

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

(1) CWP No. 178 of 2016

Vaishnavi Promoters and Builders ...Petitioner

Versus

State of Haryana and anotherRespondents

(2) CWP No. 190 of 2016

Vaishnavi Promoters and Builders ...Petitioner

Versus

State of Haryana and anotherRespondents

Date of Decision: 30.09.2016

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present:- Mr. Ajay Jain, Advocate,
for the petitioner.

Ms. Palika Monga, Deputy Advocate General, Haryana,
for the respondent-State.

SUDIP AHLUWALIA, J.

The Petitioner Firm in these two Civil Writ Petitions had purchased lands in 2006-2007 for the purpose of setting up of a Township. Those lands were situated in villages Narnaul and Kirarod, Afghan, Tehsil Narnaul, District Mahendergarh. Notification under Section 4 of the Land Acquisition Act (for short 'L.A. Act') for acquisition of those lands along with some other land was issued on 9.4.2010, followed by the Notification under Section 6 on 1.12.2010. The petitioner challenged the acquisition proceedings by filing Civil Writ Petition No. 6171 of 2011. It was dismissed by this Court on 6.7.2012. The petitioner approached the Supreme Court against such dismissal by filing an SLP, which was also dismissed on

12.9.2014. In the meantime, the Awards in relation to the lands acquired in two villages were passed by Respondent No. 2 on 25.4.2011 and 27.4.2011. On the latter date (27.4.2011), the Petitioner submitted its representations apparently in response to the Notices under Section 9 of the L.A. Act, in which, detailed emphasis was made with a view to challenge the acquisition or have the lands released, but in the last paragraph of the same, it was also mentioned that the compensation awarded by the relevant Awards was grossly insufficient, on account of which, reference to the competent authority for adjudication in the matter was sought for. The relevant paragraph in the petitioner's representation dated 27.4.2011 (Annexure P4) is set down as under -

“Respected Sir, in the above said circumstances it is kindly requested that the award No. 2 dt.25-04-2011 in respect of the land belonging to Vill. Kirarod Afgan and Award No. 3 dt. 27-04-2011 in respect of the land belonging to Narnaul Town are grossly inadequate. We have challenged the acquisition proceedings before the High Court of Punjab and Haryana, Chandigarh. However subject the decision of the aforesaid writ petition we request your good self to send reference to the competent Civil Court for enhancement in accordance with provision of law to look into the matter sympathetically and release the above said land from the acquisition and enable us to be part of development of the city in the interest of public.” (Emphasis applied)

2. It is also the petitioner's contention that oral request on its behalf for reference was also made before the respondents on the very date of its representations. It claims to have received the compensation awarded 'under protest' on 16.9.2014 i.e. four days after dismissal of its SLP by the Supreme Court. The respondent-authorities, however, took no steps to refer

the petitioner's representations dated 27.4.2011 under Section 18(1) of the L.A. Act, in spite of repeated requests on account of which, it was constrained to send Legal Notices to them on 31.8.2015, but to no avail. Hence these Writ Petitions.

3. The respondents have contested the Writ Petitions by contending that the representations submitted by the petitioner do not constitute a fit application for reference under Section 18(1) of the L.A. Act. The specific contention of respondent No. 1 in this regard in reply (Annexure R1) is -

“That the objections same has been filed dated 27.04.2011 (Annexure P-4) by the petitioner reveals that for releasing the land of Village Narnaul from acquisition, subject to the decision of his pending C.W.P. No. 6171 of 2011 and there is no such reason regarding inadequacy of compensation has been explained in it. The petitioner has not mentioned in it that he is submitting the reference under Section 18 of the Land Acquisition Act (hereinafter referred as the Act), however, he has submitted the objections in reply of notice under Section 9 of the Act, which was issued by the respondent No. 2, so it could not be referred to any court as per rules, because only the reference under Section 18 of the Act could be referred to the concerned court, so the petitioner should have submitted his reference under Section 18 of the Act within prescribed period from the announcement of Award No. 3 dated 27.04.2011, but the same reference was not submitted by the petitioner.”

4. The other contentions raised by respondent No. 1 is that the petitioner is not entitled to any further compensation after having received compensation to the tune of ₹56,51,0156/- and ₹32,43,6562/- for the lands

falling in the two villages in acceptance of the compensation Award, and that it is not entitled for any further enhancement or even reference under Section 18(1) of the L.A. Act, since no application in that regard was submitted. Furthermore, according to respondent No. 2, there is no scope to refer the petitioner's representations because -

“The petitioner has not mentioned in it that he is submitting the reference under Section 18 of the Land Acquisition Act (hereinafter referred as the Act), however he had submitted the objections in reply of notice under Section 9 of the Act issued by the respondent No. 2, so it could not be referred to any court, because only the reference under Section 18 of the Act could be referred to the concerned court, so the petitioner should have submitted his reference under Section 18 of the Act within prescribed period from the announcement of Award dated 25.04.2011 (Annexure P-4), but the same reference was not submitted by the petitioner.”

5. It is thus seen that the respondents have admitted having received the petitioner's representations dated 27.4.2011, but have also contended that the same could not have been referred in terms of Section 18 (1) of the L.A. Act, as those could not be construed to be 'applications' under the said provision. In support of this contention, they have cited a decision of the Ld. Division Bench of this Court in CWP No. 5432 of 2015 in **“Hans Raj and others Vs. Union of India and others”, 2016(2) R.C.R. (Civil) 74**, in which the writ petition for a similar direction was dismissed with the following observations:-

“The only grievance in this petition is for a direction to the respondents to make reference to the court of competent jurisdiction under Section 18 of the Act. It

being a statutory right, proper petition under Section 18 of the Act was required to be filed by the petitioners before an appropriate court within the prescribed limitation. The petitioners had made only representations Annexures P.4 to P.6 to the authorities. On the basis of mere representations, it cannot be claimed that any reference be made to the court of competent jurisdiction. Learned counsel for the petitioners has not been able to substantiate the claim made in the petition. Consequently, we do not find any merit in the petition and the same is hereby dismissed.”

6. The respondents have further placed before us a Full Bench judgment of this Court passed in LPA No. 2 of 1979 “**State of Punjab Vs. Lt. Col. Gurdial Singh**”, 1983 P.L.R. 718, in which the following observations from an earlier decision in “**Sher Singh Vs. Union of India**”, 1983 P.L.R. 86, were referred to :-

“.....In such a situation, the Court's directions to file a fresh application under Section 18 (irrespective of the fact whether it had been earlier filed at all or not) would in effect override the legislative mandate. It is obvious that the express condonation of delay has implicit in it the finding that earlier no application had been filed in time and the condoning of 7 years delay therefore, may well be a super statutory direction. In practical terms, therefore, conferring on the petitioner a right to file a fresh application under Section 18 without a finding in his favour that such application had been earlier filed at all is in a way abrogating the mandatory requirement of filing a written application and that too within the specific and prescribed periods of time. To put it in other words, to claim the remedy under Section 18 of the Act, the statutory procedural requirements have to be strictly fulfilled and in their absence no right can flow

therefrom.....”(Emphasis by us)

7. Thereafter, the Full Bench allowed the appeal and the respondent's writ petition was dismissed with these observations:-

“In the present case, contrary to the aforesaid authoritative enunciation by the Full Bench the learned Single Judge even whilst finding that the respondent had in fact not filed any reference under section 18 of Act, has directed the condonation of the laches and irrespective of the existing period of delay or its justification, has further allowed respondent the period of three months for now filing an application afresh. This infracts the rule laid down by the Full Bench and overrides the statutory limitation under section 18 of the Act and is unsustainable in law and, therefore, has to be set aside. The appeal is consequently allowed and the writ petition of the respondent is hereby dismissed. There will be no order as to costs.

Appeal accepted.” (Emphasis applied)

8. Learned counsel for the appellants has, however, asserted that both the decisions cited above are distinguishable from the facts and circumstances of the present case. In this regard, it is first being urged that there is no prescribed format for submitting any formal application for reference under Section 18(1) either under the of the L.A. Act itself, or even any other prescribed Rules in this regard including the High Court Rules and Orders as well. Hence, according to him, what must have to be seen in the application is the prayer actually made, and which cannot be sidetracked or ignored simply for the reason that it is preceded by a wrong or inconsistent nomenclature or description such as by way of reference to the notice under Section 9 of the L.A. Act. On this count, we are also of the opinion that it is settled law that wrong heading, nomenclature or even

inappropriate narration of facts or contents in any application cannot come in the way for considering or taking steps to meet up to the actual prayer made, or relief claimed in the same. The decision of the Ld. Division Bench in the case of *Hans Raj and others (supra)* is also distinguishable on the ground that the representations which were treated as not being proper applications under Section 18 of the L.A. Act were admittedly not, “within the prescribed limitation”. In the present case, however, that defect of limitation does not exist at all since admittedly the representations/applications were filed on behalf of the appellant on 27.04.2011 in relation to the first award passed two days earlier (on 25.04.2011) and the second one on that very date itself. It may be said that the heading or contents of those applications might be incomplete, and not in consonance with rigorous of Section 18 of the L.A. Act, but we cannot lose sight of the fact that the same were filed when admittedly its CWP No. 6171 of 2011 challenging the acquisition proceedings was itself pending. As such, their thrust in the form of objections to the notice under Section 9 of the L.A. Act in those applications/representations was perfectly understandable since the petitioner nursed a legitimate expectation that the writ petition might as well end up in its favour. It nevertheless also tried to safeguard its Right to adequate compensation by still incorporating the prayer to send reference to the competent Court in accordance with the provisions of law, as has already been noted in Para No. 1 above. In this view of the matter, considering that there is admittedly no prescribed format for an application for reference under Section 18 of the L.A. Act, coupled with the fact that the applications in this regard were submitted well within time and that the specific prayer for sending the reference was also

contained therein, it cannot be gainsaid that the same were liable to be rejected simply because those were mere “representations” and not “applications” under Section 18(1) of the L.A. Act.

9. The other decision in the case of ***State of Punjab Vs. Lt. Col. Gurdial Singh (supra)*** is also easily distinguishable here. In that case, admittedly, no application for reference had at all been filed by the writ petitioner, and, therefore, the Full Bench by relying upon the previous decision in ***Sher Singh's case (supra)*** had set aside the order of the Ld. Single Bench permitting filing of such application when, in fact, the prescribed statutory period of limitation had already passed, which is not so in the present case.

10. In fact, the previous decision in ***Sher Singh's case (supra)*** has itself been cited on behalf of the appellant to counter the respondent's contention that after having accepted the compensation in terms of impugned awards, the petitioner is estopped from challenging its legality or seeking any reference for enhancement of compensation under Section 18 of the L.A. Act. In that decision it was held-

“.....In such a situation, the Court's directions to file a fresh application under Section 18 (irrespective of the fact whether it had been earlier filed at all or not) would in effect override the legislative mandate. It is obvious that the express condonation of delay has implicit in it the finding that earlier no application had been filed in time and the condoning of 7 years delay therefore, may well be a super statutory direction. In practical terms, therefore, conferring on the petitioner a right to file a fresh application under Section 18 without a finding in his favour that such application had been earlier filed at all is in a way abrogating the mandatory requirement of

filing a written application and that too within the specific and prescribed periods of time. To put it in other words, to claim the remedy under Section 18 of the Act, the statutory procedural requirements have to be strictly fulfilled and in their absence no right can flow therefrom.....”.

11. In the present case also it is the petitioner's specific contention that it had accepted the compensations awarded on 16.09.2014 'under protest', and its right to seek enhancement of the same by way of reference under Section 18 of the L.A. Act could, therefore, not have been taken away by such acceptance in view of the aforesaid settled position of law.

12. For the reasons narrated in the preceding paragraphs, the writ petitions are allowed. The respondents are directed to refer the applications of the writ petitioner dated 27.04.2011 for reference under Section 18 of the L.A. Act within a fortnight from the date of communication of this order, after which the same shall be disposed of by the competent authority as expeditiously as possible, and preferably within three months of its receipt.

(SURYA KANT)
JUDGE

(SUDIP AHLUWALIA)
JUDGE

30.09.2016
adhikari

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether Reportable</i>	:	<i>Yes/No</i>