

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

RFA No.9711 of 2014(O&M)

Date of decision: 08.08.2017

Hoshiar Singh (deceased) through LR's and others

... Appellants

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Ashok Tyagi, Advocate for the appellants.
Ms. Safia Gupta, AAG, Haryana.

ARUN PALLI, J. (Oral)

Claimant-land owners are in appeal against the award dated 13.11.2013, rendered by the Reference Court, vide which their claim under Section 18 of the Land Acquisition Act, 1894 (for short, 'the Act') was dismissed being time barred.

Vide notification dated 11.01.2005, issued under Section 4, read with clause C of sub-section 2 of Section 17 of the Act, a land measuring 799 kanals 01 marla, including the land holding of the appellants, situated in Village Sultanpur, District Gurgaon, was sought to be acquired for construction and development of Express Highway Phase VII and connecting thereto with National Highway Nos.1, 10, 8 & 2. Vide award No.15, dated 10.05.2006, rendered by the Land Acquisition Collector, value of the acquired land was assessed @ ₹ 12.5 lakh per acre. Being dissatisfied with the assessment as also the compensation awarded by the Collector, the claimant-land owners filed objections under Section 18 of the Act. However, as appellant Hoshiar Singh (PW1) admitted in his cross-examination that his

brother Rajinder, who too is one of the claimants, was present at the time of pronouncement of the award dated 10.05.2006, the objections preferred by the claimants on 20.12.2006 were held to be time barred. Accordingly, the claim of the appellants was declined.

Learned counsel for the appellants submits that none of the claimants was present at the time of pronouncement of the award, for the appellants, namely, Hoshiar Singh and Rajinder are in the Army and were on duty on 10.05.2006. Likewise, even their brother Rajesh is employed in BSF and was posted at Dholchera (Assam). And, their sister Omwati Devi, post marriage, was settled in her matrimonial home. Further, he asserts that, in his examination-in-chief, Hoshiar Singh (PW1) categorically stated that none of the claimants was present when the award was pronounced. Thus, it is urged that the observation recorded by the Reference Court that Hoshiar Singh (PW1) admitted in his cross-examination that his brother Rajinder was present when the award was announced, is wholly erroneous.

Per contra, learned State counsel submits that once Hoshiar Singh (PW1) admitted in his cross-examination that Rajinder i.e. one of the claimants, was present when the Collector pronounced the award on 10.05.2006, the objections filed by the claimants on 20.12.2006 were apparently time barred. Therefore, she submits that no interference is warranted with the impugned award.

I have heard learned counsel for the parties and perused the record.

Ex facie, a bare analysis of the provisions of Section 18 of the Act reveals that a claimant-land owner can prefer objections to the award rendered by the Collector; within six weeks from the date of the said award,

provided the claimant-land owner was either present or represented before the Collector when he pronounced the award. Or, in terms of clause (b) sub-Section 2 of Section 18, within six weeks of the receipt of notice under Section 12(2) of the Act or within six months from the date of Collector's award, whichever period shall first expire. Hoshiar Singh (PW1), even in his statement in cross-examination, testified that neither he nor his other two brothers were present when the award was pronounced:

“...We were not present at the time of announcement of award as I was serving in Army at that time. Other petitioners were also working in Army except Omwati.”

In the affidavits placed on record by the appellants, namely, Hoshiar Singh, Rajinder and Rajesh, vide CM-3901-CI-2017, it is affirmed that the deponents were serving in the Army and were on duty when the Collector rendered the award. In fact, Rajinder was posted at that time at 16 Corps, CRC, Nagrota C/o 56 A.P.O.(J&K) and Rajesh was posted at 64 Bn., BSF Dholchera, C/o 99 A.P.O. On being pointedly asked, learned State Counsel could not point out from the record if any of the claimant-land owners was either present or represented before the Collector on 10.05.2006. Thus, in the given situation, the statement of Hoshiar Singh (PW1) towards conclusion of his cross-examination that ***“My younger brother Rajender was present at the time of announcement of the award.”*** prima facie appears to be an accidental error or omission. And, even as regards his statement ***“It is correct that my brother Rajender and brother in law Rao Chunni Lal Advocate informed me about the same at that time.”*** could at best be construed to mean that he acquired knowledge qua the award dated

10.05.2006 from his brother and brother in law. Of course, it could never be read to mean that they were present on 10.05.2006. The position of law is well settled that “*period of six months*”, envisaged in clause (b) sub-section 2 of Section 18, means six months from the date of actual or constructive knowledge of the award made by the Collector. Except the statement of Hoshiar Singh (PW1), as referred to above, nothing could be shown that the award, dated 10.05.2006, was indeed in actual or constructive knowledge of the claimants. This is not the case of the State either that the claimant-land owners were served with notice under Section 12(2) of the Act. Faced the situation, learned counsel for the parties submit that let the matter be remitted to the Reference Court for a decision afresh.

Accordingly, the impugned award dated 13.11.2013 is set aside and the matter is remitted to the Reference Court for re-decision. The parties through their respective counsel shall appear before the District Judge, Gurgaon on 21.08.2017. It shall be the discretion of the District Judge to either decide the matter himself or assign to any other court of competent jurisdiction. Needless to assert, this order shall not constitute any expression of opinion on merits of the case of either party. And the Reference Court shall decide the same strictly in accordance with law and on the basis of evidence on record. However, in the peculiar facts and circumstances of the case in hand, the Reference Court is requested to decide the matter within a period of three months from the date the parties shall cause appearance before the District Judge.

(Arun Palli)
Judge

August 8, 2017
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO