is available only to the land owners or a person interested, but since the respondents/Authorities do not fall within the meaning of person interested, therefore, the reference at their instance is not maintainable. He further submits that the definition of 'person interested' as has been given in Section 2(b) of the WODA does not include the respondents/Authorities in the context of provisions of Section 18 of the Land Acquisition Act, 1894 (in short the 'Act, 1894'). He further submits that Section 18 of the Act, 1894 should be read along with the provisions of the Section 25 of the WODA which puts a restriction that the amount awarded by the Collector under Section 12 cannot be reduced meaning thereby that the reference is only available for the land owners in whose favour the Competent Authority has awarded the compensation and that reference could be made for enhancement of the amount awarded and the said awarded amount, in any manner, cannot be reduced meaning thereby that the Authority for whom the land is acquired cannot make any reference showing dissatisfaction with the quantum of compensation awarded or claiming that the same should be reduced or should be less than the amount awarded by the Competent Authority.

5. Mr. Sharma, learned counsel for the petitioners has further urged that the Reference Court in its order had failed to consider the law laid down by the Supreme Court in the case

reported in **(2009) 16 SCC 1 [Steel Authority of India Limited Vs. Sutni Sangam and others]** and also in holding that the Supreme Court in the above case had considered the expression person interested in respect of provisions of Act, 1894, whereas the present case is of WODA, therefore, the said case has no applicability in the present case. He also submits that in **W.P. No.5794/2013 [Union of India and others Vs. State of M.P. and others]** and other connected petitions, the Gwalior Bench of this Court had also considered the expression person interested referred in the WODA, but the said judgment is *per incuriam* as in the same, the case of **Sutni Sangam** (supra) had not been considered.

6. On the other hand, learned counsel for respondent No.3 has opposed the submissions made by learned counsel for the petitioners and submitted that it is their reference and though the liberty was granted by the Supreme Court to the petitioners for making a reference against the award passed by the Competent Authority, but as the same had not been done, therefore, the objection with regard to applicability of the provisions of the Act, 2013 while computing the compensation cannot be entertained by the Reference Court and even by this Court. He submits that the Supreme Court in the SLP had also observed that the Collector, Jabalpur incorrectly invoked the provisions of the Act, 2013 and asked the local and Military Authorities to deposit the amount of Rs.10.55 crores which itself indicates that the provisions of the Act, 2013 shall not be applicable for determining the compensation and as such, no illegality was committed by the Reference Court while not deciding the said issue. In support of his contention, learned counsel for respondent No.3 has relied upon various judgments of the Supreme Court viz. **(1994) 6 SCC 74 [N Krishnamachari Vs. Managing Director, APSRTC, Hyderabad and others];(1980) 3 SCC 223 [Himalayan Tiles**



**and Marble (P) Ltd Vs. Francis Victor Coutinho]; (1994) 4 SCC 737 [Union of India and another Vs. District Judge, Udhampur and others]; (1993) 1 SCC 608 [Union of India Vs. Sher Singh and others]; AIR 1966 SC 237 [G.H. Grant DR Vs. State of Bihar] and (1995) 1 SCC 221 [Neyvely Lignite Corporation Ltd. Vs. Special Tahsildar (Land Acquisition) Neyvely and others].** However, learned counsel for respondent No.3 has also relied upon the judgment passed by the Gwalior Bench of this Court in the case of **Union of India** (supra). Learned counsel for respondent No.3 has submitted that in light of the above judgments, since the respondents/Authorities fall within the definition of person interested and as such, they have a right to make a reference under Section 18 of the WODA because the reference can be made by a person interested as the provision itself provides so, therefore, the objection raised by the petitioners is contrary to law.

7. I have heard the arguments advanced by learned counsel for the parties and perused the record.

8. Considering the submissions made by learned counsel for respondent No.3 and the observations made by the Supreme Court in paragraph-7 of the order of SLP filed by the Defence Authorities, I am also of the view that the objection with regard to applicability of the provisions of Act, 2013 for computation of compensation amount is not available to the petitioners for the reason that when the Supreme Court had given the liberty to the petitioners for making a reference against the award passed by the Competent Authority, despite that no reference challenging the quantum of compensation was made by them, then it can be assumed that said award had been accepted by the petitioners. However, in a reference showing disagreement with the quantum of compensation made by the respondents/Authorities, the objection raised by

the petitioners before the Reference Court had no significance, therefore, the same was not decided by the Reference Court as it was not maintainable and for the above reasons, the said issue shall also not be decided by this Court too.

9. Before deciding the question regarding maintainability of reference at the instance of the respondents/Authorities, it is apt to mention Sections 18 and 25 of the Act, 1894 which read as under:-

**“18 Reference to Court.-**(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,-

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

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**[25. Amount of compensation awarded by Court not to be lower than the amount awarded by the Collector.-** The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under section 11.]”

Likewise provisions of Sections 18 and 25 of the WODA read as under:-

**“18. Reference to Court.-**(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the

compensation among the persons interested:

Provided that every such application shall be made,-

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector' s award;
  - (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 13, sub-section (2), or within six months from the date of the Collector' s award, whichever period shall first expire.
- (2) The application shall state the grounds on which objection to the award is taken.

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**25. Rules as to amount of compensation.**-(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 12.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.”

From the respective provisions of Act, 1894 and of WODA quoted hereinabove, it is clear that both the provisions are identical in nature. In the Act, 1894, Section 25 restricts that the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11. It means that if a person makes a reference against the amount of awarded compensation asking therein that the same be reduced, the said reference is nothing but a futile exercise in view of the specific bar provided under the provisions of Section 25 of the Act, 1894 and of the WODA also. Here in this case, admittedly, the reference had been made by the

respondents/Authorities as they were not satisfied with the quantum of the compensation awarded by the Collector. The definition of 'person interested' provided under sub-section (b) of Section 3 of the Act, 1894 and also under sub-section (b) of Section 2 of the WODA reproduced hereinbelow:-

**“3(b)** the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;

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**2(b)** the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the imposition of restrictions upon the use and enjoyment of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.”

It is clear that both are identical. However, the cases on which learned counsel for the parties have placed reliance are infact not on the issue which is to be adjudicated in this case. In none of the cases, the Supreme Court and the High Court have dealt with the specific issue as to whether the reference at the instance of the respondents/Authorities in whose favour the land is acquired, is maintainable or not. However, from perusal of the judgments cited above, I am of the view that the Supreme Court and the High Court have used the expression 'person interested' to the extent when the compensation is determined by the Competent Authority. There is no dispute to that aspect that after acquisition of the land, if compensation is determined by the Competent Authority for whom the land is acquired, is a person interested and has every right to see whether the computation of compensation is being made by the Competent Authority in a proper manner or not. They have every right to be heard or to put up their stand and as such, they

are the proper parties before the Competent Authority as they are the person interested as per the expression provided under Section 3(b) of the Act, 1894 and Section 2(b) of the WODA. The Supreme Court has also observed that the Authority has a right to adduce evidence on the question of quantum of compensation so that the Company may not have to put a very heavy amount of money. Likewise, when the reference is made by the land owner, the Company is also a proper party so as to put up their stand or to adduce evidence so that the compensation could be determined in a proper manner, but not on a higher side because ultimately the amount has to be paid by them. Further, Section 50 of the Act, 1894 gives right to a local authority or Company for whom the land is acquired to appear before the Collector or before the Court and to adduce evidence for the purpose of determining the compensation, but that provision very clearly provides a specific bar for making reference by the local authority or Company as per Section 18 which clearly indicates that the person interested so far as it relates to local authority or Company is concerned, the same is only to the extent that they have a right to appear before the Collector or before the Court to put up their stand, but not for raising a reference as per Section 18. For ready reference, Section 50 of the Act, 1894 is reproduced hereinbelow:-

**“50 Acquisition of land at cost of a local authority or Company.-**(1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of any incidental to such acquisition shall be defrayed from or by such fund or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.”

10. Further, the Supreme Court in the case reported in **AIR 1986 SC 1164 [Santosh Kumar and others Vs. Central Warehousing Corporation and another]** had an occasion to deal with the aspect as to whether the reference can be made by a local authority or a Company under Section 18 or not and considering the provisions of Sections 25 and 50 of the Act, 1894, the Supreme Court in paragraphs 3, 4 and 5 of the said case has observed as under:-

“3. Section 4 of the Land Acquisition Act enables the Government, whenever land is needed for any public purpose or for a company to publish a notification to that effect in the official Gazette. After hearing objections, or straightway, where such hearing is dispensed with on account of urgency, the Government is required by Section 6 of the Act to make a declaration that any particular land is needed for a public purpose or for a company. Thereafter the Collector is required to invite claims to compensation for all interests in such land. The Collector is then required by Section 11 of the Act to enquire into the objections and the claims and determine and apportion the compensation by making an award. A proviso added by way of an amendment in 1984 stipulates that no award shall be made by the Collector without the previous approval of the Government or of the officer authorised by the Government in that behalf. Section 18 enables any person interested who has not accepted the award to require the Collector to refer the matter for the determination of the court, “whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested”. Here we must refer to Section 50(2) of the Act and the proviso thereto which are as follows:-

“Section 50(2). In any proceeding held before a Collector or Court in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or company shall be entitled to demand a reference under Section 18.”

Section 25 further prescribes that the amount of compensation awarded by the court shall not be less than the amount awarded by the Collector under Section 11. Section 54 provides for an appeal to the High Court from the award, or from any part of the award, of the court but it does not prescribe who may

appeal to the High Court.

4. In our view there cannot be any possible doubt that the scheme of the Act is that, apart from fraud, corruption or collusion, the amount of compensation awarded by the Collector under Section 11 of the Act may not be questioned in any proceeding either by the government or by the company or local authority at whose instance the acquisition is made. Section 50(2) and Section 25 lead to that inevitable conclusion. Surely what may not be done under the provisions of the Act may not be permitted to be done by invoking the jurisdiction of the High Court under Article 226. Article 226 is not meant to avoid or circumvent the processes of the law and the provisions of the statute. When Section 50(2) expressly bars the company or local authority at whose instance the acquisition is made from demanding a reference under Section 18 of the Act, notwithstanding that such company or local authority may be allowed to adduce evidence before the Collector, and when Section 25 expressly prohibits the court from reducing the amount of compensation while dealing with the reference under Section 18, it is, clearly not permissible for the company or local authority to invoke the jurisdiction of the High Court under Article 226 to challenge the amount of compensation awarded by the Collector and to have it reduced.

5. Long ago, it was held in *Ezra v. Secy. of State for India* [(1905) 32 IND APP 93 : ILR 32 Cal 605], and it has never been doubted since, “that the “award” in which the enquiry by the Collector results is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owners of the lands” and that, “if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the court.” As pointed out by this Court in *Raja Harish Chandra v. Deputy Land Acquisition Officer* (1962) 1 SCR 676 : (AIR 1961 SC 1500), the observations of the Privy Council in *Ezra’s* case indicate that the Collector, in making an award, acts as an agent of the Government, and that the legal character of the award made by the Collector is that of a tender or offer by him on behalf of the Government. (See also *Mohammad Hasnuddin v. State of Maharashtra*, [(1979) 2 SCR 265 at p.274 : (AIR) 1979 SC 404 at p.409]. If the Collector making an award was in law making an offer on behalf of the Government, it is difficult to appreciate how the Government or anyone who could but claim through the Government would be entitled to question the award, apart from fraud, corruption or collusion.”

Dealing with the specific provisions, the Supreme Court in the aforesaid case has finally observed that the reference at the

instance of local authority or the Company for whose benefit land is acquired, is not tenable.

11. Moreso, the Full Bench of this Court in a case reported in **1987 M.P.L.J. Vol.XXXII 535 [M.P. State Co-Operative Oil Seeds Growers Federation Seoni, Malwa Vs. State of Madhya Pradesh and others]** has considered the view taken by the Supreme Court in the case of **Santosh Kumar** (supra) and in paragraphs 4, 5 and 6 of its judgment has observed as under:-

“4. Section 4 of the Land Acquisition Act enables the government, whenever land is needed for any public purpose or for a company to publish a notification to that effect in the official Gazette. ‘Company’ has been defined under Section 3(e) to include a Society or a Co-operative Society registered under Societies Registration Act, 1860, or under any law relating to Co-operative Societies for the time being in force in any State. After hearing objections, or straightway, where such hearing is dispensed with on account of urgency, the government is required by Section 6 of the Act to make a declaration that any particular land is needed for a public purpose or for a company. Thereafter the Collector is required to invite claims to compensation for all interests in such land. The Collector is then required by Section 11 of the Act to enquire into the objections and the claims and determine and apportion the compensation by making an award. A proviso added by way of an amendment in 1984 stipulated that no award shall be made by the Collector without the previous approval of the government or of the officer authorised by the government in that behalf. Section 18 enables any person interested who has not accepted the award to require the Collector to refer the matter for the determination of the court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. Here we must refer to Section 50(2) of the Act and the proviso thereto which are as follows:-

50(2) In any proceeding held before a Collector or Court in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation :

Provided that no such local authority or company shall be entitled to demand a reference under Section 18.

Section 25 further prescribes that the amount of



compensation awarded by the court shall not be less than the amount awarded by the Collector under Section 11. Section 54 provides for an appeal to the High Court from the award, or from any part of the award, of the court but it does not prescribe who may appeal to the High Court.

5. According to me, the matter is settled by the latest decision of the Supreme Court in *Santosh Kumar vs. Central Warehousing Corpn.* (1986) 2 S.C.C. 343 wherein it has been held as under:-

“Sections 50(2) and 25 of the Act indicate that apart from fraud, corruption or collusion the amount of compensation awarded by the Collector under Section 11 may not be questioned in any proceeding either by the Government or by the company or local authority at whose instance the acquisition is made. The Collector, in making an award, acts as an agent of the Government, and the legal character of the award made by the Collector is that of a tender or offer by him on behalf of the Government. Therefore, the Government or anyone who could claim through the Government, would not be entitled to question the award. It is, therefore, not permissible for the company or local authority to invoke the jurisdiction of the High Court under Article 226 to challenge the amount of compensation awarded by the Collector and to have it reduced. What may not be done under the provisions of the Act may not be permitted to be done by invoking the jurisdiction of the High Court under Art. 226. Article 226 is not meant to avoid or circumvent the processes of the law and the provisions of the statute.”

The appeal to the Supreme Court arose out of an order of the Division Bench in a writ petition setting aside the award given by the Land Acquisition Officer on the grounds (i) while determining the compensation at least 1/3rd of the land should have been left out for the purpose of roads etc. and (ii) the sale of small plots of land could not have been taken as conclusive to determine the compensation of the land in question which was quite a large area. Therefore, in view of the decision of the Supreme Court neither the petitioner-society, at whose instance the land was acquired, can make a reference under Section 18 of the Act because of the bar in proviso to Section 50(2) of the Act nor this court can entertain this writ petition against the impugned award at the instance of the Society. However, the learned counsel for the petitioner contended that under Sub-section (2) of Section 50 the Society was entitled to be noticed in the proceedings for determination of compensation by the Land Acquisition Officer but no such notice was given. Under the sub-section, the society could have appeared and adduced

evidence for the purpose of determining the amount of compensation and so the award should be quashed and the case remitted back for re-determination of the amount of compensation. In order to satisfy myself, the record of the Land Acquisition Officer was requisitioned and on going through the record I am satisfied that the Society had notice of the proceedings for determination of compensation though there is no notice as such on record intimating the Society about the proceedings, but the Society was given a notice on 1-9-1983 to deposit Rs. 3,33,224.28 p. tentatively pending determination of compensation to be awarded for acquisition of the land in question. According to me, this was the notice to the Society about the proceeding. The Society in reply submitted a written undertaking to pay the compensation that may be awarded by the Land Acquisition Officer. Nothing prevented the society at that stage to have intervened and contend as to what is to be the market price of the land under acquisition and also could have disputed the amount tentatively determined. So after the award is given, it is not open to the society to claim that it has no notice of the proceedings and a fresh opportunity should be given by remitting the award to the Land Acquisition Officer for redetermination of the compensation. Relief could have been in this writ petition in case the Society had no notice of the proceedings for determination of the compensation.

6. Section 18 permits a person interested to apply for a reference to the civil Court if he has not accepted the award. But proviso to Section 50(2) provides that the local authority or the company at whose instance the acquisition is made, shall not be entitled to demand a reference. Both these sections are to be read together and proviso to Section 50(2) is by way of exception to Section 18. It is true that the Supreme Court in *Himalaya Tiles and Marbles (P.) Ltd. (supra)* has held that the definition of 'person interested' in Section 18 must be construed so as to include a body, local authority or a company for whose benefit the land is acquired. But the Supreme Court was not considering the effect of the proviso to Section 50(2) to Section 18. The observation of the Supreme Court has to be read in the light of the facts of that case. There the land-owner challenged the acquisition in a writ petition and the Single Bench of the Bombay High Court quashed the acquisition as the acquisition was not for public purpose. Section 4 has since been amended, an acquisition can be made for a public purpose or for a company. The company at whose instance the acquisition was made filed Letters Patent appeal which was dismissed by the Division Bench on the ground that the appellant has no *locus standi* to file the appeal. The Supreme Court also dismissed the appeal as there was no compliance to Section 7 but held that the Letters Patent Appeal was competent as the company

was a person interested to support the acquisition and to see that it is not required to pay a very heavy amount as compensation. The Supreme Court has not said that a reference will lie at the instance of a local authority or a company. This means that a local authority or a company is a person aggrieved and has a right to challenge any order quashing the acquisition as at its instance the acquisition was made. So Gulab Gupta, J. was not right in saying that a reference will lie at the instance of a local authority or a company at whose instance the acquisition was made provided it had no notice or had not participated in the proceedings for determination of compensation. B.C. Varma, J. was also not right in reducing the amount of compensation in the writ petition. In case the Society had not notice of the proceedings before the Land Acquisition Officer, he could have only remanded the case for redetermination of the compensation after giving opportunity to the Society to adduce evidence. The Full Bench decision of this Court in *Town Improvement Trust vs. S.C. Angre (supra)* stands impliedly overruled by the latest Supreme Court decision in *Santosh Kumar Vs. Central Warehousing Corpn. (supra)*.

12. The Supreme Court further in the case reported in **(2011) 7 SCC 639 [State of Madhya Pradesh Vs. Narmada Bachao Andolan and another]** in paragraph-47 has observed as under:-

“47. It is a matter of common experience that the “person interested” gets the actual amount of compensation in reference under Section 18 and appeal under Section 54 of the 1894 Act. Award made by the Land Acquisition Collector is merely an offer by the State through its agent. The Collector acts in dual capacity. It is in fact for this reason that local authority/company for whom the land is acquired cannot question the award of the Collector except on the ground of fraud, corruption or collusion, as provided under Section 50 of the 1894 Act. The award in the enquiry by the Collector is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owners of the lands, and that, if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the court. (See Ezra v. Secy. of State for India in Council [(1904-05) 32 IA 93] and Santosh Kumar v. Central Warehousing Corpn. [(1986) 2 SCC 343 : AIR 1986 SC 1164])”

(Emphasis Supplied)

13. Considering the respective provision of the Act, 1894 which is *pari materia* to the provision of the WODA, the

consistent view of the Supreme Court is that the reference at the instance of the authority or the Company for whose interest the land is acquired, is not tenable. Moreover, the provision of Section 50 of the Act, 1894 which has also been dealt with by the Supreme Court puts a specific bar for a Company to make a reference against the award passed by the Collector. However, the similar provision is not available in the WODA, but that does not make any difference because if the provision like Section 50 is not available in the WODA, it does not mean that the said provision has any significance to rule out the law laid down by the Supreme Court in respect of Section 18 of the Act, 1894. Although, if we read Sections 18 and 25 of the Act, 1894 conjointly then it is clear that Section 25 puts a restriction that the amount awarded by the Collector cannot be reduced and in the WODA itself, the said restriction is also available and as such, both the provisions are identical, ergo, if a reference showing disagreement in regard to quantum of compensation is made making a prayer therein to reduce it, the same would be meaningless and also a futile exercise.

14. Although, in the case of **Union of India** (supra) on which learned counsel for respondent No.3 has placed reliance, the High Court has dealt with the provision of Section 2(b) of the WODA and interpreted the definition of person interested, but in view of the discussion made hereinabove, it is clear that the Supreme Court has dealt with the specific provision as to whether the local authority or the Company at whose instance the land is acquired, can avail the remedy provided under Section 18 and make a reference against the award passed by the Collector. This Court has also considered the expression as has been provided under Section 2(b) of the WODA, but that expression does not have the same implication in Section 18 and the same has been clarified by this Court in the discussion made hereinabove that the person interested does not mean to

raise a reference, but being a proper party the authority or the Company has a right to be heard at the time of determining the compensation by the Competent Authority i.e. Collector or even by the Reference Court when any reference is made by the land owner or person interested to claim the enhancement of compensation.

**15.** Thus, I am of the opinion that the Court below has not dealt with this particular aspect of the matter and confined its observation only to the extent that the definition of person interested as provided under Section 2(b) of the WODA includes the person at whose instance, the land is acquired and as such, reached at a conclusion that the reference at their instance is maintainable, but in view of the discussion made in the preceding paragraphs, the said finding of the Court below is not sustainable in the eyes of law.

**16.** Although, as per learned counsel for the petitioners, the Court below in its order has considered the judgment of **Union of India** (supra), but that judgment is *per incuriam* for the reason that the High Court in the said case had not considered the judgment of **Sutni Sangam** (supra) wherein the Supreme Court in paragraph-51 has given clear meaning of person interested as defined in Section 3(b) of the Act, 1894 which is *pari materia* provision to that of Section 2(b) of the WODA.

**17.** However, in the case of **Sutni Sangam** (supra), the Supreme Court in paragraph-51 has observed that so far as Section 18 of the Act, 1894 is concerned, the local authority or the Company does not come within the definition of person interested. Paragraph-51 of the said case reads as under:-

“**51.** The Act uses the expression “person interested”. The definition of the expression “person interested” as contained in Section 3(b) of the Act is an inclusive definition although not an exhaustive one. Primarily it includes “all persons claiming an interest in compensation to be made on account of the acquisition of

land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land". The expression "person interested" for the purpose of Section 18 of the Act may be given a restricted meaning. A State is not a person interested. A company or a local authority for whose benefit the lands are acquired, having regard to the provisions of sub-section (2) of Section 50 of the Act, is not entitled to file any application for reference."

In view of the aforesaid, I am convinced with the submission made by learned counsel for the petitioners for the reason that the Supreme Court in the said case has very specifically made distinction of person interested to the context of Section 18 of the Act, 1894 which is *pari materia* provision to that of the WODA.

**18.** Thus, this Court has no hesitation to hold that the reference at the instance of the respondents/Authorities which is registered as MJC No.283/2021 before the Tenth Additional District Judge, Jabalpur is not tenable, therefore, the same is hereby dismissed as not maintainable. Consequently, the order dated 26.07.2021 (Annexure-P/18) passed in the said reference proceeding is set aside.

**19.** It is apt to mention here that during the course of arguments, learned counsel for the petitioners has argued that the reference made by the respondents before the Reference Court was barred by time and in this regard, the petitioners had raised an objection despite that the Court below had not dealt with that objection. However, on going through paragraph-12 of the preliminary objections raised by the petitioners before the Court below which is available on record as Annexure-P/13 only three preliminary objections with regard to maintainability of reference were raised, but in all those three objections, the reference was not attacked on the ground of limitation, therefore, the Court below had not dealt with the said aspect. In the petition filed under Article 227 of the Constitution of India, this Court is testing the legality of the

order passed by the Reference Court wherein the question of limitation was not dealt with by the Court below, therefore, I am also not inclined to go into the said question. However, the said issue is left open for the petitioners and if any occasion arises, they may raise this objection before the Court below, but at present since the reference in question has already been dismissed by this Court, therefore, nothing more is required to be discussed on the ground of limitation.

**20.** With the aforesaid, the petition filed by the petitioners stands **allowed** in terms of the observation made in paragraph-18.

**(SANJAY DWIVEDI)**  
**J U D G E**