

\$~27

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 30th November, 2017*

+ W.P.(C) 1323/2017

VAIBHAV GUPTA & ORS. Petitioners

Through: Mr. Sumit Gaur, Adv.
Mr. Sanjeev Chhikara and
Mr. Ravinder Nain, Advs.

versus

UNION OF INDIA Respondent

Through: Mr. Yeeshu Jain, Standing Counsel
with Ms. Jyoti Tyagi, Adv. for
L&B/LAC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE V. KAMESWAR RAO

G.S.SISTANI, J. (ORAL)

1. This is a petition under Article 226 of the Constitution of India filed by the petitioners seeking a writ of mandamus to quash the order dated 29th October, 2015 passed by the ADM/LAC (West). A direction is also sought to refer the reference under Section 18 of the Land Acquisition Act to the Court of learned Additional District Judge for determination of the market value of the acquired land. Pleadings in this matter are complete.
2. Counsel for the Land Acquisition Collector (LAC) submits that it is not necessary to file the counter-affidavit. Counsels agree that the writ petition may be heard and disposed of at this stage itself.
3. The necessary facts noticed for the disposal of the writ petition are that a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') was issued on 15th June, 2006,

Section 6 notification was issued on 14th June, 2007 and an Award No.06/DC (W)/2007-2008 was made on 1st May, 2008. The petitioners claim that late Shri J.P.Gupta, and Smt. Sarla Gupta were the Bhumidhar of the land falling under Khasra No. 38/19/2(0-05), 38/21 min (0-18), 38/22/1(0-16), 38/21 min (2-00) situated in the revenue estate of village Tikri Kalan, Delhi. The petition also discloses that upon the death of Shri J.P. Gupta, petitioners being his legal heirs received the compensation amount under the award dated 11th May, 2012.

4. It is the case of the petitioners that the petitioners were never served with any notice under Section 12(2) of the Act. However, the possession of the land was taken from the petitioners and compensation of Rs. 22,20,114/- was released in their favour on 11th May, 2012 and further a sum of Rs. 22,05,777/- was released subsequently. It is the case of the petitioners that, it is only at the time of receiving the said amount, the petitioners learnt about the award having been published. Thereafter without any delay a reference under Section 18 of the Land Acquisition Act was filed on 15th May, 2012 vide diary No. 1201. Since the aforesaid reference was not traceable, the petitioners filed a fresh petition under Section 18 of the Act vide diary No.754, which was received on 10th June, 2015.
5. The grievance of the petitioners is that the reference petition has been dismissed by the Land Acquisition Collector (West) on the ground of limitation. It may also be noted at this stage that the petitioners had approached this Court by filing the W.P.(C) No. 6637/2016. The aforesaid writ petition was dismissed on 21st November, 2016 as the petitioners had sought leave to withdraw the writ petition with liberty to

file an appropriate petition which would be listed before the learned Single Judge of this Court.

6. Counsel for the petitioners submits that no notice was issued by the LAC to the petitioners prior to passing of the order dated 29th October, 2015 to enable the petitioner to convince the Land Acquisition Collector that the reference petition was filed within the period of limitation. He further submits that since the Land Acquisition Collector is a Quasi Judicial Authority, the Land Acquisition Collector should have followed the principles of natural justice and opportunity of hearing should have been granted by the LAC to the petitioners and in the absence thereof, their rights have been severally affected.
7. Learned counsel for the respondents has opposed this petition on the ground that the reference petition which was received on 10th June, 2015 is patently beyond the period of limitation. Counsel submits that the petitioners received compensation as far back as on 11th May, 2012. Thus, the petitioners not only had knowledge about the passing of the award but the petitioners were also aware about the contents of the award. It is only based on the knowledge that the compensation was claimed and was granted in the year 2012.
8. Ms. Jyoti Tyagi further submits that there is no evidence on record to show that a reference petition was filed on 15th May, 2012 as neither of copy thereof has been filed alongwith the present petition and upon verification, the diary number appears to be incorrect. She further submits that in the reference petition which was received on 10th June, 2015 (second petition). No reference was made of an earlier reference petition having been filed, nor there is any correspondence placed on record to show that the petitioners ever ascertained from the office of

the LAC, the result of the earlier alleged petition having been filed. She further submits that the reference petition, which was received on 10th June, 2015 is categorically on the face of the record beyond the period of limitation and thus the same could not have been entertained by the LAC. Moreover, no purpose would be achieved by either issuing notice in such a case to the petitioners as it would amount to a useless formality.

9. We have heard learned counsel for the parties.

10. Section 18 of the Land Acquisition Act, 1894 reads as under:

“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, -

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;

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.”

11. A mere reading of the Act would show that the period of limitation for filing a reference petition is six weeks, if a person is present or represented before the Collector at the time when the award is made, six weeks from the receipt of notice from the Collector under Section 12(2) of the Act or six months from the date of the Collector's Award

whichever period shall first expire. It is the case of the petitioners that the petitioners had filed a petition under Section 18 on 15.05.2012 which has not been decided. It is also the case of the petitioners that since no decision was taken or received by the petitioners and the petitioners were forced to file a second petition, which was received on 10.06.2015. The first question which arises for our consideration is whether the petitioners in fact filed a petition on 15.05.2012? We find that the submission made that a petition was filed on 15.05.2012 is a false claim. It may be noted that no diary number has been disclosed. No copy of the reference petition alleged to have been filed on 15th May, 2012 has been filed and in the absence of any reference made in the subsequent reference petition which was received on 10th June, 2015. Having regard to the fact that after 15th May, 2012, there is not a single correspondence filed to show that the petitioners ever enquired about the outcome of such an application, we find it hard to believe that any application under Section 18 of the Act was filed by the petitioners on 15th May, 2012.

12. Accordingly, the only reference petition which was filed before the LAC and copy of which has been filed before this Court is dated 10th June, 2015. Reading of reference petition would show that there is no averment explaining the delay in filing the reference petition except the oral submission made in the Court today that an earlier petition was filed and that petition would have been within the period of limitation. There is no material on record to support such a submission.
13. No doubt the Land Acquisition Collector is a Quasi Judicial Authority. We may note that in another Writ Petition (C) No.10039/2016 titled as ***Shanti Devi and Others vs. Union of India*** this court has held that in

case of any deficiency or short coming or in case, where the reference petition is beyond the period of limitation, the LAC must issue notice to the applications and afford a reasonable opportunity of hearing and then pass a reasoned order. However, in the facts of the present case, we are of the view that it would be an absolute useless formality to remand the matter back to the Collector and direct an opportunity of hearing as we have afforded a complete hearing to the petitioners and we find no ground whatsoever to show that the reference petition was filed within the period of limitation.

14. We may also note that it is a settled law that the Land Acquisition Collector has no power to condone the delay, it would be useful to refer to the observation made by a Division Bench of this Court in the case of ***Sh. Bale Ram vs. Land Acquisition Collector, 2005 (121) DLT 454***, wherein it has been held as under:

“ Filing of an application within time is a sine qua none for its entertainment by the Collector in terms of the provisions of the statute. As the Collector is discharging its statutory functions he is bound by the provisions of the statute. The Land Acquisition Act is a complete court in itself and does not permit for application of general principles of law and even of the Limitation Act by the Collector. The Collector in fact has no power to condone the delay. Thus essentially he would have to reject an application which is beyond the prescribed period of limitation as per the provisions of section 18 of the Act. The Supreme Court in the case of Officer on Special Duty (Land Acquisition) and Anr. v. Shah Manilal Chandulal and ors. (1996) 9 SCC 414 held in unambiguous term that the Act clearly makes a distinction between the Collector and the Court. This dichotomy cannot be loose sight of and the Land Acquisition Collector has no power to condone the delay.

Earlier the view taken by some of the High Courts was that mere intimation of the award would be sufficient and the

prescribed period of limitation of six months would commence from that date, when the award was announced and mere intimation was sent to the claimant. In view of the judgment of the Supreme Court, this view cannot be regarded as correct law. The most fair and reasonable construction of this proviso would be the date of knowledge of contents of the award which would be sufficient to enable the applicant to pursue his remedy like a common prudent man and in accordance with law. Unlike other proviso to section, sources of information or knowledge would not be a material consideration. It is the ultimate provided by the legislature for preferring an application under section 18 of the Act. In other cases, it would be within six weeks from the date of receipt of notice by the claimant under section 12(2) and in the event of the party being present at the time of announcement of the award within six weeks from the Collector's award. In no event, the Collector would have jurisdiction to entertain and make a reference to the Court of competent jurisdiction under section 18 of the Act in excess of six months from the date of Collector's award. In other words, within six months from the date, the party had constructed and/or actual knowledge or information of the award in regard to its essential features. The last part of the second proviso has not defined the word "Collector's Award" and this would have to be gathered from the facts and circumstances of each case but in view of the principle aforesaid. Once the award has been made and the party has knowledge about its ingredients, the time limit on a realistic interpretation would commence from that date and has expired on lapse of six months. Prohibition of limitation in a statute is normally to be construed strictly and the equitable or ethical consideration would not normally be with the courts in giving it totally a liberal interpretation so as to wipe out the very effect of the limitation clause.

Reliance placed by the petitioners upon the judgments of the Supreme Court afore-referred is certainly well founded. It is a settled principle that the knowledge must relate to essential contents of the award and not merely the information that the Collector has passed the award. It will be necessary for us to refer to the relevant dictum of the supreme Court in this regard. In the case of Raja Harish Chandra (supra), the Court held as under :-

"The award made by the Collector under section 12 is, in a sence, a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, inter alia, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceedings is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer, section 18 gives him the statutory right of having the question determined by Court, and it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case, it is on the amount thus determined prejudicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for acceptance. Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office, it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively."

This principle was reiterated with approval by the Supreme Court in the case of Mst. Quiser Jehan Begum (supra) with further expansion to the word 'knowledge and/or information of the award' and clearly interpreting the expression 'six months from the date of Collector's award, the Court held as under :-

(5) As to the second part of cl. (b) of the proviso, the true scope and effect thereof was considered by this Court in Harish Chandra's case, 1962-1 SCR 676: (AIR 1961 SC 1500) (supra). It was there observed that a liberal and mechanical construction of the words "six months from the date of the Collector's award:

occurring in the second part of cl.(b) of the proviso would not be appropriate and "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.... 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." Admittedly the award was never communicated to the respondents. Therefore the question before us boils down to this. When did the respondents know the award either actually or constructively? Learned counsel for the appellant has placed very strong reliance on the petition which the respondents made for interim payment of compensation on December 24, 1954. He has pointed out that the learned Subordinate Judge relied on this petition as showing the respondents' date of knowledge and there are no reasons why we should take a different view. It seems clear to us that the ratio of the decision in Harish Chandra's case, 1962-1 SCR 676 :(AIR 1961 SC 1500) (supra) is that the party affected by the award must know it, actually or constructively, and the period of six months will run from the date of that knowledge. Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under S.12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly when a party is present in Court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award."

In the case of Bharat Chand Dilwali v. UOI 1988, Rajdhani Law Reporter 224 as well as a Division Bench of Gujrat High Court in the case of Rsulkhanji Sardar Mahomad Khanji v. H.P. Rathod 3rd Spl Land Acquisition Officer, Ahmd and Anr. 1975 (16) Gujrat Law Reporter 911 took the view that mere knowledge of the award or taking part in the proceedings under section 30 of the Act would not be helpful for holding that limitation had commenced from such a date. For this purpose,

the date would be when either the award was communicated to the party actually or he had knowledge of essential contents of the award actually or constructively.

Now we would apply to the above well settled principles of law to the facts of the present case. In this regard, at the very outset, we may also notice that complete and correct facts have not been disclosed by the petitioners in these petitions. The award was announced on 19th June, 1992 and possession of the property in question was taken on 25th January, 2000. The claimants were obviously fully aware about the acquisition proceedings and they filed the application for receiving of compensation on 23rd June, 2001. In this application reference was made to the essential features including the number of the award. In regard to amount of compensation payable to the petitioners they had specified definite figures in the indemnity bonds and other documents annexed with the applications or filed subsequent thereto. The indemnity bond and surety bonds and other documents were filed by Bale Ram on 3rd December 2001 while the application was filed on 23rd March, 2001. These documents clearly show that the petitioners had complete and full knowledge and information about the passing of the award and essential contents thereof for the purposes of upholding their remedy under section 18 of the Act in accordance with law. The limitation for filing an application by the petitioner under section 18 thus would commence at best from 23rd March, 2001 and even if any liberal attitude, which is not called for, is given to the petitioners, then the limitation would commence from 3rd December, 2001 and would expire on 23rd September, 2001 and 3rd June, 2001 while admittedly the application under section 18 of the Act was filed on 30th May, 2002 and 3rd June, 2002.

The Supreme Court in the case of Msmt. Qaisar Jehan Begum (supra) had granted relief to the petitioner because their Lordships of the Supreme Court as a finding of fact held that the claimants had no knowledge of the contents of the award and did not know the amount of compensation which have been awarded. This judgment, therefore, is of no help to the petitioners as they themselves had submitted all necessary

documents for payment of compensation including all essential contents required for that purpose.

We may also notice here that the claimants filed application for payment of compensation and received the same without protest in the surety and indemnity bonds submitted by them before the authorities. It is nowhere stated that they were receiving the compensation under protest or without prejudice to their rights. However, in the applications submitted by them under section 18 of the Act in 2002, it is stated " that the petitioner had not accepted the market value of the Land Acquisition Collector and other contents of the award". The payment admittedly was received by them on 15th April, 2002 in pursuance to the documents and applications submitted without protest in March, 2001. In light of the judgment of the Supreme court in the case of Land Acquisition Officer v. Shivabai and Ors. JT 1997 (5) SC 123, it is held that the claimants having received the payment without protest; reference which was barred by limitation was also without jurisdiction, both the petitioners had submitted similar applications and similar documents and thus application under section 18 of the Act would also be not maintainable in addition to the fact that it is barred by limitation.

Argo, for the reasons aforerecorded, we find no merit in these petitions and the same are dismissed while leaving the parties to bear their own costs."

15. Counsel for the petitioners has relied upon the decision of Supreme Court in the case of **Premji Nathu vs. State of Gujarat, 2012 (5) SCC 250**, in support of his submission that the period of limitation would begin only when the petitioners had knowledge of the contents of the award, it has been held as under:

"14. The reason for providing six months from the date of the award for making an application seeking reference, where the applicant did not receive a notice under Section 12(2) of the Act, while providing only six weeks from the date of receipt of notice under Section 12(2) of the Act for making an application

for reference where the applicant has received a notice under Section 12(2) of the Act is obvious. When a notice under Section 12(2) of the Act is received, the landowner or person interested is made aware of all relevant particulars of the award which enables him to decide whether he should seek reference or not. On the other hand, if he only comes to know that an award has been made, he would require further time to make enquiries or secure copies so that he can ascertain the relevant particulars of the award.

15. *What needs to be emphasised is that along with the notice issued under Section 12(2) of the Act, the land owner who is not present or is not represented before the Collector at the time of making of award should be supplied with a copy thereof so that he may effectively exercise his right under Section 18(1) to seek reference to the Court.*

xxxx

xxxx

xxxx

xxxx

18. *In Bhagwan Das v. State of Uttar Pradesh (2010) 3 SCC 545, this Court interpreted Section 18 and laid down the following propositions: “(i) If the award is made in the presence of the person interested (or his authorised representative), he has to make the application within six weeks from the date of the Collector's award itself. (ii) If the award is not made in the presence of the person interested (or his authorised representative), he has to make the application seeking reference within six weeks of the receipt of the notice from the Collector under Section 12(2). (iii) If the person interested (or his representative) was not present when the award is made, and if he does not receive the notice under Section 12(2) from the Collector, he has to make the application within six months of the date on which he actually or constructively came to know about the contents of the award. (iv) If a person interested receives a notice under Section 12(2) of the Act, after the expiry of six weeks from the date of receipt of such notice, he cannot claim the benefit of the provision for six months for making the application on the ground that the date of receipt of notice under Section 12(2) of the Act was the date of knowledge of the contents of the award.”*

19. *The Court in Bhagwan Das then held:*

“When a person interested makes an application for reference seeking the benefit of six months' period from the date of knowledge, the initial onus is on him to prove that he (or his representative) was not present when the award was made, that he did not receive any notice under Section 12(2) of the Act, and that he did not have the knowledge of the contents of the award during a period of six months prior to the filing the application for reference. This onus is discharged by asserting these facts on oath. He is not expected to prove the negative. Once the initial onus is discharged by the claimant/person interested, it is for the Land Acquisition Collector to establish that the person interested was present either in person or through his representative when the award was made, or that he had received a notice under Section 12(2) of the Act, or that he had knowledge of the contents of the award. Actual or constructive knowledge of the contents of the award can be established by the Collector by proving that the person interested had received or drawn the compensation amount for the acquired land, or had attested the mahazar/panchnama/proceedings delivering possession of the acquired land in pursuance of the acquisition, or had filed a case challenging the award or had acknowledged the making of the award in any document or in statement on oath or evidence. The person interested, not being in possession of the acquired land and the name of the State or its transferee being entered in the revenue municipal records coupled with delay, can also lead to an inference of constructive knowledge. In the absence of any such evidence by the Collector, the claim of the person interested that he did not have knowledge earlier will be accepted, unless there are compelling circumstances not to do so.”

20. *In the light of the above, it is to be seen whether the conclusion recorded by the Reference Court, which has been approved by the High Court that the application filed by the appellant was barred by time is legally sustainable.*

21. *A careful reading of the averments contained in paragraph 2 of the application filed by the appellant under Section 18(1) shows that the notice issued by the Collector under Section*

12(2) was served upon him on 22.2.1985. Thereafter, his advocate obtained certified copy of the award and filed application dated 8.4.1985 for making a reference to the Court. This implies that copy of the award had not been sent to the appellant along with the notice and without that he could not have effectively made an application for seeking reference.

22. On behalf of the State Government, no evidence was produced before the Reference Court to show that copy of the award was sent to the appellant along with the notice. Unfortunately, while deciding issue No.3, this aspect has been totally ignored by the Reference Court which mechanically concluded that the application filed on 8.4.1985 was beyond the time specified in Section 18(2)(b). The learned Single Judge of the High Court also committed serious error by approving the view taken by the Reference Court, albeit without considering the fact that the notice issued by the Collector under Section 12(2) was not accompanied by a copy of the award which was essential for effective exercise of right vested in the appellant to seek reference under Section 18(1)."

16. There is no quarrel with the proposition sought to be raised by the counsel for the petitioners that the Land Acquisition Collector (LAC) being a quasi-judicial authority must comply with the principles of natural justice. There is also no quarrel with the proposition in view of the law laid down by the Apex Court, which has been noticed in the case of **Sh. Bale Ram** (*supra*) and the law laid down in the case of **Premji Nathu** (*supra*) that the period of limitation would start from the knowledge of the contents of the Award. The judgment in the case of **Premji Nathu** (*supra*) relied upon by the counsel for the petitioners, in our view, would not apply to the facts of the present case for the reason that in the case of **Premji Nathu** (*supra*) the applicant had made an application for the grant of certified copy and he explained the delay on the ground that certified copy was not made available to him.

17. In the present case, it is the case of the petitioners that the petitioners made an application under Section 18 of the Act on 15.05.2012. The effect of this averment would be that on this date, the petitioners were fully aware of the contents of the award. The grievance of the petitioners is that this application is not traceable and no order was passed by the LAC forcing the petitioner to file a second petition, which was received on 10.06.2015. In case, the alleged application filed by the petitioners on 15.05.2012 was dismissed without affording an opportunity of hearing to the petitioners, then the submissions of the counsel for the petitioners would hold good but the factual position is otherwise. As we have observed in the paragraphs foregoing, we are not convinced that any application under Section 18 of the Act was filed on 15.05.2012 for the reasons that (1) no copy of such application has been filed; (2) no diary number has been provided; (3) no document has been placed on record to show steps taken to pursue the application; and, (4) no reference of earlier alleged application in the second application which was received on 10.06.2015. The abovementioned factors, in our view, conclusively hold that the submissions made that the earlier application was not considered, is false. The award in this case was made as far back as on 01.05.2008. The petitioners being legal heirs of late Sh.J.P.Gupta received compensation on 11.05.2012. In this backdrop the application, which was received on 10.06.2015, is patently beyond the period of limitation. We find no reason to remand the matter back to enable the LAC to give opportunity of hearing to the petitioner as we have already granted a full hearing to the petitioners and remanding the matter back would be a useless formality.

Resultantly, we find no merit in this writ petition. The writ petition is dismissed. No order as to costs.

18. At this stage counsel for the petitioners submits that he will make an application under Section 28(A) of the Land Acquisition Act in case such a relief is open to him.

G.S.SISTANI, J

V. KAMESWAR RAO, J

NOVEMBER 30, 2017

aky/rb /

