

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.418 OF 2019

Vishwambhar Laxmanrao Patil @ Jogdand,
Age 62 yrs., Occ. Agri.,
R/o At Post Narwadi, Tq. Sonpeth,
Dist. Parbhani.

... **Appellant.**

... **Versus** ...

- 1 The State of Maharashtra
 Through The Collector, Parbhani.
- 2 The Special Land Acquisition Officer,
 Jaikwadi Project No.1, Parbhani.
- 3 The Executive Engineer,
 Majalgaon Canal Division No.7,
 Gangakhed, Dist. Parbhani.

... **Respondents.**

...

Mr. V.B. Jogdand Patil, Advocate for the appellant

Mr. S.P. Deshmukh, AGP for the respondent Nos.1 and 2

Mrs. C.R. Kutti Chaudhary, Advocate for the respondent No.3

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 04th JULY, 2019

PRONOUNCED ON : 20th AUGUST, 2019

JUDGMENT :

1 Present appeal has been filed by the original claimant challenging the Judgment and Award passed by learned Civil Judge Senior Division, Gangakhed, Dist. Parbhani in L.A.R. No.6/2000 dated 08.02.2011.

2 The present appellant had filed said reference under Section 18 of the Land Acquisition Act, 1894 for enhancement in the compensation awarded by Special Land Acquisition Officer. His 80 R land out of Sy.No.84 situated at village Narwadi, Tq. Gangakhed, Dist. Parbhani was acquired for the purpose of Canal. Award under Section 11 of the Act came to be passed on 19.11.1991 by Special Land Acquisition Officer, Parbhani. Compensation @ Rs.12,800/- was granted. He had withdrawn the said amount of compensation under protest and it was his submission that compensation @ Rs.25,000/- per acre ought to have been awarded. The other statutory benefits were also claimed. The respondents filed their written statement and supported the Award passed by the learned Special LAO by saying that due procedure has been followed. They had also raised the objection regarding limitation.

3 Taking into consideration the rival contentions, issues came to be framed and the matter was fixed for hearing. However, it is to be noted from

the record that petitioner failed to adduce evidence. Even after getting many chances a specific order to that effect was passed by learned reference Court stating that since the petitioner has failed to adduce evidence, the matter to proceed without the evidence of the petitioner and thereafter on the basis of the documents on record, the learned reference Court rejected the reference by holding that the petitioner has failed to prove that the compensation awarded to him is inadequate and not as per the market price. It is held that the claim was time barred. Hence, this appeal.

4 Heard learned Advocate Mr. V.B. Jogdand Patil for the appellant, learned AGP Mr. S.P. Deshmukh for the respondent Nos.1 and 2 and learned Advocate Mrs. C.R. Kutti Chaudhary for the respondent No.3.

5 It has been vehemently submitted on behalf of the appellant that perusal of the petition itself would show that he made a specific statement that he has received the copy of the award or notice under Section 12(2) of the Act on 20.04.1992. The reference was filed by him on 30.05.1992 before the Special Land Acquisition Officer, Parbhani. Yet, without considering the record, the learned Reference Court has stated that since the Award was declared on 19.11.1991, the reference, which was filed on 30.05.1992, is time barred i.e. not within six months from the date of the Award. He has

shown the photo copy of the notice under Section 12(2) of the Act which was given to him by the Special LAO on 16.04.1992. It was further submitted that since the reference was within limitation, yet, the learned reference Court did not afford proper opportunity to the claimant, the matter deserves remand.

6 Per contra, the learned AGP and learned Advocate representing the acquiring body supported the reasons given by the reference Court.

7 At the outset, from the Judgment of the learned Reference Court, especially on the point of limitation it is clear that there is total lack of application of mind. When in the contents of the petition specific statement was made in paragraph No.1 itself, that the Award was passed by the respondent and it was communicated to the petitioner on 20.04.1992; the learned Reference Court ought to have considered the said fact before addressing the point of limitation. Since the reference was under Section 18 of the Land Acquisition Act, taking into consideration the decision in **Raja Harish Chandra Raj Singh vs. The Deputy Land Acquisition Officer and another, AIR 1961 SC 1500** it ought to have been considered that the date of limitation to file reference would run from the date of the Award either communicated to or is known by party actually whether actively or

constructively. It has been held by the Hon'ble Supreme Court that -

“Where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. So the knowledge of the party affected by the award made by the Collector under S. 12 of the Land Acquisition Act, 1894, either actual or constructive is an essential requirement of fairplay and natural justice. Therefore the expression “the date of the award” used in proviso (b) to S. 18(2) of the Act must mean the date when the award is either communicated to the party or is known by him either actually or constructively. It will be unreasonable to construe the words from the date of the Collector's award used in the proviso to S. 18 in a literal or mechanical way”.

8 The said ratio has been reiterated by the Apex Court in **Popat Bhairu Govardhane and others vs. Special Land Acquisition Officer and another, (2013) 10 SCC 765**. After taking note of Raja Harishchandra's case (supra) it has been observed that, *“Unless a party had knowledge of the order, the question of approaching the proper Forum challenging the order does not arise. Therefore, it is the date of the knowledge from which the limitation*

would start". Therefore, in this case, there was total lack of application of mind by the learned Reference Court about the point of limitation. No doubt, the copy of the notice was not produced before the Reference Court but statement to that effect was definitely made in the petition itself. Under such circumstance, by keeping the point of limitation also open and the fact, that since the petitioner could not get a proper opportunity, though the record shows that many opportunities to lead evidence was given to the petitioner, one more chance deserves to be given by remanding the matter. Hence, the appeal deserves to be partly allowed. Therefore, following order.

ORDER

1 The appeal is partly allowed.

2 The Judgment and Award passed in L.A.R. No.6/2000 by learned Civil Judge Senior Division, Gangakhed, Dist. Parbhani dated 08.02.2011 is hereby set aside.

3 The said reference is restored to the File of concerned Court.

4 The concerned Court is directed to give an opportunity to both sides to lead evidence, if they desire and decide the matter afresh.

5 It is clarified, that since the reference is of the year 2000, is remanded, the petitioner shall not in any case obtain adjournment on any count.

6 The learned Trial Court is directed to expedite the matter and decide it, within a period of three months, from the date of receipt of Record and Proceedings.

7 Record and Proceedings be immediately sent back to the Trial Court.

8 All the parties are directed to appear before the concerned Court on 02.09.2019.

(Smt. Vibha Kankanwadi, J.)

Date : 20.08.2019.

9 It is clarified that since the matter is being remanded on the count that the claimant failed to appear, the claimant will not be entitled to get interest from 13.08.2001, which was the date for adducing evidence by the claimant till today. Reference Court to take note of the same.

(Smt. Vibha Kankanwadi, J.)