

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.562 of 2016
IN
Civil Writ Jurisdiction Case No. 22627 of 2011**

=====

Mangani Rai, Son of Late Kunji Rai, resident of Village + Post- Harpur Kala,
Police Station- Majorganj, District- Sitamarhi.

.... Appellant/s

Versus

1. State of Bihar through the Collector, Sitamarhi.
2. District Land Acquisition Officer, Sitamarhi.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Yogendra Mishra, Advocate
Mr. Arvind Kumar Jha, Advocate
For the Respondent/s : Mr. Krishna Chandra, AC to AG

=====

**CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE SUDHIR SINGH**

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 23-03-2017

Seeking exception to an order dated 10.12.2015 passed by
the learned Writ Court in Civil Writ Jurisdiction Case No.22627 of
2011; this appeal has been filed under Clause X of the Letters Patent.

The land of the appellant was acquired under the Land
Acquisition Act (hereinafter referred to as 'the Act') and an award was
prepared on 24.01.2007 in the name of one Tilakdhari Rai. Notice
under Section 12(2) of the Act was issued in the name of Tilakdhari
Rai, son of Ramautar Rai and not in the name of the appellant. When



the appellant was served with the notice in the name of Tilakdhari Rai, the appellant filed an application claiming his right to receive compensation, but he pointed out that the name of the claimant has not been correctly mentioned and raised objection to the same. The name was corrected and after the correction was ordered, the appellant sought for reference of the matter under Section 18(2) of the Act and the same having been dismissed, the matter travelled to the Writ Court and the Writ Court held that when the award was passed and served on the appellant on 27.12.2007, the appellant was required to file an application for enhancement of the compensation by seeking reference under Section 18(2) within six weeks, but as the application was filed only on 18.07.2008, i.e. after the period of six weeks, the Writ Court dismissed the writ petition.

However, before the learned Writ Court the admitted position was that the award was drawn in the wrong name, i.e. in the name of Tilakdhari Rai which was served on the appellant on 27.12.2007 and the application had been filed by the appellant on 10.01.2008 before the District Land Acquisition Officer wherein the appellant sought his right to the amount and interest, however by holding that in this application, reference was not sought for and appellant accepted the cheque which was tendered on 14.07.2008, the petition was dismissed. However, it is seen from the record that the payment of the cheque was made on 14.07.2008 and the appellant



immediately filed an objection on 18.07.2008 when the correction in the award was made and cheque was issued to him on 14.07.2008.

That being factual position, the question would be as to whether merely because an award was served on 27.12.2007 in the wrong name, i.e. in the name of Tilakdhari Rai, who was not the actual land owner and the recipient of the award, when the corrected award and cheque was tendered to the appellant only on 14.07.2008, and immediately he sought enhancement and objection on 18.07.2008, can it be said that the application was belated.

After the notice was served on the petitioner on 27.12.2007, the appellant within six weeks on 10.1.2008 filed an objection (Annexure-2 to the writ petition) wherein he has clearly pointed out that the award prepared in the name of Tilakdhari Rai and others in respect of the appellant's land is wrong, it should be corrected and prepared in the correct name. This objection remained pending and thereafter, on 12.02.2008, the appellant filed for certified copy of the order-sheet and other documents and it was only on 14.07.2008 when he was informed about the correction in the award and the cheque dated 14.07.2008 was tendered to him for Rs.1,96,875/- after deducting the income tax. It is, therefore, a case where the objection to the award and notice given to the appellant on 27.12.2007 was kept pending and it was only decided when the cheque was tendered to him on 14.07.2008 and immediately after four days on 18.07.2008



appellant had sought reference under Section 18(2) of the Act, that being the factual position, it cannot be said that the reference sought was beyond the period of six weeks. It's a case where in the peculiar facts and circumstances, it has to be held that the award correctly prepared and with all particulars, was, in fact, tendered to the appellant only on 14.07.2008 and not on 27.12.2007 as held by the learned Writ Court.

Even though, the learned Writ Court has taken note of various judgments in the matter of actual and constructive knowledge about the award and has held that the appellant had knowledge of the award on 27.12.2017 and, therefore, the right to seek reference accrued to him within six weeks thereof, we are of the considered view that in this case, the principle of actual or constructive knowledge about the award cannot be applied in the peculiar facts and circumstances inasmuch as on 27.12.2007, the award was neither passed in favour of the appellant nor was any payment made in the name of the appellant. When the award was passed and served on the appellant on 27.12.2007, it was in the name of Tilakdhari Rai and when the appellant pointed out this defect, the award was corrected and after correction of the award, it was only on 14.07.2008 that the amount, as awarded, was paid to the appellant and after receipt of this on 18.07.2008, the appellant sought reference, i.e. within four days thereof.



In this case, it has to be held that the final award was served on the appellant only on 14.07.2008 and if he had sought reference within four days thereafter, the learned Writ Court has committed an error in dismissing the appeal. What was tendered to the appellant and what is held to be a constructive knowledge acquired by the appellant on 27.12.2007 was not an award passed in his name or in his favour. It was an award passed in the name of one Tilakdhari Rai and the appellant, not being Tilakdhari Rai, cannot seek any reference and, therefore, the appellant rightly pointed out that the award has been wrongly passed in the name of Tilakdhari Rai. It was only on 14.07.2008 when corrected award and amount were tendered to the appellant and if within four days thereafter, the appellant has sought reference, it cannot be said that the appellant had sought a reference beyond the period of six weeks. The finding recorded by the learned Writ Court that the appellant should have sought reference commencing from the date of receipt of the notice under Section 12(2) of the Act cannot be made applicable in the present case as the receipt of the notice and award under Section 12(2) made to the appellant on 27.12.2007, is not an award and the notice to him or issued to him. It was issued to Tilakdhari Rai and after objection by the appellant when it was corrected and actually tendered to the appellant by way of cheque on 14.07.2008; reference sought by the appellant on 18.07.2008 was within limitation. The learned Writ Court has not



taken note of this aspect of the matter and, therefore, in dismissing the writ petition by accepting the preliminary objection of the respondents, an error has been committed by the learned Writ Court.

It was the case where, in fact, in accordance with the requirement of law, the notice of the award, corrected award and the amount in pursuance of the award were already tendered on 14.07.2008 and if within four days thereof, the appellant has raised objection and sought a reference, the reference sought was well within the time stipulated under Section 18(2) of the Act and in rejecting the same, the learned Writ Court has committed an error.

In view of the above, we allow this appeal quashing the order dated 10.12.2015 passed by the learned Writ Court in Civil Writ Jurisdiction Case No.22627 of 2011 and direct the respondents to make reference of the matter to the competent Court in exercise of the power under Section 18(2) of the Act.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Sunil

AFR/NAFR	N. A. F. R.
CAV DATE	N. A.
Uploading Date	29.03.2017
Transmission Date	

