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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 23.09.2015

+ **LA.APP 954/2010**

KHEM CHAND & OTHERS Appellants

Through: Mr. I.S.Dahiya, Advocate

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Sanjay Kumar Pathak & Mr.
Sunil Kumar Jha, Advocate for UOI

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present appeal under Section 54 of the Land Acquisition Act (for short, 'the Act') is directed against the judgment dated 02.07.2010 passed by Additional District Judge, Rohini Courts, Delhi (Reference Court) in LAC No. 182A/08, titled 'Khem Chand & Ors. Vs. Union of India & Ors.'. By the impugned judgment, the reference petition made at the instance of the appellants under Section 18 of the Act to seek enhancement of compensation as awarded by the Land Acquisition Collector (LAC), has been dismissed on the ground of same being barred by limitation. The learned ADJ has held that the fair market value of the acquired land in question would be Rs. 16,750/- per bigha as on 26.03.1986, and that the appellants would have been entitled to the said compensation along with other statutory benefit, had the reference been made in time. However, since the same has been

held to be barred by limitation, the appellants have been denied the said enhancement.

2. The background facts may first be noted.

3. A notification under Section 4 of the Act in relation to the lands in question was issued on 30.10.1963. This was followed by a declaration under Section 6 of the Act on 16.01.2009. The award was made by the LAC under Section 11 of the Act on 19.09.1986 thereby assessing the market value at Rs. 6,650/- per bigha. Notice was issued under Section 12(2) of the Act on 11.12.1986. However, it was issued only to the recorded owners. No notice was issued to the appellants, as they were not the recorded owners of the land in question. Since the appellants staked claim over the lands in question falling in Khasra No. 43/26 and 43/27, total admeasuring 13 bighas 14 biswas-which was assessed in the name of Gaon Sabha, at the behest of the appellants, a reference under Section 30-31 of the Act was made to the Court of Additional District Judge, on 16.07.1987. This reference remained pending for over 12 years and was decided in favour of the appellants on 09.12.1999. Some of the interested parties in whose favour no compensation was apportioned preferred a review, which too was dismissed on 25.08.2001. The orders/judgment dated 09.12.1999 and 25.08.2001 attained finality. On 10.09.2001, the appellants were paid the awarded apportioned compensation in terms of the judgment made under Sections 30-31 of the Act. On 16.10.2001, the appellants made a reference petition under Section 18 of the Act. The said reference petition was sent to the Court of learned Additional District Judge by the LAC on 15.07.2002. By the impugned judgment, the reference court dismissed the said reference as

being barred by limitation.

4. Section 18 of the Act reads as follows:

“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.*

5. From Section 18(2) of the Act, it would be seen that the period of limitation prescribed for making an application – to seek reference under Section 18, is six weeks from the date of the Collector’s award, if such person was present and represented before the Collector at the time of making his award. In other cases, the said application has to be made within six weeks of the receipt of the notice from the Collector under Section 12(2), or within six months from the date of the Collector’s award, whichever period expires first.

6. In the present case, the reference had not been made even within six months of the making of the Award by the LAC, which had been made on 19.09.1986. Faced with this situation, and in view of the interpretation given by the courts to Section 18 of the Act, the appellants in their reference application made the following statements and averments in paragraphs 9 & 10:

“9. That the petitioners received a notice from the court of Addl. District Judge, Delhi, in a case under Section 30-31 of the L.A.Act pertaining to adjudication of the dispute between the petitioners and the Gaon Sabha. However, it is submitted that the petitioners were held by the Hon’ble Court of Addl. District Judge, Delhi, as the interested persons in the land in question and it was also held by the Ld. Addl. District Judge, Delhi that the petitioners are entitled to compensation of the land in question and it has also been held that the petitioners have acquired Bhumidari rights in the land in question.

10. That inspite of the above orders passed by the Hon’ble Court of Addl. District Judge, Delhi, the petitioners have not so far received the compensation and so at present the petitioners have no knowledge about the essential contents of the Award regarding the acquired land. Instead no notice u/s 4,6,9,10 and 12(2) of the L.A.Act were ever served upon the petitioners. It has been held by the Apex Court vide verdict as AIR 1961 SC Page 1500 that the essential contents of the award must have known to the petitioners at the time of filing of the Reference petition and the limitation for filing of the reference petition starts from the date of knowledge of the essential contents of the Award. It may not out of place to mention here that at present also the petitioners have no knowledge about the essential contents of the Award. Also the payment of compensation has been made to petitioners on 10.09.2001, hence the reference petition is within time.”

7. The Union of India filed their written statement raising several

preliminary objections which are not relevant for the present purpose. On merits, a seven line reply was given by the Union of India which reads as follows:

“ON MERITS

All the other averments in the reference petition are stoutly denied and opposed. The compensation has been legally and correctly assessed by the LAC and the same is adequate and just. Petitioner is not the recorded owner of the land in dispute as such he is not entitled to get any compensation or enhanced compensation in respect of land in dispute. The reference petition may, therefore, be dismissed.”

8. A perusal of the written statement of the UOI shows that the same was a cyclostyled written statement, and only a few blanks had been filled up and the typed/cyclostyled preliminary objection Nos. 4 and 9 were struck out. The DDA also filed their written statement in response to paragraphs 9 and 10 of the reference application. The DDA stated as follows:

“9. That the contents of para 9 of the reference petition relate to the record and filing of the case under section 30-31 of the Land Acquisition Act, 1894 and decision of the same by the Hon’ble Court, the same may kindly be perused and need no reply.

10. That the contents of para 10 of the reference petition, as alleged, are further wrong and denied. It is further denied that the petitioners have no knowledge about the essential contents of the award regarding the acquired land. It is further denied that no notice under section 4,6,9, 10 and 12(2) of the Land Acquisition Act, 1894, were ever served upon the petitioners. It is further denied that at present also the petitioners have no knowledge about the essential contents of the award, as alleged.”

9. Thus, the case of the appellants was that, not being the recorded *bhumidars*, they were never put to notice of any proceedings under the Act and the LAC, while making his award, noticed only the Gram Sabha in respect of the lands in question. The appellants further stated that since they staked a claim in respect of the lands in question, a reference under Section 30-31 of the Act was made by the Collector to the Reference Court. Even at that stage, they were not aware about the essential contents of the Award. The appellants had stated that they learnt of the essential contents of the award only when the awarded and apportioned compensation was released to them on 10.09.2001, and if that were treated as the starting point of limitation for preferring the reference application, the reference was made well within time as it had been made on 16.10.2001 before the LAC.

10. A perusal of the impugned judgment shows that the learned ADJ attributed constructive knowledge of the essential contents of the award to the appellants on the premise, that at the time of making the reference under Section 30-31 of the Act, the LAC enclosed a memorandum which contains the essential contents to the award, namely, the extent of land acquired, Khasra numbers, name of the person making the claim, and total amount of compensation to be apportioned. The impugned judgment is premised on the basis that where the claimant is represented through counsel, he would have constructive knowledge of all that is placed on the file of the Reference Court, which would include the said memorandum as well as a copy of the award itself.

11. While deciding the issue as to when the appellants gained knowledge of the contents of the award, the learned ADJ, *inter alia*, observed that the

onus was on the petitioner/ appellants herein to prove that they had no knowledge – either actual or constructive, of the market value of the land as assessed by the LAC. In this regard, reliance was placed on ***Bhagwan Das & Others Vs. State of U.P. & Others***, AIR 2010 SC 1532. The relevant extract from the said decision, relied upon by the learned ADJ, reads as follows:

“when a person interested make an application for reference seeking the benefit of six month from the date of knowledge, the initial onus is on him to prove that he (or his representatives) were not present when the award was made that he did not receive any notice u/s 12(2) of the Act and that he did not have the knowledge of the content of Award during the period of six month period to file application for reference. Petitioner has not entered into witness box to prove when he got the knowledge of the content of the Award.”

Here itself I may observe that there is a typographical error in the extract set out in the impugned judgment. The correct extract reads as follows:-

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 the 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.

12. The learned ADJ observed in paragraph 16.12 as follows:

“... .. In each and every reference under Section 30-31 of Land Acquisition Act LAC has sent a memorandum in which not only the disputed amount of compensation is stated but the compensation is also deposited with the Court by the Collector. Further LAC mentioned the area of the land under dispute and its khasra numbers in the memorandum sent to the Court. As proved from the document Ex.P1. After deciding the reference the Court releases the compensation in favour of successful interested person. Every contesting interested person is therefore aware of the market value determined by the Collector and the amount deposited in the Court. A copy of Award is also enclosed in said reference. Petitioners had successfully contested the reference. The petitioners were represented by advocate all through the proceedings. Therefore, it is proved that the petitioners were aware of the amount of compensation for which they were contesting the reference under Section 30-31 of L.A. Act, or they had opportunity to know the contents of award by inspecting the file of the case.”

13. Reliance was also placed on the judgment of the Supreme Court in ***Muthi Chettiar Vs. Commissioner of Income Tax***, Madras ILR 1951 815, wherein the Supreme Court has observed:

“If a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time, limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and therefore, must be presumed to have knowledge of the order.”

14. By placing reliance on ***State of Punjab Vs. Satinder Bir Singh***, (1995) 3 SCC 330, and ***Mahadeo Bajirao Vs. State of Maharashtra***, (2005) 7 SCC 440, it was observed that under the scheme of Land Acquisition Act, the LAC is not required to give a copy of the award to the party present at the time of announcement of the award or along with notice under Section 12(2) of the Act. A party intending to challenge the award has to inspect the same or take a certified copy from the Collector. The learned ADJ went on to observe that:

“The Award was passed in the year 1986. Petitioners have knowledge of passing of the award. Nothing prevented the petitioner to either inspect the Award file or took certified copy from LAC Office or Court for almost 15 years. Thus it is proved that the petitioners diligently contested reference petition under Section 30-31 of L.A. Act where the amount of compensation is mentioned and deposited in Court and petitioners had opportunity of inspecting the Award or taking its certified copy leads to inference that petitioner had knowledge of market value fixed by the Collector or at least had constructive knowledge of the same. Knowledge whether actual or constructive is sufficient for the purposes of computing limitation, even otherwise petitioners have contended that they filed the present reference without taking knowledge of the content of the award as it is apparent from para 10 of the reference petition filed by the petitioner relevant lines of para is reproduced as below:

“It may not be out of place to mention here that at present also

the petitioners have no knowledge about the contents of the award.”

Thus if petitioner can file reference after 15 years without alleged knowledge of contents of award, nothing can prevent them to file the same earlier also.”

15. Reliance placed by the appellants on the judgment of the Supreme Court in ***Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer & Another***, (1962) SCR 676, was rejected by distinguishing the said case on facts by observing:

“The facts of Harish Chandra case are different from the facts of present reference inasmuch as the present petitioner had evinced knowledge of essential contents of the award as he was contesting reference u/s 30-31 where in entire detail essential for fly the award was mention in the memorandum itself.”

16. Reliance placed by the appellants on ***State of Punjab Vs. Mst. Qaisar Jehan Begum & Another***, AIR 1963 SC 1604, was rejected on the basis:

“In the case of Qaiser Jehan Begum, the application for interim compensation did not come in her way because the un rebutted evidence of petitioner was that she did not know the amount of compensation and the fact that land was acquired till the day she filed her reference under Section 18 of the Act.

However, in present case, the petitioners did not enter the witness box to depose that they had no knowledge of essential contents of award prior to six months of her filing reference under Section 18 of the Act. Limitation is a mixed question of fact and law. Without evidence of petitioner this issue cannot be answered their. From the Ex. P1, filed by the petitioners themselves, it is proved that the petitioners knew the date and number of Award, number of Khasra acquired and area of land in acquisition, atleast when they receive notice of the reference u/s 30-31 as these details are mentioned in the memorandum

sent by the LAC while referring the case to civil court. The petitioners also had actual or at least constructive knowledge of the market value fixed by the Collector as back in the year 1958 when reference was sent by LAC and notice was received by the petitioner of the reference they begin contesting reference under Section 30-31 of the Act.”

17. Similarly, reliance placed by the appellants on ***Bharat Chand Dilwali Vs. UOI***, 1988 RLR 224, was rejected on the basis that in the said case, the petitioners were not represented through counsel, and that in the said case there was no dispute that petitioners had no knowledge of the contents of the award. However, in the present case, the appellants had contested the reference through counsel, and they have not led any evidence to prove that they had no knowledge of the contents of the award even though the onus was on them to prove that they had filed the reference within six months from the date of knowledge.

18. The learned ADJ in paragraph 16.23 observed as follows:

“16.23 While reverting back to the present case the conclusion drawn from the evidence on record, arguments addressed by the counsels for parties and case law relied upon by them is that petitioners have failed to prove that they were not present when award was announced or they have no knowledge of the passing of award and its contents. Even otherwise it is proved from the document Ex. P1 filed by the petitioner themselves that in the 80s & when the petitioners received notice of the LAC reference no. 90/03 and filed claim they were aware of number of Award, Khasra number and area of land acquired. Therefore, I held that the petitioners had knowledge of essential contents of the Award prior to six months of filing the reference petition. Therefore, present reference which was filed on 29.10.01 is clearly barred by limitation.”

19. The submission of Mr. Dahiya, learned counsel for the appellants is that the impugned judgment is patently laconic and in the teeth of the judgments of the Supreme Court in *Raja Harish Chandra Raj Singh* (supra), *Mst. Qaisar Jehan Begum* (supra) and the judgment of this Court in *Bharat Chand Dilwali* (supra). Learned counsel submits that since the appellants were not the recorded owners, they were not named in the award. For the same reason, no notice was issued to them under Section 12(2) of the Act. There was no occasion for them to be present when the award was announced. Mr. Dahiya submits that they were never served with the copy of the award. Consequently, they were not aware of the contents of the award.

20. Mr. Dahiya submits that merely because they were interested parties in the reference under Sections 30-31 of the Act, and because they were represented through counsel, it does not follow that the appellants had either actual or constructive knowledge of the contents of the award, including the market rate determined by the Land Acquisition Collector.

21. Mr. Dahiya submits that the learned ADJ assumed that in the reference petition under Sections 30-31 of the Act, the so-called memorandum was filed. The learned ADJ further assumed that the learned counsel for the appellants inspected the reference file (under Sections 30-31 of the Act), and that he did find and peruse the so-called memorandum containing the essential particulars/ contents of the award. Further, the learned ADJ assumed that the counsel of the appellants after deriving the said knowledge communicated the same to the appellants, and despite such communication, the appellants did not take steps to seek a reference under

Section 18 of the Act within six months of deriving such knowledge of the contents of the award.

22. Mr. Dahiya submits that, in fact, the UOI did not even dispute the averments made by the appellants in their reference application under Section 18, in paragraphs 9 & 10 that they were not aware of the contents of the award till they received the compensation on 10.09.2001. In this regard, he has referred to the written statement filed by the UOI to the said reference petition, wherein the only defence raised was that the compensation had been legally and correctly assessed by the LAC and that the same is adequate and just. The respondent/ UOI had stated that the appellants are not the recorded owners of the land in dispute, and as such, not entitled to get any compensation or enhanced compensation in respect of the land in dispute.

23. Mr. Dahiya submits that the DDA, in response to paragraphs 9 & 10 of the reference application, while denying that the petitioner had no knowledge about the essential contents of the award, did not disclose any basis on which the said denial was founded. The denial by the DDA, particularly in paragraph 10 of its written statement to the reference application, was a bald denial. Mr. Dahiya submits that the DDA being a statutory body, such a denial, which was not premised on the basis of the record, or on the basis of personal knowledge of the person denying the averments made in paragraph 10 of the reference application, was of no avail. Mr. Dahiya submits that in these circumstances, there was no occasion for the appellants to lead any evidence with regard to the lack of their knowledge of the essential contents of the award.

24. Mr. Dahiya further submits that the initial burden which fell on the appellants to show that they had no knowledge of the contents of the award stood discharged from the undisputed facts of the case, namely that the appellants were not the recorded owners of the land in question; they were not issued any notice at the time of acquisition of the land; they were not named in the award; they were not issued any notice under Section 12(2) of the Act, and had no occasion to remain present when the award was made by the LAC; the reference under Section 30-31 of the Act was made on 16.07.1987; the same was decided in favour of the appellants on 09.12.1999; the review filed by some of the aggrieved interested persons was dismissed on 25.08.2001, and; the payment of the awarded apportioned compensation was released to the appellants only on 10.09.2001. Mr. Dahiya submits that it was only then that the appellants gained knowledge of the contents of the award, including the compensation assessed by the LAC on the basis of the market value assessed by him.

25. On the other hand, Mr. Pathak has supported the impugned judgment. Mr. Pathak submits that it is not believable that the appellants were not aware of the essential contents of the award since the reference under Sections 30-31 of the Act in which the appellants were interested, remained pending between 16.07.1987 and 09.12.1999. Mr. Pathak submits that the appellants were represented through counsel and would certainly have been aware of the contents of the award as not only the memorandum which contains the essential contents of the award form part of the said reference, but also the award itself form part of the reference under Sections 30-31 of the Act.

26. Mr. Pathak submits that the appellants did not lead any evidence to establish that they were actually not aware of the contents of the award till they received the awarded apportioned compensation on 10.09.2001 on the basis of the decision in the reference under Sections 30-31 of the Act decided on 09.12.1999.

27. Having heard learned counsel, perused the impugned judgment and the decisions referred to in the impugned judgment and relied upon by the parties, I am of the view that the impugned judgment is patently laconic and in the teeth of the successive decisions of the Supreme Court and this Court relied upon by the appellants and referred to above.

28. The Supreme Court in *Raja Harish Chandra Raj Singh* (supra), while interpreting on the aspect of limitation prescribed under Section 18 of the Land Acquisition Act, held that the award of the Collector under Section 11 is not a decision but an offer of compensation on behalf of the Government to the owner of the property and it is not effective until it is communicated to the owner. Mere making of the award or signing it, or filing it in the office of Collector is not sufficient. It also involve the communication of the award to the owner either actually or constructively . The term “date of the award” in the proviso to Section 18 means the date when the award was communicated to the owner, or made known by him either actually, or constructively. In the said case, the Collector had made the award, signed it and filed the same in his office under Section 12(1) of the Act on 19.03.1950. No notice of the award was given to the appellant under Section 12(2). The appellant claimed to have come to know of the award on or about 13.01.1953, and then preferred the application under

Section 18 of the Act on 24.02.1953. The Supreme Court held that the said application has been made within the prescribed period. Thus, the Supreme Court rejected the literal and mechanical interpretation of the words “*from the date of the Collector’s award*” by holding that such an interpretation would be unreasonable.

29. In *Mst. Qaisar Jehan Begum* (supra), the Supreme Court further explained that the knowledge of the award does not mean a mere knowledge of the fact that an award had been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually, or constructively. The Supreme Court again rejected the literal and mechanical construction of the expression “*six months from the date of the Collector’s award*” occurring in second part of clause (b) of proviso to Section 18. In the said case, the respondents had claimed knowledge of the award on 22.07.1955 – the date on which the compensation was paid. Strikingly, in that case as well, in the reply filed by the State of Punjab, the appellant-State did not contradict the averment of the respondents/claimants that they have come to know of the award on 22.07.1955. The Supreme Court, thus, concluded that the date of knowledge of the award of the respondents was 22.07.1955.

30. I have already extracted hereinabove the reply filed by the UOI as well as by the DDA, particularly to paragraphs 9 & 10 of the reference application. While there is no denial of the averments made in paragraphs 9 & 10 by the appellants, by the UOI, the denial of the DDA is a bald denial and not premised on any material whatsoever.

31. In *Bhagwan Das* (supra), relied upon by the appellants, the Supreme Court held that when a person interested makes an application for reference under Section 18 of the Act, 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, and 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 the period of six months prior to filing of the application for reference. The Supreme Court held that the initial onus is discharged by asserting these facts as done by the appellants in the present case. The interested person is not expected to prove the negative. Once the initial onus is discharged by the claimants/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, *inter alia*, received or drawn the compensation amount for the acquired land. The Supreme Court observed: “*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 do so*”.

32. There is one aspect that needs emphasis at this stage. In *Bhagwan Dass (supra)*, the Supreme Court while holding that the initial onus is discharged by asserting the facts with regard to deriving of actual or constructive knowledge by the claimants, the Supreme Court has also observed that, '*this onus is discharged by asserting these facts on oath*'. (emphasis supplied). What has been held against the appellant is that they have not led evidence to show that they did not have knowledge-actual or constructive, of the essential contents of the Award at an earlier point of time.

33. A perusal of the reference under Section 18 shows that the same has been signed by the appellants and their predecessor-in-interest, who were alive when the said reference was made under Section 18 of the Act. A perusal of the record of the Reference Court-which has been summoned, discloses that the Reference Court did not even call upon the parties, or grant them an opportunity, to lead any evidence. The reference was not rejected merely on the ground that it was not accompanied by a statement, on oath, with regard to the date of actual or constructive knowledge of the contents of the Award. The same was entertained. Thus, there is no reason to assume that the reference as preferred by the appellants was defective on account of it not being accompanied by an affidavit/statement, on oath, on the aforesaid aspect. The record of the Reference Court shows that it only dealt with several applications under Order 22 CPC before proceeding to pass the impugned judgment. The fact that the averments made in the Reference Application were not supported by a statement on oath i.e. by an affidavit, or that the claimants/appellants did not lead any evidence, thus, cannot be held against them. Had they been given an opportunity to lead evidence, and

then they would have failed to lead their evidence, the situation might have been different. Even in that situation, in the light of the written statement filed by the UOI and the DDA, it would have been debatable whether there was any necessity for the appellants to lead any evidence on the said aspect. However, these questions do not arise, because, as a matter of fact, the Reference Court did not call upon the parties, or did not grant them opportunity, to lead any evidence before passing the impugned judgment.

34. In my view, the fact that the appellants did not make the said statement on oath in their reference application, cannot be fatal to the maintainability of the said application. The question of the appellant adducing evidence, or deposing on oath with regard to their deriving knowledge, or constructive knowledge, of the essential contents of the Award would have arisen, had there been a contest by the respondents to their averment that they had not derived actual or constructive knowledge of the essential contents of the Award earlier. Since, in the pleadings, the Union of India did not deny the said position, and the DDA made a bald denial without any substance or basis, the occasion for the appellants to make the said statement on oath really did not arise. The said aspect was never put in issue before the Reference Court by the respondents, and no trial was held thereon. Apart from making the said statement, the appellants could have done precious little to establish their lack of knowledge of the essential contents of the Award, as they could not be expected to prove the negative. Consequently, the statement made by the appellants in their reference application in paras 9 and 10 was sufficient, particularly, when there was no denial of the said averments by the respondents. In any event, in the present appeal, the said

statements have been reiterated which are duly supported by the affidavit of one of the appellants, namely, Sukhbir Singh. In the present appeal, the appellants have stated that the “*appellants got the knowledge of the actual contents of the Award regarding the market value determined by the Land Acquisition Collector only after 25.08.2001 when the appellants received the payment vouchers of the compensation of the apportioned amount on 10.09.2001*”. Thus, there is sufficient compliance with the requirements of the judgment in Bhagwan Das (supra) by the appellants.

35. In the present case, the respondent Land Acquisition Collector did not lead any evidence to establish that the appellants had the knowledge of the contents of the award at any point of time prior to their receiving payment of the awarded apportioned compensation on 10.09.2001 in pursuance of the judgment of the Reference Court under Sections 30-31 of the Act.

36. In ***Bharat Chand Dilwali*** (supra), like in the present case, the petitioner was not the recorded *Bhumidhar* of the acquired land. Consequently, no notices under Sections 9 & 10 of the Act were issued to him and he was not informed of the making of the award, as no notice under Section 12(2) was ever issued to him. The award was made on 16.02.1962. Since the petitioner in that case had claimed to have purchased the acquired land from the father of respondents No.2 & 3, the said claim resulted in a reference being made under Sections 30-31 of the Act to the learned ADJ. This reference was decided on 08.07.1974. The petitioner claimed that he became aware of the award on 14.07.1976 and he filed the application under Section 18 of the Act on 04.11.1976. The learned ADJ held that the reference was barred by limitation. This Court, by placing reliance on

earlier decisions of the Gujarat High Court and the Orissa High Court observed that the knowledge of the award did not mean that the mere knowledge of the fact that the award had been made, and that such knowledge should relate to the essential contents of the award. The Court observed:

“The question thus is not that the award has been given but what award has been given. Notice under Sub-s. (2) of S. 12 of the Act is not an idle formality. The claimant must have notice as to the grounds on which award has been based for him to take objections to the same and to seek reference under S. 18 of the Act. There is ample authority for the proposition that when date of knowledge of making the award is imputed to the claimant it must be the date when he became aware of the contents of the award for him to file objections seeking reference to the court under S. 18 of the Act. It may be that in the instant case, the petitioner was aware of the award particularly in view of the proceedings under (S. 30 of the Act. There is, however, nothing on record to suggest that he was even aware of the contents of the award which fact was not in issue in the proceedings under S. 30 of the Act. The petitioner did contend and, in fact, it was so held by the order in proceedings under S. 30 of the Act that though in earlier stages of those proceedings the petitioner was represented by his counsel but thereafter he did not participate in the proceedings. Mr. V.P. Singh, learned counsel for the petitioner, submitted that the State should not raise a plea of limitation when this point was thoroughly thrashed at the time of reference by the Collector. He said persons similarly situated as the petitioner had been paid enhanced compensation and the petitioner should not be deprived of that by the respondents by taking shelter of the technical plea of limitation. In this connection, he referred to two decisions, one of the Supreme Court and the other a Bench decision of the Calcutta High Court. In Madras Port Trust v. Hymahshu International (AIR 1979 SC 1144), the Supreme Court was concerned with the provisions of S. 110 of

the Madras Port Trust Act (II of 1905). Under this section, the Madras Port Trust had taken the plea that the claim was barred by limitation. The court observed as under:-

"The plea of limitation based on this section is one which the court always looks upon with disfavor and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable."

The other decision is Kumar Veda Kantha Sinha Roy v. State AIR 1982 Sc 307 the petitioner had complained of non-payment of compensation under the Requisitioning and Acquisition of Immovable Property Act, 1952. A single judge of the Calcutta High Court had dismissed the plea on the ground of delay. Reversing that order, Sabyasachi Mukharji, J. (as his Lordship then was), observed that on the facts of that case the petition should not have been dismissed on the ground of delay as otherwise the petitioner was entitled to compensation."

37. The learned ADJ has rejected the reliance placed on ***Bharat Chand Dilwali*** (supra) on the specious basis that the appellants in the present case were represented through counsel, while in ***Bharat Chand Dilwali*** (supra) they were not so represented through counsel. Firstly, this is a factually

incorrect recording of facts by the learned ADJ inasmuch, as, even in ***Bharat Chand Dilwali*** (supra), the petitioner had initially been represented through counsel. It was only later that the petitioner did not participate in the proceedings. Thus, the reasoning adopted by the learned ADJ that on account of the petitioner/ appellant being represented through counsel, he would have constructive knowledge of the contents of the award, as the award of the LAC and the memorandum forms part of the proceedings under Sections 30-31 of the Act, would have equally applied to the decision in ***Bharat Chand Dilwali*** (supra). In fact, there was no basis to distinguish the decision in ***Bharat Chand Dilwali*** (supra) from the present case, and the learned ADJ was bound to follow the said decision. The said decision could not have been avoided on the basis of a non-existent distinction on facts.

38. The learned ADJ has also observed that in ***Bharat Chand Dilwali*** (supra), it was not disputed that the petitioners had no knowledge of the contents of the award. As noticed above, even in the present case, the LAC/ UOI did not dispute the averments made in paragraphs 9 & 10 of the reference application in their written statement. Though, the DDA sought to dispute the averments made in paragraph 10 of the appellants reference application, the said denial was wholly unfounded and devoid of any particulars. While claiming that the appellants had knowledge of the contents of the award, it was not disclosed as to on what basis it was so claimed. There was no question of the appellants entering the witness box to depose that they had no knowledge of the contents of the award prior to the making of the reference under Section 18 of the Act being filed. Clearly, the learned ADJ ignored the position that a fact, which is not disputed in the

pleadings need not be proved. The initial onus which fell upon the appellants to show that they had no knowledge of the contents of the award prior to the six months of the filing of the reference application under Section 18 of the Act, stood discharged upon the appellants making the said averment in their reference application. It was not for the appellants to prove the negative. The respondents did not lead any evidence to establish the knowledge by the appellants of the contents of the award by establishing through their conduct, such knowledge. No evidence was led that the appellants had actual or constructive knowledge of the contents of the award at any earlier point of time.

39. The learned ADJ has returned the finding with regard to the constructive knowledge of the contents of the award of the appellants by adopting an extremely stretched reasoning, and by successively assuming facts on the basis of assumptions. Firstly, he assumed that in the proceedings under Sections 30-31 of the Act, as a matter of fact, the memorandum disclosing the essential contents of the award or the award had been filed, in the present case. He also assumed that the counsel of the appellants must have inspected the record of the said reference petition. He also assumed that the counsel, during such assumed inspection, would have noticed the memorandum and/or the award of the LAC and perused the same and would have, thus, derived the knowledge of the contents of the award. He also assumed that after gaining such knowledge of the contents of the award, the counsel would have communicated the same to the appellants. There is absolutely no basis for any of the aforesaid assumptions. Pertinently, this does not even appear to have been pleaded,

much less established by the respondents by leading any evidence before the learned ADJ. Constructive knowledge of the contents of the award has also been attributed to the appellants, merely because they had engaged a counsel to represent them, by holding that it was the responsibility of the appellants to gain knowledge of the essential contents of the award by inspecting the Award in the office of the LAC. However, in the decision relied upon by the appellants, such reasoning was not adopted by the Supreme Court, or by this Court.

40. While dealing with the applications seeking condonation of delay in preferring the appeals under the Land Acquisition Act, the Supreme Court has taken cognizance of the fact that the claimants under the Act are generally agriculturists, who come from rustic and rural backgrounds and are not aware of their rights and the legal position. In this regard, reference may be made to ***Dhiraj Singh V. State of Haryana*** (2014) 14 SCC 127. No doubt, Section 5 of the Limitation Act does not apply to proceedings under Section 18 of the Land Acquisition Act, and, therefore, cannot be pressed into service. However, cognizance can be taken of the fact that the appellants being agriculturists and rustic people coming from rural backgrounds, in all probability, they were genuinely not aware of the essential contents of the Award, and to impute constructive knowledge of the essential contents of the Award to them, when there is no other ostensible action/statement attributed to them-which would indicate their knowledge of the essential contents of the Award, would be, harsh, unfair and farfetched.

41. For all the aforesaid reasons, I am of the view that the impugned judgment is patently laconic and cannot be sustained. The same is, accordingly, set aside. The reference preferred by the appellants is held to have been made within the period of limitation i.e. within six months of the appellants deriving knowledge of the essential contents of the award on 10-09-2001.

42. The appeal is accordingly allowed.

43. The parties are left to bear their respective costs.

VIPIN SANGHI, J

SEPTEMBER 23, 2015

sl /B.S. Rohella