

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 27TH DAY OF NOVEMBER 2015 / 6TH AGRAHAYANA, 1937

WP(C).No. 16479 of 2012 (H)

PETITIONER(S):

J.P.JOSEPH, AGED 77 YEARS,
S/O JOSEPH, KOTTURETHU PAREPEEDIKAYIL, LAKASSERI MURI,
CHEGANNUR VILLAGE,
NOW RESIDING AT 14-LALIT,
UTTAM HSNG CO-OPERATIVE SOCIETY, ST.ANTONY'S ROAD,
CHEMBUR, MUMBAI-400071.

BY ADV. SRI.A.SHAFAEEK (KAYAMKULAM)

RESPONDENTS :

1. THE DISTRICT COLLECTOR,
ALAPPUZHA.
2. THE SPECIAL TAHSILDAR,
LAND ACQUISITION (RAILWAY), KAYAMKULAM.
3. SOUTHERN RAILWAY,
REPRESENTED BY EXECUTIVE ENGINEER (DOUBLING),
KAYAMKULAM.

BY ADV. GOVERNMENT PLEADER SRI.K.K.SAIDALAVI
R3 BY ADV. SRI.V.E.ABDUL GAFOOR,SC, RAILWAYS
BY SRI.C.S.DIAS,SC, RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

- EXT.P1 TRUE COPY OF THE PUBLIC NOTICE DATED 3/2/2010 ISSUED UNDER RULE 7(2).
- EXT.P2 TRUE COPY OF THE LETTER DATED 17/10/2010 SENT BY LATE SRI.JOHN JOSEPH TO THE 3RD RESPONDENT.
- EXT.P3 TRUE COPY OF THE COVERING LETTER DATED 26/10/2010 SENT BY 3RD RESPONDENT TO THE 2ND RESPONDENT.
- EXT.P4 TRUE COPY OF THE REMINDER SENT ON 30/10/2010 BY LATE SRI.JOHN JOSEPH.
- EXT.P5 TRUE COPY OF THE VALUATION STATEMENT OF LAND PROPOSED TO BE ACQUIRED PREPARED UNDER RULE 10(2).
- EXT.P6 TRUE COPY OF THE NOTICE ISSUED TO THE PERSON INTERESTED ON LAND UNDER RULE 11(2).
- EXT.P7 TRUE COPY OF THE AWARD DATED 9/12/2011 UNDER RULE 12 (1).
- EXT.P8 TRUE COPY OF THE FORM REFERRING THE LAC TO THE COURT UNDER RULE 16.
- EXT.P9 TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT INFORMING THE DEPOSIT OF THE AMOUNT AWARDED.
- EXT.P10 TRUE COPY OF THE FORM OF SCHEDULE OF INFORMATION FOR REFERENCE TO COURT ISSUED UNDER FORM 17 OF RULE 16.
- EXT.P11 TRUE COPY OF THE LETTER DATED 22/2/2012 ISSUED BY THE 2ND RESPONDENT TO SUB JUDGE CHENGANNUR.
- EXT.P12 TRUE COPY OF THE NOTICE DATED 7/3/2012 ISSUED FROM THE SUB COURT, CHENGANNUR.
- EXT.P13 TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P14 TRUE COPY OF THE LETTER SENT ALONG WITH EXT.P13.
- EXT.P15 TRUE COPY OF THE ORDER DATED 31/5/2012 OF THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.16479 of 2012

Dated this the 27th day of November, 2015

JUDGMENT

The petitioner has filed this Writ Petition seeking a writ of certiorari to quash Ext.P15 order passed by the 2nd respondent by which Ext.P13 reference application filed under Section 18(1) of the Land Acquisition Act, 1894 read with Rule 16A of the Land Acquisition Rules stands rejected on the ground that the application for reference is belated. The petitioner has also sought for a writ of mandamus commanding respondents 1 and 2 to refer Ext.P13 to the Sub Court, Chengannoor for deciding the question of enhancement of the compensation with respect to 10.92 Ares of land in Re-survey No.268/2 of Chengannoor Village in Chengannoor Taluk, acquired for the purpose of doubling of Chengannoor-Chingavanam Railway track, as per LAC.No.33/2011 of the 2nd respondent.

2. I heard the arguments of the learned counsel for the petitioner, learned Government Pleader appearing for respondents 1 and 2 and also the learned Standing Counsel for the 3rd respondent.

3. The issues that arise for consideration in this Writ Petition are as to the legality or otherwise of Ext.P15 order passed by the 2nd respondent and as to whether Ext.P13 application filed by the petitioner under Section 18(1) of the Land Acquisition Act can be entertained by the Reference Court.

4. The pleadings and materials on record would show that in connection with the doubling of the Railway track from Chengannoor-Chingavanam land acquisition proceedings were initiated based on Section 4(1) notification issued on 2.11.2009, which was followed by Ext.P1 public notice, under Rule 7(2) of the Rules, dated 3.2.2010. As per the schedule to Ext.P1 public notice, the property described as Sl.No.34 is 10.92 Ares of land in Re.survey No.268/2-1 of Chengannoor Village, which forms part of 44.40 Ares of properties in the possession of the petitioner and late Sri.John Joseph. However, in Ext.P1 public notice, Sri.George Joseph, another brother of the petitioner, who does not have any right, title or interest over the property, is shown as the owner of the property. On coming to know about Ext.P1, the petitioner's brother submitted Ext.P2 representation dated 17.10.2010 before the 3rd respondent

seeking appropriate orders for correction of the name and address of the owner of the land sought to be acquired. On receipt of Ext.P2, the 3rd respondent by Ext.P3 forwarded a copy of Ext.P2 to the 2nd respondent for necessary action. Thereafter, the petitioner's brother Sri.John Joseph submitted Ext.P4 representation before the 2nd respondent pointing out the aforesaid fact. However, ignoring Exts.P2 and P4 representations, Ext.P7 award was passed by the 2nd respondent on 9.12.2011 awarding a total compensation of ₹22,76,855/- for the land in question. In the award, Sri.George Joseph, the brother of the petitioner, who has absolutely no right or interest over the property in question is shown as registered holder of the said land. Since the said George Joseph failed to claim the compensation, the amount was deposited before the Sub Court, vide Ext.P8. Thereafter Ext.P9 notice under Section 12(2) of the Act was issued to George Joseph stating that the compensation amount will be deposited in the Sub Court. Since the aforesaid George Joseph raised no claim over the said amount, the 2nd respondent deposited the compensation amount in the Sub Court, Chengannoor, vide, Ext.P11 dated 22.2.2012. Consequent to the deposit so made,

Ext.P12 notice was issued from the Sub Court to the aforesaid George Joseph.

5. When the petitioner came to know about the award passed by the Sub Court, Chengannoor he filed Ext.P13 application dated 26.4.2012 for making a reference to the Reference Court under Section 18(1) of the Act, against Award No.6/2011 dated 9.12.2011 of the 2nd respondent. The aforesaid application was forwarded to the 2nd respondent along with Ext.P14 covering letter. However, by Ext.P15, the said application was rejected stating that Sri.George Joseph failed to make an application for reference within the stipulated period and no documents were produced to prove his title over the property. As such Ext.P13 application cannot be entertained. It is aggrieved by the aforesaid order passed by the 2nd respondent, the petitioner is before this Court in this Writ Petition seeking various reliefs.

6. A counter affidavit has been filed on behalf of the 1st respondent contending, inter alia, that, since Ext.P13 application filed by the petitioner is not within the prescribed time limit, namely, within the period of six weeks from the date of receipt of Rule 10B

notice, the same cannot be entertained. In that view of the matter the reasoning of the 2nd respondent in Ext.P15 is perfectly legal and no interference of this Court is called for.

7. As I have already noticed, Ext.P7 award passed by the 2nd respondent is one passed without notice to the petitioner. As can be seen from the documents on record, when the petitioner came to know about the acquisition proceedings and the fact that his brother is shown as the owner of the land under acquisition, representations were made before the Land Acquisition Officer as well as before the Requisition Authority, pointing out the aforesaid mistake. In the aforesaid representations it was also pointed out that the petitioner is not in station and he is at Chennai. In spite of the aforesaid representations, the 2nd respondent passed Ext.P7 award dated 9.12.2011. Immediately on coming to know about Ext.P7 the petitioner submitted Ext.P13 application before the 2nd respondent seeking a reference under Section 18 (1) of the Act. But, the said application was rejected by the 2nd respondent by Ext.P15, stating that it is belated.

8. In **Parsottambhai Maganbhai Patel & others vs. State of Gujarat (2005(7) SCC 431)** the Apex Court held that, the limitation under the latter part of Section 18(2)(b) of the Act has to be computed having regard to the date on which the claimants got knowledge of the declaration of the award either actual or constructive. This principle, however, will apply only to cases where the applicant was not present or represented when the award was made, or where no notice under Section 12(2) was served upon him. It will also apply to a case where the date for the pronouncement of the award is communicated to the parties and it is accordingly pronounced on the date previously announced by the Court, even if the parties are not actually present on the date of its pronouncement. Paras 6 and 7 of the judgment read thus:-

“6. Learned counsel for the appellants rightly placed reliance upon the judgment of this Court in *Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and another*, AIR 1961 SC 1500 and submitted that since the appellants were not present when the award was made, and no notice was given to them under Section 12(2) of the Act, the application for making a reference under Section 18 of the Act must be held to be within time if it is filed within six months of the date of knowledge of the declaration of the award. In our

view, the submission is sound and must be accepted. This Court in Raja Harish Chandra Raj Singh (supra) was dealing with a case in which an award was declared under the Act on March 25, 1951. No notice under Section 12(2) of the Act was given to the claimants. It was only on January 12, 1953 that the claimants came to know about the declaration of the award whereafter they filed an application claiming a reference under Section 18 of the Act on February 24, 1953. The High Court of Allahabad held that the case fell under the latter part of Clause (b) of the proviso to Section 18 and since the application made by the appellants before the Land Acquisition Officer for claiming a reference under Section 18 was made beyond six months from the date of the award in question, it was beyond time. This view of the High Court was overruled by this Court and in doing so the Court made the following pertinent observations:-

"Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office: it

must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words "the date of the award" occurring in the relevant section would not be appropriate.

There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affects persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector, it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it can be said to be made when pronounced. If the

date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair-play and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to S. 18 in a literal or mechanical way".

7. This Court, therefore, held that the limitation under the latter part of section 18(2)(b) of the Act has to be computed having regard to the date on which the claimants got knowledge of the declaration of the award either actual or constructive. This principle, however, will apply only to cases where the applicant was not present or represented when the award was made, or where no notice under Section 12(2) was served upon him. It will also apply to a case where the date

for the pronouncement of the award is communicated to the parties and it is accordingly pronounced on the date previously announced by the Court, even if, the parties are not actually present on the date of its pronouncement. Coming to the facts of the instant case the High Court has not rejected the plea of the appellants that they came to know of the award only when compensation was being paid to them in July, 1988. They had admittedly no notice under Section 12 (2) of the Act. They had therefore filed the application under Section 18 of the Act on September 22, 1988 well within the period of limitation. The Reference Court recorded a finding in favour of the appellants but the High Court has reversed that finding without applying the principle laid down in *Raja Harish Chandra* (supra). Moreover, we find from the grounds of appeal filed before the High Court that the assertion of the claimants that they came to know of the declaration of the award only when compensation was being paid to them in July, 1988, has not even been challenged."

9. The decision in *Parsottambhai Maganbhai Patel's* case was followed by the Apex Court in **Bhagwan Das & others Vs. State of U.P. and others (AIR 2010 SC 1532)**. Paras 11 to 13 of the judgment read thus:-

"**11.** When a land is acquired and an award is made under section 11 of the Act, the Collector becomes entitled to take possession of the acquired land. The award being only an

offer on behalf of the Government, there is always a tendency on the part of the Collector to be conservative in making the award, which results in less than the market value being offered. Invariably the land loser is required to make an application under section 18 of the Act to get the market value as compensation. The land loser does not get a right to seek reference to the civil court unless the award is made. This means that he can make an application seeking reference only when he knows that an award has been made. If the words six months from the 'date of the Collector's award' should be literally interpreted as referring to the date of the award and not the date of knowledge of the award, it will lead to unjust and absurd results. For example, the Collector may choose to make an award but not to issue any notice under section 12(2) of the Act, either due to negligence or oversight or due to any ulterior reasons. Or he may send a notice but may not bother to ensure that it is served on the land-owner as required under section 45 of the Act. If the words 'date of the Collector's award' are literally interpreted, the effect would be that on the expiry of six months from the date of award, even though the claimant had no notice of the award, he would lose the right to seek a reference. That will lead to arbitrary and unreasonable discrimination between those who are notified of the award and those who are not notified of the award. Unless the procedure under the Act is fair, reasonable and non-discriminatory, it will run the risk of being branded as being violative of Article 14 as also Article 300-A of the Constitution

of India. To avoid such consequences, the words 'date of the Collector's award' occurring in proviso (b) to section 18 requires to be read as referring to the date of knowledge of the essential contents of the award, and not the actual date of the Collector's award.

12. The following position, therefore, emerges from the interpretation of the proviso to section 18 of the Act :

(i) If the award is made in the presence of the person interested (or his authorised representative), he has to make the application within six weeks from the date of the Collector's award itself.

(ii) If the award is not made in the presence of the person interested (or his authorised representative), he has to make the application seeking reference within six weeks of the receipt of the notice from the Collector under section 12(2).

(iii) If the person interested (or his representative) was not present when the award is made, and if he does not receive the notice under Section 12(2) from the Collector, he has to make the application within six months of the date on which he actually or constructively came to know about the contents of the award.

(iv) If a person interested receives a notice under section 12 (2) of the Act, after the expiry of six weeks from the date of receipt of such notice, he cannot claim the benefit of the provision for six months for making the application on the ground that the date of receipt of notice under section 12(2) of the Act was the date of knowledge of the contents of the award.

A person who fails to make an application for reference within the time prescribed is not without remedy. It is open to him to make an application under section 28-A of the Act, on the basis of an award of the court in respect of the other lands covered by the same acquisition notification, if there is an increase. Be that as it may.

13. When a person interested makes an application for reference seeking the benefit of six months' period from the date of knowledge, the initial onus is on him to prove that he (or his representative) was not present when the award was made, that he did not receive any notice under Section 12(2) of the Act, and that he did not have the knowledge of the contents of the award during a period of six months prior to filing the application for reference. This onus is discharged by asserting these facts on oath. He is not expected to prove the negative. Once the initial onus is discharged by the claimant/person interested, it is for the Land Acquisition Collector to establish that the person interested was present either in person or through his representative when the award was made, or that he had received a notice under Section 12(2) of the Act, or that he had knowledge of the contents of the award. Actual or constructive knowledge of the contents of the award can be established by the Collector by proving that the person interested had received or drawn the compensation amount for the acquired land, or had attested the Mahazar/Panchnama/proceedings delivering possession of the acquired land in pursuance of the acquisition, or had filed a case challenging the award or had

acknowledged the making of the award in any document or in statement on oath or evidence. The person interested, not being in possession of the acquired land and the name of the State or its transferee being entered in the revenue municipal records coupled with delay, can also lead to an inference of constructive knowledge. In the absence of any such evidence by the Collector, the claim of the person interested that he did not have knowledge earlier will be accepted, unless there are compelling circumstances to not to do so."

10. In the case on hand the respondents have absolutely no case that before passing Ext.P7 and any notice was issued to the petitioner, who is stated to have valid title and interest over the property sought to be acquired. In that view of the matter there is absolutely no justification on the part of the 2nd respondent in rejecting Ext.P13 application submitted by the petitioner stating that it is a belated one.

11. During the course of arguments, the learned counsel for the petitioner brought to my notice that, subsequent to the filing of the Writ Petition the petitioner approached the reference court by filing I.A.No.228 of 2012 in L.A.R.No.4 of 2012 claiming the compensation amount deposited by the Land Acquisition Officer and

the Reference Court by order dated 21.6.2012 issued a letter to the Manager, State Bank of Travancore, Chengannur for releasing ₹20,49,169/- in favour of the petitioner. A copy of the aforesaid order passed by the Sub Court was also handed over to the learned Government Pleader appearing for respondents 1 and 2. The aforesaid order passed by the Sub Court, Chengannoor would prima facie show that the petitioner has established his right, title and interest under acquired property before the Sub Court and it was on that basis he was disbursed with the compensation amount deposited in L.A.R.No.4 of 2012.

In that view of the matter, I deem it appropriate to direct the 2nd respondent to reconsider Ext.P13 application submitted by the petitioner, with notice to him. For that purpose Ext.P15 order passed by the 2nd respondent is set aside and the 2nd respondent is directed to reconsider Ext.P13 and take necessary action on that application with notice to the petitioner or his representative and after giving him an opportunity of being heard. Once the 2nd respondent is satisfied about the title and interest of the petitioner over the acquired land in LAC.No.33/2011, the said respondent shall refer

Ext.P13 to the Reference Court for deciding the question as to whether the petitioner is entitled for any enhancement in the compensation already awarded. Steps in this regard shall be taken within a period of three months from the date of receipt of a certified copy of this judgment.

The Writ Petition is disposed of as above.

Sd/-

ANIL K.NARENDRAN, JUDGE

skj

True copy

P.A to Judge