

**IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH**

RFA No. 3095 of 2015 (O&M)

Date of decision: 28.7.2015

M/s K&D Real Estate & Builders

..... Appellant

VS

State of Haryana and others

..... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Prateek Rathee, Advocate, for the appellant.

Rajesh Bindal J.

The present appeal has been filed against the award dated 5.2.2015, whereby the learned court below dismissed the objections filed by the land owner on account of delay.

Briefly, the facts are that land situated in revenue estate of village Hayatpur, District Gurgaon, was sought to be acquired by the State of Haryana, vide notification dated 11.2.2010, issued under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act'). The Land Acquisition Collector (for short, 'the Collector') vide award dated 14.6.2010 assessed the market value of the acquired land @ ₹ 60,00,000/- per acre. Aggrieved against the award of the Collector, the land owner filed objections on 9.11.2012, which were referred to the learned Additional District Judge, Gurgaon, who keeping in view the material placed on record by the parties, dismissed the objections filed by the landowner being time barred vide award dated 5.2.2015. It is this award which is impugned in the present appeal by the landowner.

Learned counsel for the appellant company submitted that the other landowners, whose land was acquired vide same notification, have been awarded higher compensation, whereas only the appellant has been discriminated. He had filed application under Section 18 of the Act against

award dated 14.6.2010 for making reference to the learned District Judge, Gurgaon, for assessment of fair compensation. It was submitted that Ganga Dutt, who was the proprietor of the appellant company and was pursuing the case, died in the month of August, 2010. After his death, the appellant took over the charge of the affairs of the company. He was under the impression that his father had filed the reference petition. But when he came to know that no such application had been filed against the award dated 14.6.2010, he filed the application before the Additional District Judge, Gurgaon, who vide award dated 5.2.2015, dismissed the same being time barred. It was submitted that the findings recorded by the learned court below that the reference filed by the land owner was time barred, are totally erroneous. He submitted that in terms of the provisions of Section 18 of the Act, the objections could be filed within six weeks from the date of award in case the land owners are present at the time of pronouncement of the award. In other cases, it would be within 6 weeks of the receipt of the notice from the Collector under Section 12 (2) of the Act or within six months from the date of the Collector's award, whichever period expires first. The submission is that in the present case, the land was acquired vide notification under Section 4 of the Act dated 11.2.2010. The award was announced by the Collector on 14.6.2010. The objections, which were filed on 9.11.2012, were within limitation of six months as enumerated under Section 18 (2) of the Act as the period of limitation provided for therein has been interpreted to mean that the same has to be filed within six months from the date of knowledge of the award. When the appellant came to know about the fact that his father has not filed the reference, immediately thereafter he filed the objections, the same should be considered as the date of knowledge.

Heard learned counsel for the appellant and perused the paper-book.

The facts, which are evident from the record are that notification under Section 4 of the Act was issued on 11.2.2010. The Collector announced the award on 14.6.2010. It is admitted case of the appellant that at that time his father was taking care of the affairs of the company. It is not denied by the appellant that his father had not received

the compensation of the acquired land in the year 2010 or that he was not in the knowledge of the award by the Collector. Another fact, which is not in dispute, is that the objections were filed by the appellant on 9.11.2012.

In the aforesaid factual matrix, the issue which arises for consideration by this Court is, as to whether the objections filed by the appellant are to be treated within time by considering the limitation from the date the appellant claimed that his father received the amount of compensation or from the date he admittedly had the knowledge of announcement of the award. It is for the reason that admitted case of the appellant is that his father had received the amount of compensation in the year 2010.

Section 18 of the Act is extracted below:

“ **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 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 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.”

The aforesaid section provides that in case any person interested does not accept the award, he may by written application to the Collector require that the matter be referred to the court. The objections can be regarding measurement of the land, the amount of compensation, the

persons to whom it is payable or the apportionment of compensation amongst the persons interested. The application should contain the grounds on which the award is objected to. Proviso to sub-section (2) of Section 18 of the Act provides for the period in which the objections could be filed. Clause (a) thereof provides that in case a person is present or represented before the Collector at the time of announcement of the award, the objections can be filed within six months from the date of the Collector's award. Clause (b) provides that in other cases, the objections can be filed within six weeks of the receipt of notice from the Collector under Section 12(2) of the Act or within six months from the date of Collector's award, whichever period expires first.

In Officer on Special Duty (Land Acquisition) and another v. Sham Manilal Chandulal and others, (1996)9 SCC 414, Hon'ble the Supreme Court considered the issue as to whether limitation provided for under Section 18(2) of the Act for filing objections can be extended and it was answered in the negative. Paragraphs 17 and 18 thereof are extracted below:

“17. It is to be remembered that the Land Acquisition (Amendment) Act (68 of 1984) was enacted prescribing the limitation to exercise the power under Sections 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 Section 18 may be treated to be special law, in the absence of such an application by Land Acquisition (Amendment) Act (68 of 1984), the Act specifically maintains distinction between the Collector and the court and the Collector/LAO performs only statutory duties under the Act, including one while making reference under Section 18. It is difficult to construe that the Collector/LAO while making reference under Section 18, as statutory authority

still acts as a court for the purpose of Section 5 of the Limitation Act.

18. 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/LAO, 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.” (emphasis supplied).

The same view was followed in State of Karnataka v. Laxuman, (2005) 8 SCC 709 and by this Court in RFA No. 2513 of 1992 – Harbans Singh vs The State of Punjab decided on 8.8.2014.

In view of the aforesaid enunciation of law, the delay in filing of objections against the award of the Collector cannot be condoned. In the case in hand, the appellant was well aware of the acquisition proceedings. The amount of compensation was received by his father in the year 2010 and the objections were admittedly filed after more than 2 years thereafter on 9.11.2012, which were clearly beyond the period of six weeks from the date of knowledge of the award.

Considering the aforesaid factual matrix, I do not find that any illegality has been committed by the learned Reference Court in dismissing the objections filed by the appellant as time barred. Accordingly, the appeal is dismissed.

28.7.2015
vs

(Rajesh Bindal)
Judge

(Refer to Reporter)