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

% *Date of Judgment: 03rd July, 2018*

+ W.P.(C) 4670/2018

SH. SURESH CHAND JAIN

..... Petitioner

Through: Ms Deepti Bhagat, Adv

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Chiranjeev Kumar, Adv for UOI
Mr Yeeshu Jain and Ms Jyoti Tyagi,
Adv for L&B/LAC
Mr Srinivas Vishven, Adv for R-3
Mr Shadan Farasat, ASC and
Mr Ahmed Said, Adv for GNCTD

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. With the consent of the parties, the writ petition is set down for final hearing for disposal. As per the writ petition, the petitioner had purchased a plot bearing No. 34 and 34A measuring 225 sq. yards out of Khasra No.5/7/2, 8, 13, 14/2 and 17/2 situated at Village Nangloi Jat, Delhi in the estate abadi known as Friends Enclave, Sector-7, Delhi from the Bhumidar on 13.06.1974.

2. A notification under Section 4 of the Land Acquisition Act, 1894 was issued on 15.05.1978, Section 6 declaration was made on 06.01.1979 and thereafter an Award was rendered on 28.01.1980. Reference made under Sections 30 and 31 of the Land Acquisition Act, was made by the Collector on 04.09.1980. Notices were issued to the interested persons including the petitioner. It is the case of the petitioner that the reference was decided after

a period of 36 years. Vide judgment dated 02.07.2016, it was held that the petitioner was entitled to compensation for the aforesaid plot of land. On 09.01.2017, the petitioner made a claim for enhancement of compensation. It is the complaint of the petitioner that the Land Acquisition Collector vide order dated 15.01.2018 has rejected the application being barred by limitation. Counsel for the petitioner submits that no notice was issued to the petitioner, no opportunity of hearing was granted and thus the order of the Land Acquisition Collector dated 15.01.2018 is liable to be set aside. Counsel relies on decision rendered by this Court in the case of **Shanti Devi & Ors vs Union of India**, W.P.(C) No. 10039/2016 dated 30.11.2017 wherein this Court has highlighted that principles of natural justice should be followed and hence the order rejecting the application on the grounds of limitation was set aside and an opportunity of hearing was granted.

3. Ms Jyoti Tyagi, learned counsel appearing for the LAC, submits that petitioner had participated in 30-31 proceedings and was thus aware of the passing of the award and the contents thereof and thus the application under Section 18 filed by the petitioner is blatantly barred by limitation.

4. We have heard the learned counsels for the parties.

5. In the case of **Madan & Anr vs State of Maharashtra** reported at (2014) 2 SCC 720 it was held as under:-

“3. It appears that after the order dated 4-9-1991 was passed in the reference under Section 30 of the Act, the appellants received the compensation on 5-9-1991. Though the precise date is not available, within six weeks from the date of the order dated 4-9-1991 the appellants sought a reference under Section 18 of the Act for enhancement of the compensation awarded. The aforesaid reference which was numbered as LAR No. 75 of 1992 was decided by the Second Additional District Judge,

Beed by order dated 29-10-1993 enhancing the compensation amount by an additional sum of Rs 2,10,000 along with solatium, interest, etc. as due under different provisions of the Act.

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6. The learned counsel for the appellants has vehemently urged that from the materials placed on record it is evident that the appellants did not participate in the enquiry leading to the award dated 16-8-1985 passed by the Land Acquisition Collector. No notice of the award under Section 12(2) of the Act was served on the appellants either. It is pointed out that the appellants became entitled to receive compensation under the award only on 4-9-1991 i.e. the date of the order of the court in the reference made under Section 30 of the Act. Such compensation was received by the appellants on 5-9-1991. Thereafter, the application for reference under Section 18 of the Act was made within the period of 6 weeks from the date of the order passed under Section 30 of the Act. Relying on the decision of this Court in *Harish Chandra Raj Singh v. Land Acquisition Officer* [*Harish Chandra Raj Singh v. Land Acquisition Officer*, AIR 1961 SC 1500] the learned counsel has urged that the date of knowledge of the award referred to in Section 18(2), in the present case, has to be understood to be 4-9-1991 i.e. the date of the order under Section 30 of the Act. If that be so, according to the learned counsel for the appellants, the High Court was clearly in error in holding the reference under Section 18 of the Act to be barred by limitation. Another decision of this Court in *G.H. Grant v. State of Bihar* [AIR 1966 SC 237] has been relied on to emphasise the true purport of Sections 18 and 30 of the Act.

7. Controverting the submissions advanced on behalf of the appellants, the learned counsel for the State has contended that the appellants having claimed to be the owners of the land were at all times aware of the land acquisition proceedings leading to the award dated 16-8-1985 passed by the Collector. According to the learned counsel for the State, the appellants, therefore, should have sought a reference under Section 18 within the time prescribed by Section 18(2). In this regard, the learned counsel for the State has pointed out that even under Section 18 of the Act it is open to an aggrieved party to seek a reference on the question of apportionment of the award. The award in the present case having been passed by the Land Acquisition Collector on 16-8-1985, the reference under Section 18 for enhanced compensation made in the year 1991 is inordinately delayed and the conclusion of the High Court to the said effect is fully justified.

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9. From the order dated 29-10-1993 passed in LAR No. 75 of 1992, it is, inter alia, clear that there was a dispute amongst the landowners (the appellants are one set of such landowners) in respect of their respective shares in the acquired land on account of which no apportionment of compensation was made by the Collector who made a reference under Section 30 of the Act to the court. Further, in the order dated 29-10-1993 it is recorded that the appellants had no knowledge of the award till the order dated 4-9-1991 came to be passed in the reference under Section 30. In *Harish Chandra Raj Singh [Harish Chandra Raj Singh v. Land Acquisition Officer, AIR 1961 SC 1500]* this Court has held that the expression “the date of the award” used in proviso (b) to Section 18(2) of the Act must be understood to mean the date when the award is either communicated to the party or is known by him either actually or constructively. It was further held by this Court that it will be unreasonable to

construe the words “from the date of the Collector's award” used in the proviso to Section 18 in a literal or mechanical way. In the present case, it has already been noticed that a finding has been recorded by the Reference Court in its order dated 29-10-1993 that “*the petitioners had no knowledge about the passing of the award till the date of payment of compensation on 5-9-1991 because they were held entitled to receive the compensation after the decision of reference under Section 30 dated 4-9-1991*”.

10. What transpires from the above is that it is for the first time on 4-9-1991 (date of the order under Section 30 of the Act) that the appellants came to know that they were entitled to compensation and the quantum thereof. It is not in dispute that the reference under Section 18 was made within 6 weeks from the said date i.e. 4-9-1991. In the above facts, it is difficult to subscribe to the view taken by the High Court to hold that the reference under Section 18 was barred by limitation.

11. A cursory glance at the provisions of Sections 18 and 30 of the Act, extracted above, may suggest that there is some overlapping between the provisions inasmuch as both contemplate reference of the issue of apportionment of compensation to the court. But, a closer scrutiny would indicate that the two sections of the Act operate in entirely different circumstances. While Section 18 applies to situations where the apportionment made in the award is objected to by a beneficiary thereunder, Section 30 applies when no apportionment whatsoever is made by the Collector on account of conflicting claims. In such a situation one of the options open to the Collector is to make a reference of the question of apportionment to the court under Section 30 of the Act. The other is to relegate the parties to the remedy of a suit. In either situation, the right to receive compensation under the award would crystallise after apportionment is made in favour of a claimant. It is only thereafter that a reference under Section 18 for enhanced compensation can be

legitimately sought by the claimant in whose favour the order of apportionment is passed either by the court in the reference under Section 30 or in the civil suit, as may be.”

6. In the present matter no doubt the petitioners were participating in the proceedings pending under Section 18 of the Act, however counsel for the petitioner has urged before us that the dispute regarding apportionment was laid to rest only on 02.07.2016 when it became clear that the petitioner was entitled to the compensation.

7. Without expressing any opinion on the merits of the matter as to whether the application filed by the petitioner under Section 18 of the Act is within the period of limitation or not, we set aside the order of the Collector dated 15.01.2018 to enable the petitioner to appear before the Collector and explain his case and convince the Collector that the reference is within the period of limitation as it is contented that the dispute with regard to the apportionment was decided after 36 years and post the decision, an application under Section 18 was made. Resultantly, the application is allowed. The rule is made absolute. The Land Acquisition Collector will issue notice to the petitioner within two weeks on receipt of this order. One opportunity of hearing will be granted. Thereafter a reasoned order will be passed and served upon the petitioner at the address mentioned in this writ petition, unaffected by any observation made by the Court in the order passed today.

8. Accordingly, the writ petition stands disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

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