

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

CWP No.22460 of 2015 (O&M)

Date of decision: 05.05.2016

Sukhwinder Kaur and others

.....Petitioners

vs.

State of Punjab and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHAR DHAWAN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? **YES**
3. Whether the judgment should be reported in the Digest?

Present: Mr. Amit Aggarwal, Advocate for the petitioners.

Ms. Sudeepti Sharma, DAG, Punjab.

Mr. Balwinder Singh, Advocate for PUDA.

Ajay Kumar Mittal,J.

CM No.5045 of 2016

1. Written statement on behalf of respondent No.2 is taken on record.

CM stands disposed of.

CWP No.22460 of 2015

2. The petitioners pray for quashing the order dated 11.6.2008,

Annexure P.5 (Colly) whereby the land reference filed by them under section 18 of the Land Acquisition Act, 1894 (in short, “the Act”) for determination of the compensation has been dismissed on the ground of limitation.

3. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. Land of the petitioners was acquired by the respondents vide notification dated 6.10.2004 issued under section 4 of the Act for setting up residential project named as Phases 4 and 5, Urban Estate, Bathinda. After considering the objections filed under section 5A of the Act, notification dated 7.3.2005 was issued under section 6 of the Act. The award was pronounced on 6.3.2007 and compensation was assessed at the rate of ₹ 30 lacs per acre. Aggrieved by the amount of compensation assessed by respondent No.2, the land owners including the petitioners preferred land references under section 18 of the Act. The petitioner filed reference petition on 14.2.2008 to the Collector for referring the same to the reference court so that fair market value of the acquired land may be assessed. After considering the evidence as well as other valuable material, the reference court in the case of other land owners decided the claim petitions by passing a common award dated 16.10.2014, Annexure P.1 and enhanced the compensation at the rate of ₹ 1000/- per square yard which came to ₹ 48,40,000/- per acre. After filing the land reference under section 18 by the petitioners, respondent No.2 served a letter dated 14.3.2008, Annexure P.3 whereby the petitioners were asked to explain the delay beyond six months in

were residing in a different village, so no notice under sections 12(2) and 9(3) of the Act had ever been received by them. After submitting the replies, respondent No.2 never communicated any further proceedings in the matter to the petitioners and decided the land reference petition vide order dated 11.6.2008, Annexure P.5. Being aggrieved by the award, Annexure P.1, similarly situated land owners filed regular first appeals before this court which are pending adjudication. The controversy arose when after deciding the land reference filed by other land owners by the reference court vide Annexure P.1, the petitioners sought information under RTI from respondent No.2 with regard to the status of their land reference. The petitioners were intimated by respondent No.2 that their land reference had already been dismissed by the Collector vide order dated 11.6.2008, Annexure P.5 but no explanation had been given while passing the order except stating that the land reference was barred by limitation. According to the petitioners, the impugned order Annexure P.5 which was passed in the year 2008 was never communicated to them. They came to know when they sought information from the respondents under the RTI Act regarding the status of their land reference. Hence the instant writ petition by the petitioners.

4. A written statement has been made on behalf of respondent No.2 wherein it has been inter alia stated that the land reference of the petitioners had been received vide diary No.327 dated 14.2.2008 in the office of respondent No.2. The reasons for delay were sought from the petitioners. No application for

reference application. The letter dated 16.4.2008 sent by the petitioners had not been received by the office of the respondent No.2. However, it was stated by respondent No.2 in para 5 of the written statement that “it is probably for the same reason that the notices under Sections 12(2) and 9(3) of the Land Acquisition Act had not been received by the petitioners but, for no fault of the answering respondent.”

5. We have heard learned counsel for the parties.

6. Learned counsel for the petitioners submitted that the impugned order dated 11.6.2008, Annexure P.5 dismissing the land reference application filed by the petitioners is not legal and valid being without jurisdiction. Reliance was placed on judgment of the Apex Court in *Raja Harish Chandra Raj Singh vs. The Deputy Land Acquisition Officer and another*, AIR 1961 SC 1500.

7. On the other hand, learned counsel for the respondents supported the impugned order.

8. In order to effectively adjudicate the controversy raised herein, it would be apposite to refer to relevant statutory provisions contained in Sections 9, 12 and 18 of the Act. Section 9 of the Act reads thus:-

“9. Notice to persons interested:

- (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898).”

9. Section 9 of the Act is mainly intended to give notice to the persons interested in the land. Under sub section (1) of Section 9 of the Act, a duty is cast on the Collector to issue public notice regarding the intention of the Government to take possession of the land and that all claims for compensation for all interests in the land should be made to him. The notice is required to be published at all

of the Act mandates that notice should contain all the particulars of the land and shall require all persons interested in the land to appear personally or by agent before the Collector fixing the time and place of hearing wherein fifteen days notice is obligatory. The claimants are required to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation and objections, if any, to the measurements made under Section 8 of the Act. Such statement should be in writing and signed by the party or his agent. Sub section 3 thereof postulates that similar type of notice as under sub section (2) is required to be served on the occupier of the land and on all the persons known or believed to be interested in the land. However, this notice can be served on the persons or those entitled to act for persons so interested as reside or have agents authorised to receive service on their behalf, within the revenue district where the land is situated. The requirements of this section are mandatory. Issuance and service of notice is essential for the Collector to exercise his jurisdiction to acquire. Sub section (4) of Section 9 of the Act requires the Collector to serve such notice where the interested person resides elsewhere and has no agent, by registered letter at his last known residential address or place of business.

10. Section 12(1) of the Act provides as to when the award of the Collector would be final and conclusive evidence. Sub section (2) thereof casts a duty on the Collector to give immediate notice of the award to such of the persons

the award is made. It reads thus:-

“12 Award of Collector when to be final.

(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.”

11. Wherever the interested person has not accepted the award under Sub section (1) of Section 18 of the Act, he can by written application to the Collector seek the matter to be referred for the determination of the Court in respect of 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. Sub section (2) of Section 18 of the Act stipulates that every such application shall state the grounds of objections to the award and shall be made within six weeks if he or his representative was present before the Collector at the time of making the award and in other cases where interested person is not present, within six weeks of the receipt of the notice of 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. Section 18 is quoted hereunder:-

“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.”

12. Having analyzed the legal position, we proceed to examine the factual matrix. Admittedly, the land of the petitioners was acquired vide notification dated 6.10.2004 issued under section 4 of the Act followed by notification under section 6 of the Act on 7.3.2005. The award was announced on 6.3.2007 assessing compensation at ₹ 30 lacs per acre. The compensation was paid by the Collector to the petitioner on 30.8.2007. The land owners including the petitioners preferred land references under section 18 of the Act. The land reference was filed by the petitioners on 14.2.2008. The Compensation was enhanced to ₹ 1000/- per square yard in the case of other land owners. On

14.3.2008, respondent No.2 served letter on the petitioners asking them to explain the delay in filing the land reference. The petitioners replied to the notice stating that since they were residing in a different village, no notice under sections 12(2) and 9(3) of the Act had ever been received by the petitioners. Further, it has been stated by respondent No.2 in its written statement in para 5 that since letter dated 16.4.2008 sent by the petitioners had not been received in its office, it was probably for the same reason that notices under sections 12(2) and 9(3) of the Act had not been received by the petitioners.

13. The question in the aforesaid factual matrix which arises for our consideration would be whether it was essential for the respondents to have served the notice under Section 12(2) of the Act and communicated the passing of the award so as to entitle the affected land owners to take further recourse in the matter. The answer is in the affirmative. It is trite law that any decision taken by the Collector assessing the market value of the property for the purpose of the Act for payment to the affected land owners is essentially to be communicated to the said party under Section 12(2) of the Act and also in accordance with the principles of natural justice. In other words, wherever, the affected land owner is present when the award is pronounced, knowledge of such pronouncement would be imputed to him. However, in the eventuality of award being announced in the absence of the affected land owners, it would be imperative on the Collector to serve notice under Section 12(2) of the Act communicating the same to such land

away legal right of the affected land owners under Section 18 of the Act. Thus, limitation under Proviso to Section 18 of the Act for the purposes of filing reference petition would begin to run from the date of knowledge by the affected land owners. If a person is not served with a notice under section 9(3) or Section 12(2) of the Act and had no knowledge of passing of the award, he would not be bound by the period of limitation as envisaged under Proviso to sub Section (2) of Section 18 of the Act.

14. The Apex Court in *Raja Harish Chandra Raj Singh's* case (supra) while considering the issue of limitation in filing application for determination of Compensation under Section 18 of the Act had exhaustively dealt with this aspect and had observed as under:-

“6. 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 affect 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.

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11. A similar question arose before the Madras High Court in *Annamalai Chetti v. Col. J. G. Cloete, ILR 6 Madras 189*. Section 25 of the Madras Boundary Act XXVIII of 1860 limited the time within which a suit may be brought to set aside the decision of the settlement officer to two months from the date of the award, and so the question arose as to when the time would begin to run. The High Court held that the time can begin to run only from the date on which the decision is communicated to the parties. "If there was any decision at all in the sense of the Act", says the judgment, "it could not date earlier than the date of the communication of it to the parties; otherwise they might, be barred of their right, of appeal

without any knowledge of the decision having been passed". Adopting the same principle a, similar construction has been placed by the Madras High Court in K. V. E. *Swaminathan alias Chidambaram Pillai v. Letchmanan Chettiar*, [ILR 53 Madras 491](#). On the limitation provisions contained in sections 73(1) and 77(l) of the Indian Registration Act XVI of 1908. It was held that in a case where an order was not passed in the presence of the parties or after notice to them of the date when the order would be passed the expression "within thirty days after the making of the order" used in the said sections means within thirty days after the date on which the communication of the order reached the parties affected by it. These decisions show that where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. Therefore, we are satisfied that the High Court of Allahabad was in error in coming to the conclusion that the application made by the appellant in the present proceedings was barred under the proviso to [section 18](#) of the Act."

15. After hearing learned counsel for the parties and perusing the averments made in the writ petition and the written statement, we find that in the present case, the notices under sections 12(2) and 9(3) of the Act and even the impugned order dated 11.6.2008, Annexure P.5 were never communicated to the petitioners. The petitioners came to know only when they sought information

was received by the landowners on 30.8.2007 on which date the passing of the award by the Collector would be taken into consideration for calculating the period of six months under the Proviso to Section 18(2) of the Act. The application having been filed on 14.2.2008 i.e. within six months of the payment of compensation on 30.8.2007, the same cannot be held to be barred by limitation. Consequently, the impugned order dated 11.6.2008, Annexure P.5 is set aside and the writ petition stands allowed. The concerned respondent is directed to make reference under Section 18 of the Act to appropriate Court in accordance with law forthwith.

(Ajay Kumar Mittal)
Judge

May 05, 2016
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(Shekhar Dhawan)
Judge