

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.418 of 2018

In

Civil Writ Jurisdiction Case No.20058 of 2012

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The Union Of India, Ministry Of Defence, Government of India, through the Defence Estate Officer, having its office at Danapur, P.O., P.S. Town Danapur, District Patna through Vishwas Sohal, Son of Sri Amar Chand Sohal, Resident of House No. 612, Sector - 12, Panchkula, Haryana - 134112, presently residing at CEO's residence, Danapur Cantonment, P.S. Danapur, District Patna.

... .. Appellant/s

Versus

1. Arjun Yadav Son of Kishun Yadav
2. Ranjit Yadav Son of Arjun Yadav
Both residents of Mauza Nagdih, P.S. 457, Village Parpar, P.O. Sithaura, P.S. Rajgir, Dist. Nalanda.
3. The State of Bihar through the Commissioner cum Secretary, Department of Land Reforms, Government of Bihar, Patna
4. The Collector, Nalanda at Biharsharif.
5. The District Land Acquisition Officer, Nalanda at Biharsharif.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. S.D. Sanjay, Add;. S.G.
Ms. Priya Gupta, Advocate
Mr. Mohit Agarwal, Advocate
Mr. A.B. Mathur, CGC
Mr. Alok Kumar Agarwal, Advocate

For the Private Respondents : Mr. Mrigank Mauli, Advocate
Mr. Sanjay Kumar, Advocate
Mr. Jainandan Singh, Advocate
Mr. Sanket, Advocate
Mr. Prince Kumar Mishra, Advocate



For the State of Bihar

Mr. Prabhu Narayan Sharma, AC to AG.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-04-2019

This appeal is by the Union of India arising out of a writ petition in proceedings under the Land Acquisition Act, 1894 where the appellant was not made a party and the writ petition was allowed vide impugned judgment dated 7th of May, 2014 in C.W.J.C. No. 20058 of 2012 and other analogous cases and in compliance whereof proceedings under the 2013 Act were drawn up and orders were passed in exercise of powers under Section 64 of the 2013 Act, thereby considerably enhancing the amount of compensation payable to the respondent-petitioners applying the rates as per the new Act. The appeal had been entertained and notices were issued on 17th of April, 2018 and, simultaneously, an interim order was passed staying the operation of the impugned judgment.

2. The order dated 17th of April, 2018 is extracted hereunder:-

“Issue notice to the respondents on the memorandum of appeal



and on I.A. Nos. 2477 of 2018, both under registered cover with A/D and by ordinary process, on requisites etc. within two weeks, returnable within four weeks.

List for analogous hearing along with L.P.A. No. 1731 of 2017.

In the meanwhile, all actions and further proceedings before the Presiding Officer, Land Acquisition & Rehabilitation Authority, Patna, in furtherance to the impugned order passed on 07.05.2014 by the learned Writ Court in the writ petition in question, shall remain stayed till the next date.”

3. Thereafter vide order dated 18th December, 2018 leave to appeal was granted to the appellant and the delay in the filing of the appeal was condoned whereafter the respondents were called upon to file their response. The interim order extracted hereinabove was directed to continue until further orders.

4. The matter was thereafter taken up and, ultimately, after hearing the learned counsel for the parties, a direction was issued to list the matter for delivery of judgment on the date fixed.

5. The background in which the present appeal has



been filed is that the Ministry of Defence, Government of India, for the setting up of an Ordnance Factory at Rajgir, District-Nalanda, Bihar, required land. For this, acquisition process was set into motion and on 15th of September, 1999 a notification under Section 4 of the Land Acquisition Act, 1894 was issued, followed by a Section 6 notification simultaneously invoking the provisions of Section 17(4) of the said Act.

6. The sanction was granted by the Central Government for deposit of the amount of 80 per cent. This amount was deposited and further steps were taken for acquisition of 50 acres of land for rehabilitation of the displaced persons on the land that was acquired for the Ordnance Factory.

7. According to the appellant, the District Land Acquisition Officer, on 12th of June, 2001, pronounced an award. The respondent had every knowledge of the said proceeding, but since there was a dispute with regard to the ownership and the extent of compensation payable, a reference was made under Section 30 of the 1894 Act on 12th of October, 2002 vide letter dated 21.10.2002 for being adjudicated by the concerned Court at Nalanda, Bihar Sharif. Prior to this, possession of the land was taken over on 6th July, 2002. The balance of the 20% amount was also deposited by the appellant with the respondent



Collector.

8. On 30th January, 2010, the reference under Section 30 was answered whereby the claim of the respondents was accepted and a direction was issued to apportion the award accordingly.

9. A notice was issued under Section 12(2) of the 1894 Act on 24th April, 2010 calling upon the respondents to receive the award of the land stated therein.

10. The respondent-petitioners thereafter moved an application on 24th May, 2010 to exercise their right for making a reference under Section 18 of the 1894 Act. The fact that an award was passed on 12th June, 2001 was accepted in the said proceedings, but the amount awarded was disputed contending that the respondent-petitioners were entitled to payment of compensation at a higher rate as awarded. It was also disputed that the award was deficient and it did not contain the particulars including the area or the amount to which the respondent-petitioner was entitled. The respondent-petitioners alleged that it is only through the order passed by the Court in proceedings under Section 30 that the respondent-petitioners came to know about the exact contents of the award about the area acquired and the compensation released. It is for this reason that they



moved the application under Section 18 on 02.06.2010 within the time prescribed therein after having been served with a copy of the order aforesaid.

11. The said application was rejected by the Land Acquisition Officer on 15.07.2010 declining to refer the dispute under Section 18 on the ground that the application was barred by time that was impugned in the petition giving rise to this appeal.

12. At this juncture, we may mention that Shri Mrigank Mauli, learned counsel appearing for the respondent-petitioners, has raised three basic preliminary objections; firstly that in Section 18 proceedings, it is only after the Court entertains the application that notices are required to be issued to the beneficiaries of acquisition. Thus, the Union of India was not a proper and necessary party to be impleaded in the writ petition and, as a matter of fact, the Union of India could not press its commercial interest in order to question the correctness or otherwise of the application under Section 18 of the Act. It is urged that it is only after the proceedings are entertained that any party interested may be called upon to give evidence and not otherwise. Thus, if the Collector had rejected the application then the writ petition filed challenging the said order did not



require impleadment of the Union of India, inasmuch as, it is only the issue of the entertaining of an application under Section 18 within the limitation prescribed that has to be decided and for which the learned Single Judge has arrived at the correct conclusion. Accordingly, the appellant has no right to institute or maintain this appeal. The order of grant of leave to appeal therefore be recalled and the appeal be dismissed.

13. The second ground of preliminary objection is that the appellant after the judgment of the learned Single Judge, that was delivered in the year 2014, participated in the proceedings which is evident from the order-sheet that has been filed to demonstrate that the appellants had come to know of the proceedings initiated by the answering respondents and in spite of having participated therein, the present appeal, which was filed in the year 2018, did not disclose the fact of having participated before the court below and orders having been passed. It is in this background that it is urged that the preliminary objections deserve to be entertained and the appeal dismissed on this ground alone. We will deal with this matter as the learned counsel have advanced their submissions in this regard with the aid of certain judgments claiming them to be applicable on the facts of the present controversy.



14. The third ground of the preliminary objection is on the limitation part contending that this appeal is wholly belated and, therefore, the order passed condoning the limitation should be set aside and the appeal be dismissed for want of any sufficient cause or explanation on the part of the appellant in filing of this appeal.

15. There is one more fact which deserves mention that against the orders passed under Section 64 of the 2013 Act, appeals have been filed by the State of Bihar questioning the correctness thereof. However, the learned counsel for the appellants contends that those proceedings have been initiated by the State of Bihar, but in the present case since the entire exercise for enhancement after entertaining the contentions in the application under Section 18 emanates on the strength of the judgment impugned herein, then the decision rendered in this appeal challenging the impugned judgment of the learned Single Judge may have an impact and for which it was necessary for the appellants to have preferred this appeal.

16. The main thrust of the argument of Shri S.D. Sanjay, learned Additional Solicitor General of India on behalf of the Ministry of Defence, Union of India is that the learned Single Judge not only committed an error in treating the



application under Section 18 to have been filed within time, but also the reason given in respect thereof, namely that the award dated 12th June, 2001 was a purported award and it came into existence only after the orders came to be finally passed on the reference under Section 30 of the Act. It is urged that this was a totally incorrect approach of assuming that there was no award dated 12th June, 2001 and, therefore, the judgment of the learned Single Judge deserves to be set aside.

17. Responding to the said submission, Shri Mrigank Mauli contends with the aid of certain decisions that an award has to be a complete award and the stated award dated 12th June, 2001 was a mere paper calculation, without there being any order pronouncing an award as required under Section 11 indicating the details of the area and the amount payable. It is his submission that in the absence of any valid award the question of running of the period of limitation under Section 18 does not arise. He has, however, with the aid of the judgments of the Apex Court, contended that the opportunity to file an application under Section 18 arises only after notices are served under Section 12(2) of the 1894 Act and the contents of the award are made known, whereas in the present case the so-called award dated 12th June, 2001 does not contain any details



with regard to the area of the respondent-petitioners having been acquired or the extension of compensation received. It was only in the year 2010 when, for the first time, upon adjudication in Section 30 proceedings of the 1894 Act that the material was made known and, consequently, it is thereafter that the application was filed under Section 18 of the 1894 Act. It is, therefore, urged that there was no delay and the application under Section 18 of the Act moved in the year 2010 was very much within time. The learned Single Judge, therefore, has rightly construed this position and has arrived at the correct conclusion.

18. Coming to the issue of preliminary objections raised, we may deal with the issue of filing of this appeal after some delay. The prayer for condonation of delay in the filing of this appeal has been made in I.A. No. 2477 of 2018. In Paragraph 3 of the said affidavit, the appellant discloses that pursuant to the judgment of the learned Single Judge dated 7th May, 2014 the proceedings were undertaken after transfer from the court of District & Sessions Judge by the court of Land Acquisition Rehabilitation and Resettlement, Authority, Patna and then notice was issued to the appellant in October, 2016. The fact, therefore, disclosing the knowledge of the proceedings



pursuant to the judgment of the learned Single Judge, therefore, appears to have been accepted to be in October, 2016. The said Authority has proceeded to hear the matter and the appellant did participate in the said proceedings, whereafter the new Award was passed on 23rd May, 2018. In Paragraph 4 of the affidavit, it has been stated that when these facts came to the notice of the officials of the appellant through the Defence State Officer, Danapur who referred the matter in the headquarters at Delhi in the Legal Department of the Ministry of Defence, it was then decided to take appropriate steps to challenge the order of the learned Single Judge dated 7th May, 2014 followed by the advice of the learned Additional Solicitor General of India in the Patna High Court who immediately dispatched his communication for filing of this appeal and as soon as the sanction was given on 05.12.2018, the appeal has been filed. The explanation is that there was no intentional delay or laches keeping in view the said background and if the delay is not condoned, it shall cause serious prejudice to the appellant that would be saddled with a liability of great magnitude which would be against public interest and the public exchequer. It is further stated in the affidavit that no prejudice will be caused by condoning the delay keeping in view the important issue of law that has been raised



in the appeal.

19. By way of another I.A. No. 2478 of 2018 a prayer was made for staying the operation of the impugned judgment dated 07.05.2014. A third application has been filed being I.A. No. 2479 of 2018 seeking leave to appeal as the appellant admittedly was not a party to the writ petition even though they were respondents to the application filed by the respondent-petitioners under Section 18 of the 1894 Act that has culminated in the passing of the new Award dated 23.05.2018. It is in this background that the prayer has been made to condone the delay. We may put on record that vide interim order dated 17.04.2018 a Division Bench of this Court, presided by the then Hon'ble Chief Justice, had stayed the operation of the impugned judgment of the learned Single Judge dated 07.05.2014. By an order dated 18.12.2018, this Bench taking notice of the aforesaid fact granted leave to appeal to the appellant and also condoned the delay in the filing of this appeal. Thus, by virtue of the orders dated 17th April, 2018 and 18th December, 2018, the Interlocutory Application virtually stood disposed of by condoning the delay in the filing of the appeal and granting leave to appeal. In this regard, one of the decisions cited at the Bar deserves mention, namely, **Postmaster General and others**



Vs. Living Media India Limited and another, reported in **(2012) 3 SCC 563**. This aspect was dealt with in the aforesaid judgment in Paragraphs 10 to 19 that is extracted hereinunder:-

“10. Since the learned Senior Counsel for the respondents seriously objected to the conduct of the appellants in approaching this Court after enormous and inordinate delay of 427 days in filing the above appeals, we intend to find out whether there is any “sufficient cause” for the condonation of such a huge delay. In view of the fact that the application for condonation of delay in filing the SLPs dated 10.2.2011 does not contain acceptable and plausible reasons, we permitted the appellant Postal Department to file a better affidavit explaining the reasons for the same. Pursuant to the same, an affidavit has been filed on 26-12-2011. After taking us through the same, the learned Additional Solicitor General submitted that in view of series of decisions of this Court and the appellant being a government department, delay may be condoned and an opportunity may be given to put forth their stand as to the impugned judgment of the High Court.

11. Before going into the reasons furnished by the Department for the delay, let us consider various decisions of this Court relied on by Mr. Raval, learned ASG.

12. In Collector, (LA) vs. Mst. Katiji, (1987) 2 SCC 107, while considering “sufficient



cause” in the light of Section 5 of the Limitation Act, 1963, this Court pointed out various principles for adopting liberal approach in condoning the delay in matters instituted in this Court.

13. The learned Additional Solicitor General heavily relied on the following principles:-

“(1). Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(2). Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) ‘Every day's delay must be explained’ does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4). When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5). There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.



(6). It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

By showing the above principles, learned ASG submitted that there is no warrant for according step-motherly treatment when the “State” is the applicant. It is relevant to mention that **in that case, the delay was only for four days.**

14. In *G. Ramegowda v Land Acquisition Officer*, (1988) 2 SCC 142, the principles enunciated in paras 15 and 17 are heavily relied on by the learned ASG. They are:-

“15. In litigations to which Government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, **suffers is public interest**. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.

17. Therefore, in assessing what, in a particular case, constitutes ‘sufficient cause’ for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental



decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making.”

Considering the peculiar facts, namely, the change of government pleader who had taken away the certified copy after he ceases to be in office, the High Court condoned the delay which was affirmed by this Court.

15. In *State of Haryana v Chandra Mani and Others*, (1996) 3 SCC 132 while condoning the delay of 109 days in filing the LPA before the High Court, this Court has observed that certain amount of latitude within reasonable limits is permissible having regard to impersonal bureaucratic set-up involving red-tapism. In the same decision, this Court directed the State to constitute legal cells to examine whether any legal principles are involved for decision by the courts or whether cases required adjustment at governmental level.

16. In *State of U.P. and Others vs. Harish Chandra and Others*, (1996) 9 SCC 309, by giving similar reasons, as mentioned in *Chandra Mani's* case (*supra*) this Court, condoned the delay of 480 days in filing the SLP.

17. In *National Insurance Co. Ltd. vs. Giga Ram and Others*, (2002) 10 SCC 176, this Court, after finding that the High Court was not justified in taking too technical a view of the facts and refusing to condone the delay, accepted the case of the appellant insurance company by protecting the



interest of the claimant and condoned the delay. It is relevant to point out that while accepting the stand of the Insurance Company for the delay, this Court has safeguarded the interest of the claimant also.

18. In *State of Nagaland vs. Lipok Ao and Others*, (2005) 3 SCC 752, this Court, while reiterating the principle that latitude be given to the Government's litigation, allowed the appeal filed by the State of Nagaland. It is also relevant to note here that this matter relates to criminal jurisdiction and delay in filing the SLP was only 57 days.

19. Though the learned ASG heavily relied on the abovesaid decisions and the principles laid down, on going through all the factual details, **we are of the view that there is no quarrel about the propositions inferred therein.** However, considering the peculiar facts and circumstances of each case, this Court either condoned the delay or upheld the order of the High Court condoning the delay in filing appeal by the State. While keeping those principles in mind, let us consider the reasonings placed by the Postal Department with regard to the same.”

20. The issue as to whether what would be sufficient cause particularly in matters relating to appeals to be filed on behalf of the State or the Union of India, it was held as follows in Paragraphs 21 to 24:-



“21. Before considering whether the reasons for justifying such a huge delay are acceptable or not, it is also useful to refer the decisions relied on by Mr. Soli J. Sorabjee, learned senior counsel for the respondents.

22. In CWT V. Amateur Riders Club, 1994 Supp (2) SCC 603, there was a delay of 264 days in filing the SLP by the Commissioner of Wealth Tax, Bombay. The explanation for the delay had been set out in the petitioner’s own words as under:

“2..... (g) The Advocate-on-Record got the special leave petition drafted from the drafting Advocate and sent the same for approval to the Board on 24.6.1993 along with the case file.

(h) The Board returned the case file to the Advocate-on-Record on July 9-7-1993 who re-sent the same to the Board on September 20.9.1993 requesting that draft SLP was not approved by the Board. The Board after approving the draft SLP sent this file to CAS on October 1-10-1993.”

After incorporating the above explanation, this Court refused to condone the delay by



observing thus:

“3. ... Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that the Government should not be treated as any other private litigant as, indeed, in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial red-tape. But there are limits to this also. Even with all this latitude, the explanation offered for the delay in this case merely serves to aggravate the attitude of indifference of the Revenue in protecting its common interests. The affidavit is again one of the stereotyped affidavits making it susceptible to the criticism that the Revenue does not seem to attach any importance to the need for promptitude even where it affects its own interest.

[Emphasis supplied]

23. In *Pundlik Jalam Patil v. Jalgaon Medium Project*, (2008) 17 SC 448, the



question was whether the respondent-Executive Engineer, Jalgaon Medium Project had shown sufficient cause to condone the delay of 1724 days in filing appeals before the High Court. In para 17, this Court held:

“17.....The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and “do not slumber over their rights”.

24. After referring various earlier decisions, taking very lenient view in condoning the delay, particularly, on the part of the Government and the Government Undertaking, this Court observed as under:-

“29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not



resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

30. Public interest undoubtedly is a paramount consideration in exercising the courts' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the landlosers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent



manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest.”

21. Having considered the aforesaid submissions, it is correct that settled rights should not be unsettled on account of such delay unless there is some valid explanation. By the passage of the time prescribed for filing of an appeal, an appropriate explanation is required that may be not strictly a day-today explanation but there has to be a plausible explanation



so as to justify the cause in the delay. What we find in the instant case and as pointed out by Shri S.D. Sanjay, learned Additional Solicitor General of India that a written statement, which is most casually drafted on behalf of the Union of India through its counsel Shri Harischandra Prasad dated 24.04.2017, was filed before the Presiding Officer of the Land Acquisition Rehabilitation and Re-settlement Authority, Patna. Thus, the aforesaid fact, therefore, establishes that the appellant Union of India had the knowledge of the judgment of the learned Single Judge in the year 2016 itself, but it was attended to very casually. A new Award was prepared by the Presiding Officer on 09.05.2017 and when the matter went into execution, the order-sheet dated 22.11.2017 indicates that the earlier counsel Shri Harish Chandra Prasad had been conducting the matter and the new counsel who took over informed the Court that no appropriate objection has been filed to the executive proceedings and a prayer was made to grant more time. In the order-sheet dated 1st of January, 2018 it is apparent that the Defence Department filed an application and it was recorded by the Court that so far as the State of Bihar is concerned, it had been filing applications for adjournments and time was sought by the Defence Department, Union of India on account of



change of counsel. Accordingly, the matter was adjourned and then again a date was fixed on 10th April, 2019.

22. The executive case, therefore, appears to have proceeded in spite of the stay order dated 17th April, 2018 in this appeal.

23. The usual bureaucratic approach in dealing with such serious matters is evident in this case as well. The lawyer of the Union of India in the court below who was conducting the case does not appear to have seriously pursued the matter and it is only after it was brought to the notice of the learned Assistant Solicitor General of India in the High Court that the entire machinery was set into motion for taking up appropriate steps in the matter. It is in this background that it would be apt to refer to the six principles that were dealt with by the Apex Court in the case of **Collector (Land Acquisition) Vs. Katiji**, reported in (1987) 2 SCC 107 that has been dealt with and the ratio whereof has been quoted in the judgment of **Postmaster General** (supra), extracted hereinabove. Applying the aforesaid principles, we find that the said judgment concludes in Paragraphs 27 to 30 that is extracted hereinunder:-

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved



including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies,



their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

24. Thus, the conclusion drawn by the Supreme Court was not to grant any indulgence merely because the delay



by a Government Department. However, in the present case, what we find is that as soon as the matter was brought to the notice of the Union of India, they did take appropriate steps immediately. The presumption that the Union of India was assisted by competent persons familiar with court proceedings does not appear to be available here keeping in view the nature of the application of Shri Harishchandra Prasad, the advocate of the Union of India in the court below. We have perused the said affidavit which has been filed along with the counter affidavit of the respondents and we find that it does not have even approval or sanction of the appropriate authorities of the Defence Department and appears to have been drawn up by Shri Harish Chandra Prasad and filed in a cavalier fashion. In this background, the case of substantial justice would definitely suffer, inasmuch as, in the present case what has happened is that in the garb of the new proceedings pursuant to the impugned judgment, the enhancement of the compensation is from Rs. 1410.84 per decimal to Rs. 1,20,000/- per decimal, which is almost 80 times enhancement. Order-sheet also shows the laxity on the part of the State of Bihar in not filing appropriate affidavits and contest the matter which also went on casually. We may not be able to assume an active collusion, but



at the same time, the manner in which the case has been contested with the State of Bihar in not even participating in the Section 30 proceedings and not even contesting the matter appropriately after remand from the High Court speaks volumes of their attitude of a passive participation. The Union of India is not less to blame, as is evident from the facts stated above after having knowledge of the judgment of the High Court, but the fact remains that the Union of India at least has a plausible explanation to the extent that it was not made a party to the writ petition which was deliberate on the part of the respondent-petitioners in spite of the fact that the appellants were a party of their Section 18 application. We also find that the learned Single Judge was not justified at all in allowing the writ petition without the impleadment of the Union of India and consequently, the administrative mayhem that was caused which is a combination of the circumstances indicated above the Union of India has at least come up in this appeal with an explanation where the delay cannot be stated to be deliberate or any culpable negligence on the part of the appellant though the conduct of the counsel appearing before the court below after the judgment was made known is reprehensible. Public interest should not be allowed to suffer on account of any such delay being caused due



to default on the part of the lawyer who could have informed the Assistant Solicitor General of India earlier or his higher authorities about the urgency of the matter. This casual approach, therefore, may be a default but so far as the appellant is concerned, it has made its best efforts to approach this Court and we are, therefore, of the considered opinion that the delay deserves to be condoned in entertaining this appeal, which has been rightly done under the orders passed by this Court referred to above.

25. The second preliminary objection is that the appellant has suppressed facts about its participation before the court below and the executive proceedings while filing this appeal. It is correct that the order-sheet as already referred to above does record that the appellant had come to know of the judgment of the High Court and had participated in the proceedings of the court below, but it has already been noted above that the conduct of the counsel who filed the affidavit before the court below and the manner in which the case was attended to indicates the slackness on the part of the legal machinery employed by the Union of India in the court below. This fact may not have been explained in detail, but as noted above, the affidavit filed in support of I.A. No. 2477 of 2018



admits the proceedings of the court below and its disclosure in Paragraphs 3 to 9 thereof. The appellant, therefore, cannot be said to have suppressed any material fact, even though the details thereof have not been stated and which has been brought on record through the order-sheet of the court below filed by the respondent-petitioners in their counter affidavit. This, therefore, does not amount to any *suppresio Veri or suggestio falsi* so as to construe that the appellants had succeeded in getting this appeal entertained with an interim order on 17.04.2018 or by getting the delay condoned and permission to file appeal by suppressing any material facts. The second objection is also, therefore, untenable.

26. The third ground which was urged and vehemently contended by Shri Mrigank Mauli is that the appellant was rightly not made a party in the writ petition as the appellant was neither a proper or a necessary party in a matter arising out of condonation of delay for entertaining an application under Section 18 of the 1894 Act. It was urged that neither the appellant was a proper or necessary party and even otherwise, in an application under Section 18 where the question of limitation is involved. The appellant not being an interested person at that stage having only a commercial interest was



rightly not impleaded in the writ petition. Shri Mrigank Mauli contends that it is only after a Section 18 application is entertained and notices are issued then only in order to lead any evidence with regard to quantum of compensation or otherwise can be led by an interested person and it is at that stage that the participation of the appellant that may be necessary. That stage had not yet arrived and, therefore, the appellant had absolutely no cause to plead or oppose the issue of limitation in the application filed by the respondent-petitioners. For this, he has invited the attention of the Court to the definition of the phrase “person interested” as contained in Section 3(b) of the 1894 Act, which is extracted hereinunder:-

“3(b) the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.”

27. He has then referred to Section 18 of the said Act, which is also reproduced hereinunder:-

“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,-

- (a) 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;
- (b) 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.”

28. It is urged that Section 18 is a stage where the Collector passes an administrative order for referring and adjudicating a reference thereunder for being decided by the Court in terms of Section 19 of the Act. It is at the stage of Section 19 that a notice will be served on the applicant or all persons interested in the objection except those who have consented without protest.

29. Sections 19, 20 and 21 of the 1894 Act are extracted hereinunder:-

“19. Collector's statement to the Court.-

(1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand,-

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;



(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11;

(cc) the amount paid or deposited under sub-section (3-A) of section 17; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by the parties interested respectively.

20. Service of notice.- The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:-

(a) the applicant;

(b) all persons interested in the objection,



except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

21. Restriction on scope of proceedings.-The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.”

30. This issue has to be decided simultaneously with the issue as to whether the appellant is an interested person or not. From the facts stated in detail and noted by us hereinabove, we may first begin with the nature of the objection raised by Shri Mrigank Mauli. He submits that at the stage of considering the limitation of Section 18, the appellant is not a person having any interest, inasmuch as, a commercial interest cannot be made the basis for opposing an application under Section 18. For this, he has relied on some of the judgments of the Supreme Court that have been dealt with by a Division



Bench of the Allahabad High Court in the case of **Gorakhpur Development Authority Gorakhpur Vs. District Judge, Gorakhpur and other**, reported in **A.I.R. 1991 Allahabad 241**. That was a case where the acquisition was for local authority and the provisions of Section 50(2) had to be taken into consideration.

31. Section 50(2) of the 1894 Act is extracted hereinunder:-

“50(2). In any proceeding held before a Collector or Court in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or company shall be entitled to demand a reference under section 18.”

32. The same categorically recites that a local authority or a company shall not be entitled to demand a reference under Section 18 but the company of the local authority may appear and adduce evidence. We may indicate that the said decision was in relation to an acquisition of a local authority whereas in the present case acquisition for the Union of India. Another decision in the case of **Delhi Development**



Authority Vs. Bhola Nath Sharma (Dead) by LRS. And Others, reported in **(2011) 2 SCC 54** has been cited where again it was a case relating to the Delhi Development Authority which is a local authority. However, the said decision went on to rule that the phrase “person interested” is inclusive and not exhaustive. In another case of the Apex Court **Santosh Kumar and others Vs. Central Warehousing Corporation and another**, reported in **AIR 1986 Supreme Court 1164** it was held that a company cannot challenge the amount of compensation through a writ petition in view of the bar contained in Section 50(2) of the 1894 Act. As to who is a proper and necessary party, the following judgments have been cited at the Bar:

- (i) Kasturi Vs. Iyyamperumal and others, reported in (2005) 6 SCC 733;
- (ii) Bara Hanuman Temple Durgain, Amritsar Vs. Gurbux Lal Malhotra and others, reported in AIR 1978 Punjab and Haryana 192;
- (iii) Kaka Singh Vs. Rohi Singh and others, reported in A.I.R. 1978 Punjab and Haryana 30 and
- (iv) Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and others,



reported in (1992) 2 SCC 524.

33. We may, however, now refer to those decisions which shed light as to when the acquisition is carried out for in such public parties then who would be a person interested or a proper and necessary party. In this regard, an earlier Supreme Court judgment in the case of **Himalaya Tiles and Marble (P.) Ltd. Vs. Francis Victor Coutinho (dead) by LR's**, reported in **AIR 1980 Supreme Court 1118** ruled that when a land is acquired for a Company and it has to pay a compensation under agreement then it becomes an interested person. For this, we may extract hereunder Paragraphs 6 to 13 of the said judgment:-

“6. Before, however, deciding the question as to whether or not the proceedings taken under Section 4 were cured by the amending Act, we would first deal with the contention of Dr. Chitale that the High Court was wrong in holding that the company had no locus standi to file an appeal before the Letters Patent Bench. Learned counsel submitted that the definition of person interested in Section 18 is an inclusive one and is wide enough to include the appellant for whose benefit the land was acquired and who had to pay the entire compensation in accordance with the agreement entered into by the



Government with the appellant. He argued that it could not be said that the appellant was not interested in defending the acquisition or in the quantum of compensation which was to be awarded by the Court on a Reference made by the Collector. The High Court was of the view that as the land was acquired by the Government, the company had no interest in the same and was, therefore, not entitled either to appear or to defend the proceedings before the court. In order to decide this question it may be necessary to extract the relevant part of Section 18(1) which runs thus:-

"18(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."

7. It seems to us that the definition of ‘a



person interested' given in Sec. 18 is an inclusive definition and must be liberally construed so as to embrace all persons who may be directly or indirectly interested either in the title to the land or in the quantum of compensation. In the instant case, it is not disputed that the lands were actually acquired for the purpose of the company and once the land vested in the Government, after acquisition, it stood transferred to the company under the agreement entered into between the company and the Government. Thus, it cannot be said that the company had no claim or title to the land at all. Secondly, since under the agreement the company had to pay the compensation, it was most certainly interested in seeing that a proper quantum of compensation was fixed so that the company may not have to pay a very heavy amount of money. For this purpose, the company could undoubtedly appear and adduce evidence on the question of the quantum of compensation.

8. So far as this aspect of matter is concerned, there appears to be a general consensus of judicial opinion that even though the company may not have any title to the property yet it certainly has a right to



appear and put forward its case in the matter of determination of the quantum of compensation. **In the case of Sunder Lal v. Paramsukhdas, (1968) (I) SCR 362,** this Court observed as follows:

"It will be noticed that it is an inclusive definition. It is not necessary that in order to fall within the definition a person should claim an interest in land, which has been acquired. A person becomes a person interested if he claims an interest in compensation to be awarded. It seems to us that Paramsukhdas is a "person interested" within Sec. 3(b) of the Act because he claims an interest in compensation.

.....

It seems to us that Paramsukhdas was clearly a person interested in the objections which were pending before the Court in the references made to it and that he was also a person whose interest would be affected by the objections, within Sec. 21. He was accordingly entitled to be made a party."



9. In the case of **The Hindustan Sanitaryware and Industries Ltd. Bhadurgarh v. The State of Haryana, AIR 1972 Punj and Har 59. Pandit. J.** observed as follows:-

"From the facts stated above, it is apparent that the compensation amount has to be paid by the two companies. If the said amount is increased by the learned Additional District Judge on a reference under section 18 of the Land Acquisition Act, it would be the two companies who would be prejudiced No authority even was cited by him that under similar circumstances any Court had ever held that the persons, who had actually to pay the compensation, could not be allowed to lead evidence and say that the compensation amount be not enhanced."

10. In the case of **Comilla Electric Supply Ltd. v. East Bengal Bank Ltd., Comila, AIR 1939 Cal 669**, while the High Court took the view that the company for whose benefit the land was acquired may not strictly be an interested person yet it had undoubtedly a right to appear and adduce



evidence on the quantum of compensation. In this connection, Mukherjea, J. observed thus:-

"Section 50, cl. (2) purports to remedy this disability and it lays down that in any proceeding held before a Collector or Court in such cases the local authority or company concerned may appear and adduce evidence for the purpose of determining the amount of compensation. The reason is plain. **It is the company or the local authority who has got to pay the money in such cases and it would be unjust to deny them the right would have a bearing on the amount of the compensation money.**"

Roxburgh, j. made the following observations:-

"Thus the first question for decision is clearly settled by the above decision and there can be no doubt that in the circumstances at present being considered the company is a person interested, as defined in the Act, and is entitled to require



a reference under Section 18 unless that right is restricted by the terms of the proviso to Section 50(2)."

11. In the case of M. Kuppuswami v. The Special Tahsildar, (1967) 1 Mad LJ 329, Venkatadri, J. interpreting the definition of 'interested person' observed as follows:-

"The only question for consideration therefore is whether the petitioner is a person interested, as **defined in Sec. 3(b) of the Land Acquisition Act.**

The definition section says that the expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act. The expression 'person interested' is very comprehensive and it does not profess to give an exhaustive definition. The expression 'person interested' has been interpreted by various Courts, and the trend of the opinion seems to be that I should give a liberal interpretation ...

On a review of the case-law on



the subject, it seems to me that the expression **‘person interested’** does not require that a person must really have an interest in the land sought to be acquired. It is enough if he claims an interest in compensation, as distinguished from an interest in the property sought to be acquired. As long as a person claims an interest in the compensation, he is a person interested within the meaning of the definition of that expression."

12. The only case which appears to have taken a contrary view is a Division Bench decision of the Orissa High Court in the case of State of Orissa v. Amarandra Pratap Singh, AIR 1967 Orissa 180, where the High Court held that the expression **‘person interested’** did not include a local authority or a company on whose behalf acquisition is made by the State. At the same time, it was clearly held that it was open to the company in any proceeding before the Collector or court to appear and adduce evidence for the purpose of determining the amount of compensation.

13. **Thus, the preponderance of judicial**



opinion seems to favour the view that the definition of ‘person interested’ must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. **In our opinion, this view accords with the principles of equity, justice and good conscience. How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital ? For instance, the land acquisition proceeding may be held to be invalid and thus a person concerned is completely deprived of the benefit which is proposed to be given to him. Similarly, if such a person is not heard by the Collector or a court, he may have to pay a very heavy compensation which, in case he is allowed to appear before a court, he could have satisfied it that it the compensation was far too heavy having regard to the nature and extent of the land. We are, therefore, unable to agree with the view taken by the Orissa High Court or even by the Calcutta High Court that a company, local authority or a person for whose benefit the land is**



acquired is not an interested person. **We are satisfied that such a person is vitally interested both in the title to the property and also in the compensation to be paid therefor because both these factors concern its future course of action and if decided against him, seriously prejudice his rights.** Moreover, in view of the decision of this Court referred to above, we hold that the appellant was undoubtedly a person interested as contemplated by S. 18(1) of the Act. The High Court, therefore, committed an error in throwing out the appeal of the appellant on the ground that it had no locus to file an appeal before the Bench.”

34. The aforesaid judgment was approved by the Apex Court in the case of **Union of India Vs. Sher Singh and others**, reported in **(1993) 1 SCC 608**. This decision assumes importance in the present case as this was a case where the land had been acquired for the Union of India and where also it was held that the Union of India was a proper and necessary party being an interested person.

35. Paragraphs 9 to 11 of the judgment is extracted hereunder:-



“9. In the case in hand before us, it is an admitted position that the State of Haryana acquired the land in District Gurgaon for the benefit of National Security Guard as desired by the Union of India. The land owners including the respondents of the present case filed reference petitions under Section 18 of the Act. During the pendency of the reference application before the Additional District Judge, Gurgaon, an application was moved by the Union of India through Deputy Inspector General, National Security Guard for being impleaded as respondents on the ground that the land had been acquired for the purpose of National Security Guard. It was submitted in the application that the interest of the applicant Union of India will adversely suffer in case the rate of compensation was enhanced and it would also be deprived of an opportunity to file an appeal in case Union of India is not impleaded as a party. The Additional District Judge declined to implead the Union of India as a party. A revision application was dismissed by the High Court by the impugned order dated May 24 1989. The High Court in the impugned order took the view that the matter stands concluded by the Full Bench judgment in



the case of Kulbhushan Kumar & Co. case.

10. We have heard learned counsel for the parties and have thoroughly perused the record. It was contended on behalf of the appellant Union of India that the Central Government is neither a company nor a firm and as such the Full Bench judgment of the High Court relied upon in the impugned order has no application in the instant case. The Central Government has no machinery of its own for acquiring of land and as such it had to depend upon the State Government for the above purpose. However, the financial implication with regard to the payment of compensation is to be borne by the Central Government. It was contended that the point is fully covered by the decision of this Court in the case of Himalayan Tiles & Marbles. It was also submitted that in the meantime the learned Additional District Judge, Gurgaon by its order dated January 17, 1990 has decided the reference and has enhanced the compensation. It was submitted that a great injustice has been done to the appellant as it has not been given an opportunity to contest the order of enhanced compensation and in view of the fact that its application for impleadment has been dismissed, it has been left with no remedy



of filing an appeal against the judgment of the learned Additional District Judge, enhancing the compensation.

11. On the other hand, it was contended on behalf of the respondent-land-owners that the learned Single Judge of the High Court passing the impugned order dated My 24, 1989 was bound by the Full Bench decision of the said court and there was no infirmity in taking such view. It was further contended that even if there was a conflict between the two decisions of this Court in the **Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel** and in **Himalayan Tiles & Marbles (P) Ltd.** Case both by Division Bench comprising of two Hon'ble Judges, the conflict can only be resolved by referring the case to a larger Bench of this Court.”

36. The judgment in the case of Himalaya Tiles and Marble (supra) was again approved by a Five Judges Constitution Bench in the case of **U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by LRS. and others**, reported in **(1995) 2 SCC 326** where it was explained that the judgments in the case of **Union of India Vs. Sher Singh** (supra), the judgment in the case of **Union of India Vs. Kolluni Ramaiah**,



reported in **(1994) 1 SCC 367** and the judgment in the case of **Himalayan Tiles and Marble** (supra) correctly interpreted the phrase “person interested” and approved the law laid down in the said cases. It then went on to reiterate the law of the Apex Court in the case of **Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue**, reported in **1963 Supp (1) SCR 676: AIR 1963 Supreme Court 786** to hold that the law is well settled that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceedings.

37. From the definition of the phrase “person interested” and the ratio of the judgment in the case of **Union of India Vs. Sher Singh** (supra) read with the judgment in the case of **Himalayan Tiles and Marble** (supra) as approved by the Constitution Bench in the case of **U.P. Awas Evam Vikas Parishad** (supra) it is evident that in the instant case the land was acquired for setting up of an ordinance factory by the Union of India. It is not disputed that the amount of 80 per cent had already been deposited when the approval had been given and 100 per cent by the time the entire Award was pronounced.



Thus, the Union of India was at the receiving end of making payments. In the present case, as noticed above, the enhancement on account of the impugned judgment of the High Court has resulted in 80 times escalation. In this circumstance, there can be no doubt that the Union of India was not only a proper but also a necessary party, inasmuch as, the impugned judgment did not only decide the issue of limitation of the application under Section 18 but has also gone to hold that the Award of the year 2001 was in effect not an Award and accordingly directed the authorities to pass a fresh Award. The round about away manner in which the application under Section 18 was found to be entertainable after treating it to be within time from the date of the order under Section 30 of the Act, that too, even after 13 years of the Award of 2001, it cannot be said that the Union of India was not a proper or a necessary party for the purpose of at least contesting the writ petition before this Court. It is also not understood as to why the respondent petitioners in spite of having made the appellant a party in the application under Section 18 of the 1894 Act, did not choose to implead the same parties in the writ petition. This was, therefore, a deliberate omission on the part of the respondent petitioners and which omission ought to have taken



notice of and rectified by the learned Single Judge. It is only thereafter that any opinion could have been expressed on the issue of the status of the Award. We will deal with the issue relating to the status of the Award later, but for the purpose as to whether the Union of India is a proper or a necessary party or not, we in view of the aforesaid discussion hold that the appellant Union of India had been rightly arrayed as a proper and necessary party in the application under Section 18 which was deliberately avoided in the writ petition for reasons best known to the respondent-petitioners and, therefore, the writ petition being allowed in the absence of the appellant vitiates the impugned judgment. The appellant was very much a person interested apart from being a proper and necessary party in the light of the discussion of the law as referred to in the decisions of the Apex Court quoted hereinabove. The branding of the interest of the appellant as only a commercial interest by the respondent-petitioners is not at all justified because this interest is not a pure commercial interest but a vital public interest involving a huge exchequer of the tax payers money where the Union of India sought to be saddled with compensation 80 times more than what was awarded. For all this, the appellant is a person interested and, therefore, a proper and necessary party.



The impugned judgment, therefore, deserves to be set aside on this ground alone that it was passed ex parte to the appellant.

38. Having held and overruled the preliminary objections as raised hereinabove, we now proceed to consider the other arguments raised on behalf of the learned counsel for the parties.

39. We now come to the argument raised by the learned counsel for the respondent-petitioners about the limitation and maintainability of the application under Section 18 of the Act. For this, the primary ground of attack as pleaded in the writ petition is that the proceedings dated 12th June, 2001 is not an Award and, therefore, the application under Section 18 was well within time. In the instant case, the learned Single Judge in order to decide the issue of limitation took upon itself the task to determine the status of the proceedings dated 12th of June, 2001 as being not an Award. At the same time, before the learned Single Judge it was held that the Award became complete only when effect was given by the authorities to the order of the Civil Court upon a reference upon apportionment under Section 30 of the Act. For this, the learned Single Judge relied on the fact that the State of Bihar issued a notice under Section 12(2) of the 1894 Act after the order was passed under



Section 30 in a reference that was decided on 30th January, 2010. The notice under Section 12(2) numbering the apportioned Award in favour of the appellant as Award No. 60 Y was issued on 24.05.2010. The objection, therefore, was rightly made on 2nd of June, 2010. The learned Single Judge, therefore, instead of deciding the issue of limitation came to the conclusion that since there was no Award at all and it was a purported Award, therefore, it is only after the notice under Section 12(2) that was issued on 24.04.2010 that the respondent-petitioners gave a fresh cause to file a reference under Section 18. The learned Single Judge also held that no notice had been issued under Section 12(2) after the proceedings dated 12.06.2001 and, therefore, it was a purported Award. The awardees for the first time identified after the order passed in Section 30 proceedings and it is, therefore, at that stage that the cause to file an application under Section 18 had arisen which was obviously in the year 2010 and not in the year 2001.

40. For this Shri Mrigank Mauli has urged that the learned Single Judge was right in construing that the proceedings dated 12th June, 2001 was only a purported Award and not an Award. We have been unable to gather any help either from the Act or any other judgment as to what would be a



purported Award. To us, it appears that Section 11 of the Act clearly defines an Award, which is extracted hereinunder:-

“11. Enquiry and award by

Collector- [(1)]On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objection (if any) which **any person interested** has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land [at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interest of the persons claiming the compensation and shall make an award under his hand of-

- (I) The true area of the land;
- (ii) the compensation which in his opinion should be allowed for the land; and
- (iii) the appointment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose



claims, he has information, whether or not they have respectively appeared before him:

[Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.]

[(2) Notwithstanding, anything, contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may,



without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act.]”

41. The Award of a Collector is an offer and for that the learned counsel for the respondent has cited judgment in the case of **Mrs. Khorshed Shapoor Chenai etc. Vs. Assistant Controller of Estate Duty, A.P. etc.**, reported in **A.I.R. 1980 Supreme Court 775**. The relevant portion of Paragraph 11 of the said judgment is extracted hereinunder:-

“11. In our opinion the High Court was right in holding that there are no two separate rights- one a right to receive



compensation and other a right to receive extra or further compensation. Upon acquisition of his lands under the Land Acquisition Act the claimant has only one right, which is, to receive compensation for the lands at their market value on the date of the relevant notification and it is this right which is quantified by the Collector under S.11 and by the Civil Court under S.26 of the Land Acquisition Act. **It is true that under S.11 the Collector after holding the necessary inquiry determines the quantum of compensation by fixing the market value of the land and in doing so is guided by the provisions contained in Sections 23 and 24 of the Act- the very provisions by reference to which the Civil Court fixes the valuation. It is also true that the Collector's award is, under Section 12, declared to be, except as otherwise provided, final and conclusive evidence as between him and the persons interested. Even so, it is well settled that in law the Collector's award under S.11 is nothing more than an offer of compensation made by the Government to the claimants whose property is acquired (vide Privy Council decisions in Ezra v. Secy. of State for India, (1905) ILR 32 Cal 605 and this Court's decision in Raja**



Harish Chandra v. Dy. Land Requisition Officer, (1962) 1 SCR 676 and Dr. G. H. Grant v. State of Bihar, (1965) 3 SCR 576). If that be the true nature of the award made by the Collector then the question whether the right to receive compensation survives the award must depend upon whether the claimant acquiesces therein fully or not. If the offer is acquiesced in by total acceptance the right to compensation will not survive but if the offer is not accepted or is accepted under protest and a land reference is sought by the claimant under S.18, **the right to receive compensation must be regarded as having survived and kept alive which the claimant prosecutes in Civil Court. It is impossible to accept the contention that no sooner the Collector has made his award under S.11 the right to compensation is destroyed or ceases to exist or is merged in the award, or what is left with the claimant is a mere right to litigate the correctness of the award. The claimant can litigate the correctness of the award because his right to compensation is not fully redeemed but remains alive which he prosecutes in Civil Court.** That is why when a claimant dies in a pending reference his heirs are



brought on record and are permitted to prosecute the reference. ”

42. As to what constitutes an Award, learned counsel for the respondent-petitioners has relied on the judgment in the case of **Steel Authority of India Limited Vs. SUTNI Sangam and others**, reported in (2009) 16 SCC 1 paragraphs 33 to 35 that is extracted hereinunder:

“33. An award is to be made at the end of the enquiry. The award made must be under the following three heads:

- correct area of land,
- amount of compensation the Collector thinks should be given, and
- apportionment of compensation, if any.

34. Section 11 makes it obligatory on the part of the Collector to safeguard the interests of all persons interested, even though they might not have appeared before him. In awarding compensation the Land Acquisition Collector should look into the estimate value of land and give due consideration to the other factors specified therein. Value of the property in the neighbourhood can be used as a criterion. The award should be made within a period



two years.

35. A perusal of the provisions of Sections 12, 18, 30, 31 and the procedure for reference as contained in Part III of the Act, reveals that except for the **right of reference on the said three factual matters**, the Act does not provide for appeal from the award of the Collector. Of course, an appeal lies under Section 54 to the High Court from an award of the Reference Judge made under Section 26 of the Act, and a second appeal lies to the Supreme Court from the decision of the High Court. But the **remedy of appeal is restricted only to the questions relating to the aforesaid three factual matters**. At most, therefore, the Act can be said to be a complete code, only for the special purpose of adjudicating any dispute with respect to the three factual matters of the **area, value of the land and the apportionment of the compensation** among the interested persons.”

43. On the strength of the aforesaid judgment it is urged that the documented proceedings dated 12th June, 2001 neither indicates the correct area of the land, the amount of compensation and apportionment of compensation. In the



present case, it is evident from the records, particularly the detailed order of reference under Section 30 that Award Nos. 61 to 92 of 2001 in respect of trees and constructions had already been determined and finalized, whereafter the payments of compensation had also been made. This order dated 12th October, 2002 also records that the tenure-holders had made claims far more than the area which had been acquired for which there were only 52 recorded tenure-holders. The acquired area was only 46.38 acres, whereas the claim of compensation had been made by different persons in respect of 100.7875 acres. This disproportionate claim, therefore, was sought to be resolved by several persons by submitting a compromise, but the officer found that the same had not been signed by all the recipients. The said compromise dated 04.10.2002 was, therefore, rejected and it was held that since there are competing claims including that of title, therefore, the matter for apportionment should be referred under Section 30.

44. We may extract Section 30 of 1894 Act hereinunder:-

“30. Dispute as to apportionment.- When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same



or any part thereof, or as to the persons to whom the same or any part thereof, is payable, **the Collector may refer** such dispute to the decision of the **Court.**”

45. Thus, in respect of the land since the Collector did not find it appropriate to mention names of the awardees it only mentioned the extent of area acquired and the total amount of compensation that was to be awarded for the said area. Thus, the area and the quantum of compensation were both mentioned in the Award, but in the column of recipient on account of the dispute it was stated that due to dispute of title, the names are not being mentioned and the matter was being referred under Section 30 of the Act for adjudication. This document, therefore, dated 12th June, 2001 was turned as Award No. 60 of 2001 which was declared as an Award but the payments were not made on account of the said dispute of reference. The reference was sent along with the list of the claimants and it is not in dispute that the respondent-petitioners thereafter in the said reference filed their claim which was registered as a Title Suit in the same reference proceedings as Title Case No. 10 of 2007 (**Chhotan Yadav and two others Vs. State of Bihar and others**). The two others were the



respondent-petitioners Arjun Yadav and Ranjit Yadav. A copy of the plaint which was not part of the record has been supplied by the learned counsel for the respondent-petitioners which has been perused by us. Learned counsel for the respondent-petitioners, therefore, contends that the same was only a claim set up for establishing the title and since neither the area of the respondent-petitioners was disclosed nor the amount of compensation that was payable to them was known, therefore, the contents of the Award did not exist about which the respondent-petitioners had no knowledge. It is only after the Section 30 proceedings were finalized that the amount payable to the answering respondents was made known through a notice under Section 12(2) in the year 2010 as stated above. The applicants then were tendered a cheque, whereafter they filed the application under Section 18 of the 1894 Act. It is urged on their behalf that unless there is a notice under Section 12(2), there cannot be any actual or constructive knowledge about Award and in fact there was no knowledge about the contents of the Award in the present case so as to enable the respondent-petitioners to file an application. Two judgments have been cited being that of **Madan and another Vs. State of Maharashtra**, reported in **(2014) 2 SCC 720** and **Vijay Mahadeorao Kubade**



Vs. State of Maharashtra through the Collector, reported in **(2018) 8 SCC 266**. The said judgments hold that it is only when a copy of the Award accompanies the said notice, then only it can be said that there is knowledge of the Award to the tenure-holder to enable him to file an objection under Section 18 and, therefore, limitation has to be counted accordingly. Thus, knowledge according to the aforesaid judgments can be presumed only after a notice is sent under Section 12(2) of the 1894 Act and not before it. The issue of limitation was discussed in the case of **Bhagwan Das and others Vs. State of Uttar Pradesh and others**, reported in **(2010) 3 SCC 545**. The learned counsel for the parties have also invited the attention of the Court to the Division Bench judgment in the case of **Dr. J. Dubey Vs. State of Bihar and Anr.** decided on 14th November, 1967, reported in **1968 BLJR Part 16 page-562** to advance their respective submissions.

46. As a corollary to this argument, learned counsel for the appellant has also advanced his submissions that no acquiescence can be presumed on the part of the appellant as it has been contesting the matter throughout. On the other hand, the respondent-petitioners contend that no acquiescence can be presumed on their part either, inasmuch as, they had not actual



or constructive knowledge of the Award or its contents till the matter was finalized under Section 30 of the Act. As to what is the actual and constructive knowledge, the decisions in the case of **Kanara Bank Vs. Canara Sales Corporation and others**, reported in **(1987) 2 SCC 666** and **Rajasthan Housing Board Vs. New Pink City Nirman Sahkari Samiti Limited and another**, reported in **(2015) 7 SCC 601** have been cited at the Bar.

47. In order to clear the web of facts, we find that the proceedings dated 12th of June, 2001 were very much in the actual knowledge of the respondent-petitioners, inasmuch as, the respondent-petitioners have admitted their participation before the Collector upon the issuance of a Section 9 notice issued to them in Paragraph 11 of the writ petition. Therefore, the respondent-petitioners cannot contend that they were not aware of the proceedings of the Award dated 12th June, 2001. The argument that the Award was not pronounced in their presence or they were not having knowledge also does not appear to have any substance, inasmuch as, the order-sheet of reference dated 12th October, 2002 categorically indicates the presence of the respondent-petitioners and a compromise being admitted by some of the claimants that ended up in failure and a reference



was made under Section 30 for apportionment. The respondent-petitioners were also claimants and they filed their claim upon having full knowledge of the proceedings before the Collector in the proceedings of the Award dated 12th of June, 2001. Thus, in our opinion, they had actual knowledge of the proceedings dated 12th of June, 2001, which is now criticized by them to be not an Award and to be a purported Award as held by the learned Single Judge. We are unable to accept this submission, inasmuch as, it is only the said Award which gave rise to a proceeding under Section 30. The respondent-petitioners themselves filed the claim under Section 30, which is evident from a copy of the plaint which has been handed over to the Court during the proceedings. In the said plaint, they have described the said Award No. 60 as a nil Award. We are extracting a part of the plaint which is the pleading contained therein in the proceedings under Section 30 of the Act.

48. Paragraphs 4 and 5 of the plaint are extracted hereinunder:-

“4. That other circumstances which led to the making of reference was that the claimant/objectors failed to decide their respective claim by their free consent interese through resolution, though attempts were made to partition the land on



the basis of Agreement, but the resolution could not be signed by all the executants and the plaintiffs **are ready to** prove the title of the land held by them.

5. That the plaintiffs have been owners of the land until its possession on 1.9.00 by the state of Bihar through the land acquisition collector Nalanda. The defendant No. 2 the land acquisition **collector took the possession** of the land in Sch. I of the plaint **without making any award** of compensation payable and **without making any payment of compensation** of the land acquired **but made an Award No. 60 of 2001 which is a NIL award as regards compensation payable for land acquired under plot No. 1470 aforesaid.** It is relevant to mention that award Nos. 61/01 to 92/01 were also made for trees and house structure etc, on the land on the basis of survey done and Adhoc compensation money was paid to the claimant on the basis of possession **of respective claimant but the dispute of title of the land** under acquisition could not be resolved by the respective owners and hence the reference for determination by this learned court under section 30 of the Act. **The parties are bound by the Adjudication of this court and the same**



question cannot be determined by any other courts. The plaintiffs are real owner of the land described in Sch. I hereunder the title of which is required to be determined and declared in favour of the plaintiffs on the basis of title document to be submitted with a list attached therewith and also on the basis of oral evidence in support of pleading.”

49. The aforesaid paragraph indicate admission of having received compensation for trees and house structure under Award No. 61 to 92 of 2001. It is also admitted therein that the dispute of the land could not be resolved as the Collector found that there was no effective agreement between the parties and looking to the nature of the dispute, the matter has been referred. All this clearly established that the respondent-petitioners had full knowledge of the proceedings of the Award and the reference thereafter. Thus, they had full knowledge of the said proceedings of Award, the reference whereof was made on 12th October, 2002.

50. The argument is that unless there is a notice under Section 12(2) and which notice had not been given after the Award, it cannot be presumed that the respondent-petitioners had knowledge of the contents of the Award so as to enable them



to file an application under Section 18. It is clear that one has to refer to the judgment in the case of **Bhagwan Das** (supra), which in our opinion, binds us to hold that the application under Section 18 of the 1894 Act has to be moved within six months if the person interested or his representative claims that he was not present when the Award was made. As held above, on facts, the respondent-petitioners were aware of whatever material was written in the document dated 12th June, 2001 and, therefore, it cannot be said that they were not present, inasmuch as, the very plaint extracted hereinabove indicates that they had knowledge of the proceedings. However, at the same time, Paragraph 28 of the judgment in the case of **Bhagwan Das** (supra) holds as under:-

“28. The following position therefore emerges from the interpretation of the proviso to Section 18 of the Act :

(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.”

51. As against the aforesaid ratio what we find is that the judgment in the case of **Madan** (supra) in Paragraph 11 held as under:-

“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 crystallize 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.”

52. In the aforesaid case, the aforesaid finding



was recorded after holding that the appellant in the said case had no knowledge of the Award until the order was passed in a reference under Section 30 and then relying on the judgment in the case of **Harish Chandra Raj Singh Vs. Land Acquisition Officer**, reported in **A.I.R. 1961 SC 1500** was considered in the case of **Bhagwan Das** (supra) and it was thereafter that the ratio was laid down in Paragraph 28 of the said judgment extracted hereinabove. The ratio of the judgment in the case of **Bhagwan Das** (supra) does not appear to have been noticed in the case of **Madan** (supra). In order to reconcile the ratio of the aforesaid two decisions, distinction that we find is that in the case of **Madan** (supra) it was specifically held that the appellants had no knowledge of the Award till the order was passed under Section 30, whereas, in the present case, as held above, we find that the respondent-petitioners had actual knowledge of the entire proceedings culminating in the Award dated 12th June, 2001 which is also evident by their subsequent conduct while participating in the proceedings under Section 30 of the Act. Thus, if the respondent-petitioners had not received notice under Section 12(2) but they had the knowledge of the entire proceedings, the respondents could have raised objection even under Section 18 of the Act. It may be mentioned that Section 18



of the 1894 Act is a right of objection to an interested person to apply for a reference to the Court who has not accepted the Award which may be with regard to measurement of the land, the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested. Thus, Section 18 is available for any person who has not accepted the Award. The respondent-petitioners, therefore, could have challenged the same in terms of Section 18 but they subjected themselves to the limited proceedings of apportionment under Section 30 of the Act in spite of having knowledge that the Award was in respect of a total area for which the compensation had already been determined. Thus, the respondent-petitioners were in effect claiming their right to receive the compensation by way of apportionment on the basis of title and it is for this reason that in order to apportion the same, reference was made under Section 30. They described the said award as 'Nil' award because they did not receive the compensation on account of the reference of the dispute. If the award was not acceptable, they had every right to apply before the Collector to refer the matter under Section 18 including the right to receive enhanced compensation or otherwise. The quantum of compensation, therefore, has to be dealt with under



Section 18 which includes the rate of compensation or any dispute with regard to the measurement or the area of the land. It is only on the limited ground of apportionment that Section 30 comes into play. This has been explained in the Division Bench Judgement in the case **Dr. J. Dubey** (supra) with which we find ourselves in full agreement. It was held therein that the validity of the award is not dependent on the issuance of a notice under Section 12(2) of the Act. Paragraphs 9 to 12 of the said decision are extracted hereinunder for ready reference:-

“9. Learned Counsel for the petitioner asserted that the petitioner was neither present nor represented before the Collector at the time when he made the award and as such it was necessary for the Collector to have issued notice under Section 12(2) of the Act. Admittedly, no notice as contemplated under Section 12(2) of the Act was issued. Therefore, the plea of the petitioner was that the so-called award could not be an award in the eye of law. There is no substance in this contention either. **The validity of the award does not depend on the issue of notice under Section 12(2) of the Act, which is contemplated to be issued after the award has become final under Section 12(1) of the Act.**



10. Issue and service of notice under Section 12(2) of the Act are of some importance **for the purpose of determination of the question of limitation for an application for making a reference under Section 18 of the Act. Section 18 of the Act runs as follows:**

(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 in the award is taken: Provided that every such application shall be made: (a) 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: (b) 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. A person interested in the award may accept the award as final as to the quantum of compensation payable for the land acquired. If he is not satisfied as to the quantum of compensation allowed by the award, he may file a written application before the Collector under Section 18 of the Act for making a reference to the Court for determination of proper amount of compensation payable in respect of the land so acquired. The Section does not contemplate suo motu reference to the court for the said purpose. A written application to that effect is required to be filed by any person interested. The application must be made under proviso (a) within six weeks if he was present or represented before the Collector at the time when he made the award. The petitioner asserted that he was neither present nor was he represented before the Collector when the award was made. He could not have, therefore; made an application for reference within six weeks.

11. Under proviso (b), if notice under Section 12(2) of the Act is issued and served on the



person, the **application will have to be filed within six weeks of the receipt of the notice.** No notice **admittedly was served on the petitioner under Section 12(2) of the Act.** In the second part of proviso (b) the period of limitation is six months from the date of the Collector's award in those cases which are not covered by the above contingencies. While interpreting proviso (b) of Section 18 of the Act, the Supreme Court has held in [State of Punjab v. Mst. Qaiser Jehan Begum A.I.R. 1968 S.C. 1604](#) that the expression "**six months from the date of the Collector's award**" used in the proviso must mean when the award is either communicated to the party or is known to him either actually or constructively. Therefore, for the purpose of determining the period of limitation in such a case, it is necessary to find out as to when the petitioner had knowledge of the contents of the award. The petitioner did not state in clear terms as to when he came to know about the award and its contents. The counter affidavit shows that the petitioner was served with a notice (Annexure f) on the 29th March, 1962, by the Land Acquisition Officer, Palamau, intimating to him that reference under Section 30 of the Act had been made by him to the District Judge of Palamau by letter No. 204 dated the 26th March, 1962. The petitioner in reply to the



counter affidavit admitted that though by that letter respondent 2 informed him that since Haribansi Mahto had disputed the petitioner's title to the land under acquisition, the dispute had been referred to the District Judge for adjudication of the dispute, but it did not convey any intimation to him that an award had been made on the 15th January, 1959. The objection filed by the petitioner on September 22, 1962, before the District Judge in Land Acquisition Case No. 11 of 1962 quoted above, however, clearly shows that the petitioner had full knowledge of the award and its contents at the latest on the 29th September, 1962. Therefore, the application (Annexure C) filed by the petitioner before the Land Acquisition Officer on the 14th September, 1965, after more than six years for making a reference to the court under Section 18 of the Act is clearly barred by limitation. Hence, the impugned order of the Land Acquisition Officer, dated the 22nd November, 1965 (Annexure D), cannot be said to be erroneous in law.

12. Learned Counsel for the petitioner, however, urged that as the title to the land was disputed by Haribansi Mahto, he had no locus standi to file an application before the Land Acquisition Officer for making reference to the court under Section 18 of the Act and his



cause of action remained in abeyance. It is difficult to accept this contention. There is nothing in Section 18 to indicate that the person whose title is in dispute can file an application under this Section only after his title is finally determined by a competent civil court. Under the provisions of Section 18 of the Act, any person interested who has not accepted the award may by a written application to the Collector require that the matter be referred to by the Collector for the determination of the court. Therefore, if a person is interested in the award he can file an application under this Section. Person interested has been defined in Section 3(b) of the Act as follows:

The expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act, and a person shall be deemed to be interested in land if he is interested in an easement affecting the land: In the present case, the award was prepared in the name of the petitioner as being entitled to receive Rs. 156.98 as compensation in respect of the land. Therefore, he is the most vitally interested person in the award and as such he should



have filed an application under Section 18 of the Act as soon as he had known about the existence and contents of the award. **His status to file an. application under Section 18 was in no way dependent on the decision of the District Judge in a case arising out of reference under Section 30 of the Act made at the instance of Haribansi Mahto. The two kinds of reference contemplated under Sections 18 and 30 of the Act are quite distinct and independent of each other. Section 18 contemplates a case of reference when the quantum of compensation was disputed by the person interested and Section 30 contemplates a reference when there is a dispute as to the title of the land acquired and consequently to receive the compensation money.** The effect of the decision of the District Judge dated the 7th June, 1965, was only to affirm the title of the petitioner to receive the compensation money and nothing more. In my Judgment therefore, the contention of the petitioner that his cause of action to



apply to the Land Acquisition Officer for making a reference to the District Judge under Section 18 of the Act remained suspended till June 7, 1965, must be over-ruled.”

53. There is a relevant fact which deserves mention and which we have gathered from the order sheet of the present appeal. We find that there was a direction to list this case along with other analogous cases. In the counter affidavit filed on behalf of the state in the present case there is a reference to the counter affidavit filed in C.W.J.C. No. 11241 of 2012 which arises out of the same acquisition proceedings. The said writ petition along with a bunch of other writ petition was dismissed as withdrawn on 3rd of July, 2017. The order is extracted hereinunder:-

“All the above stated petitions arise out of same impugned order and accordingly, all the above stated petitions are taken together for hearing and are being disposed of by this common order.

After some argument, learned counsel appearing for the petitioners seeks permission for withdrawal of all the petitions.



Accordingly, all the above
stated petitions stand dismissed as
withdrawn.”

54. The reference was made to the counter affidavit filed in the said writ petition. From the order sheet of the writ petition giving rise to this appeal we find that a reference was made to the analogous cases and in the counter affidavit in the writ petition a reference was made to the counter affidavit filed in C.W.J.C. 11241 of 2012. Learned counsel for the respondent petitioners sought time to give reply to the same if so desired. We have not been able to find any reply filed to the counter affidavit of the State in C.W.J.C. No. 11241 of 2012 in the present proceedings.

55. From the records of C.W.J.C. No. 11241 of 2012, we find that a counter was filed to which a reply was given by the petitioners therein. The said counter affidavit brings on record the documents which indicate the list of persons who had raised the objections. We find that Ranjit Yadav son of Arjun Yadav had filed his objection and the respondent Arjun Yadav and also filed his objection whose names appear in the list of objectors that has been appended along with the counter affidavit. The compromise that had been tendered was placed



before the officer with a recommendation that since there is a title dispute the matter can be referred. Arjun Yadav also appears to have put his thumb impression on the said compromise which was rejected while making the reference under Section 30 of the 1894 Act. All the said writ petitions, as quoted above were dismissed as withdrawn and, therefore, it was incumbent on the respondent-petitioners to have filed a reply to the averments contained to the counter therein in the writ petition giving rise to the present appeal which they do not appear to have done. The respondent-petitioners, therefore, have chosen willfully not to contest the said fact which also indicates their participation and presence in the proceedings of the award dated 12th June 2001.

56. In the above background what we find is that the judgment in the case of **Madan** (supra) does not cover the issue on facts as involved in the present case inasmuch as here the appellants had both actual and constructive knowledge about the contents of the award dates 12th June 2001 which was an award under Section 11 of the 1894 Act. The conclusion drawn by the learned Single that it was a purported award does not appeal to reason at all, inasmuch as, if the award was even otherwise deficient in any way, the same had not been challenged within time as per the law laid down in the case of



Bhagwan Das (supra). The period of limitation either six weeks if the notice had been received under Section 12(2), which is not the case here, was extended till six months. The actual award was being contested by the respondent-petitioners in the manner indicated above in the proceedings under Section 30 of the 1894 Act since 2002 itself. They therefore, cannot contend that they had no opportunity to move an application earlier. All the grounds which are being taken now in the application under Section 18 were very much available and could have been made the basis of an application under Section 18 of the Act way back in 2001 itself. It would have been possible for the Collector to have referred the matter under Section 18 as well if a ground was made out for such reference along with the proceedings under Section 30 of the 1894 Act on any demand been made by the respondent-petitioners.

57. Having held so, we may also answer the issue relating to the applicability of the 2013 Act in this regard. Suffice would be to quote Section 24 (1) (b) and Section 114 of the 2013 Act that are extracted hereinunder:-

“24(1)(b) where an award under said section 11 has been made, **then such proceedings shall continue under the provisions of the said Land Acquisition**



Act, as if the said Act has not been repealed.

114. Repeal and saving.- (1) The Land Acquisition Act, 1894 (1 of 1894) is **hereby repealed.**

(2) Save as otherwise provided in this Act **the repeal** under sub-section (1) **shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.”**

58. Coupled with the same reference be had to Section 6 of the General Clauses Act, 1897, which is extracted hereinunder:-

“6. Effect of repeal. - Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, **the repeal shall not -**

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) **affect the previous operation of any enactment so repealed or anything duly done or suffered**



thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

59. Several judgments have been cited at the Bar by the learned counsel for the parties to contend that once the 1894 Act has been repealed, there was no scope to proceed under Section 64 of the Act. Here we find that the authority below has proceeded afresh under Section 64 of the 2013 Act after the judgment of the learned Single Judge. The authority



below appears to have not correctly appreciated the provisions aforesaid which clearly allow the proceedings to continue under the old Act to a limited extent. In the instant case, the application was under Section 18 of the 1894 Act and it is the said proceedings which were under challenge before this Court before the learned Single Judge. If the writ petitions were to be allowed and relief granted, then it was to be for a limited purpose namely to decide as to whether Section 18 application was within the limitation prescribed and was otherwise entertainable and therefore, the said proceedings could have been continued being procedural in nature that are saved under Section 24(1) (b), as allowing of the writ petition would only make the application under Section 18 pending before the authority. In the instant case, the learned Single Judge went beyond the aforesaid scope of the proceedings and went on to hold that the award was not a valid award in the eyes of law and was a purported award and then directed the authorities to proceed afresh which was taken by the authorities to be a proceeding available under Section 64 of the 2013 Act.

60. We do not agree with the said process adopted by the respondent authorities by taking recourse to Section 64 of the 2013 Act and, therefore, all consequential



actions culminating into a fresh award are a nullity as the impugned judgment of the learned Single Judge is clearly vitiated and deserves to be set aside. Since the proceedings are an outcome of the impugned judgment which is being set aside, the conclusion is that the proceedings for fresh award are a nullity. We accordingly, hold so.

61. We accordingly allow this appeal and set aside the impugned judgment of the learned Single dated 07.05.2014 and uphold the order of the Collector dated 15th July 2015. We also declare all consequential proceedings undertaken by the respondent authorities and Court pursuant to the judgment dated 7.5.2014 to be a nullity.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	23.04.2019
Transmission Date	

