

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 391 of 2017**

- State Of Chhattisgarh (Land Acquisition) Through The Collector, Janjgir District Janjgir Champa, Chhattisgarh.

---- Petitioner**Versus**

1. Banau Ram S/o Panchram Kewant, Aged About 55 Years R/o Village Devari, Tahsil Sakti, District Janjgir Champa, Chhattisgarh.....Applicant No 1
2. Dhyan Das S/o Pratap Singh Gabel R/o Village Devari Tahsil Sakti, District Janjgir Champa, Chhattisgarh.

---- Respondent

For appellant
For Respondents

Shri Adhiraj Surana, Dy. G.A.
Shri Y.C. Sharma, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****13/11/2017**

1. Heard.
2. This appeal is barred by 820 days, for which an application for condonation of delay has been preferred.
3. Learned counsel for the parties are ready to assist the Court in examining the merits of the matter, therefore, considering the short question involved in this case, the delay in filing the appeal is condoned.
4. Indisputably, the respondents' land was acquired by the

State for Hasdeo Project in District, Jangir Champa for which an award was proposed on 11.09.1998 and was made on 07.10.1998. The respondents thereafter moved an application under Section 18 of the Land Acquisition Act, 1894, (henceforth 'the Act') for enhancement of the award amount. The reference was decided on 23.04.2008 vide Annexure A-3 against which the State preferred F.A. No.21/2009 which was partly allowed on 17.04.2012 and the matter was remitted back to the reference Court for decision afresh including decision on the question of limitation.

5. In the present impugned order, the learned Additional District Judge has found that the reference application was preferred after 6 months and 2 days of the award. Therefore, in absence of any evidence that the respondents were aware of the award on the date of passing of the award itself, the date on which they accepted the award amount under protest has to be taken as the date of having knowledge of the award. It has also been considered that at the time of passing of the award the respondents were not present before the Collector as the order sheet does not bear signature of any of the respondents. It is also mentioned that there is no document on the record that notice of the proposed award was served on the respondents as required under Section 12 (2) of the Act.
6. Be that as it may, the Additional District Judge has increased the amount of compensation on the ground that the respondents are entitled to the same amount of compensation as has been allowed to one Bhagvat and Kushu Ram whose lands are situate in the vicinity. It has been noticed by the Court below that the respondents have asserted that their land is more fertile than the land of Bhagvat and Kushu Ram and the Patwari has also deposed

that land belonging to the respondents are situate very close to the land belonging to Bhagvat and Kushu Ram and that all the lands are of similar quality. Thus, there is no perversity in the finding recorded by the Court below while allowing the reference application moved by the respondents. The appeal on this count deserves to be rejected, however, the Additional District Judge has also allowed penal interest at the rate 2 percent, if the increased award amount is not paid within a period of 2 months from the date of order.

7. I am afraid, the Act does not prescribe any such power or authority on the reference Court to award penal interest, if the amount is not paid by a certain time. The Act being a Code in itself, any amount granted in excess of the statutorily prescribed heads would not hold good and, therefore, the impugned order, to this extent, suffers from an error of jurisdiction.
8. For the foregoing, the appeal is allowed in part. While maintaining the increase in the award amount as directed by the reference Court, imposition of penalty of 2 percent on the appellant's, in case of failure to deposit the increased amount within 2 months, is set aside.
9. A decree be drawn accordingly.

Sd/-

Judge

Prashant Kumar Mishra

Akhilesh