

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

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**RFA Nos.6934 & 6935 of 2012 (O&M)
Decided on : 11.09.2019**

M/s Kafila Forge Ltd.

... Appellant

Versus

State of Haryana and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Alok Mittal, Advocate and
Mr. Sushant Kareer, Advocate for the appellant.

Mr. Sudeep Mahajan, Addl. AG, Haryana.
Ms. Vibha Tewari, AAG, Haryana.

Mr. Pritam Singh Saini, Advocate &
Mr. Deepak Balyan, Advocate
for the respondent-HSIIDC.

G.S. Sandhawalia, J. (Oral)

The present order shall dispose of two appeals i.e. **RFA Nos.6934 & 6935 of 2012**, filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the Act') which are directed against the Award dated 02.06.2012 passed by the Reference Court, Sonapat, whereby reference petitions have been dismissed primarily on the ground of limitation.

2. Vide the said Award, the Reference Court has come to the conclusion that in view of Section 18, the reference petitions were time barred and the petitioners were litigating before this Court till 2002 and before the Apex Court in the year 2003. They had also filed two civil suits and written statement had also been filed on 20.01.2004 in one of the civil

suit whereby the details of the Awards had been given. Reliance was, accordingly, placed upon the judgment of the Apex Court passed in '**Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and another**', AIR 1961 Supreme Court 1500, '**State of Punjab Vs. Mst. Qaisar Jehan Begum and another**', AIR 1963 SC 1604 and '**Bhagwan Das and others Vs. State of U.P. and others**', 2010 (3) SCC 545 that the petitioners could not claim that they did not have knowledge of the passing of the Awards dated 15.12.1998 and 28.04.1999 and they were illiterate, as being legal entity running a factory in the premises which had been acquired. The reference petition being beyond the period of limitation of six months, it was held that the petitioners have slept to avail their remedy by not filing the reference petition and, therefore, both the reference petitions were dismissed by coming to the conclusion that the same were filed on 04.01.2005.

3. It was noticed that the petitioners had left no stone untouched having filed two civil suits. It had been specifically pleaded by the respondents that they had been intimated about the passing of the award during the proceedings before this Court and as well as before the Civil Court. The Director of the company had given evasive reply regarding the filing of the written statement by the respondents, whereby the details of the awards had been given. The written statement filed in the proceedings before this Court, Mark RB was also taken into consideration, wherein also there was a mention regarding the passing of

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the awards. Resultantly, keeping in view the fact that multifarious litigations had been set up by the petitioners, they could not claim that they had no knowledge of the award.

4. Senior counsel for the appellants has vehemently argued that the provisions of Section 28 should be kept in mind while deciding the appeal, since similar situated landowners have got enhanced compensation by approaching this Court in **RA-173-CI-2016 in RFA No.3520 of 2006** decided on 21.11.2016 (Annexure A-1), which is sought to be placed on record by way of application for additional evidence. It is submitted that lenient view as such should be taken on the issue of limitation as an application had also been filed claiming the date of knowledge 21.07.2004 as per the application filed before the Reference Court.

5. The factual aspect of the matter as per the record would go on to show that the land was acquired vide notification dated 05.08.1997 issued under Section 4 of the Act for the purpose of the development of Industrial Estate in village Kundli, Sersa and Nangal Kalan, Tehsil & District Sonapat. The same was followed by Section 6 notification which was issued on 29.07.1998, whereby 303 acres 7 kanals 9 marlas of land was sought to be acquired and eventually 304 acres 5 kanals and 3 marlas was found on actual measurement. The Land Acquisition Collector, vide Award dated 15.12.1998 had awarded a sum of ₹4.5 lakhs per acre upto the depth of 4 acres from National Highway No.1 and at the rate of ₹2.25

lakhs per acre for remaining kind of land. Thereafter, a supplementary Award was passed on 28.04.1999 regarding the super-structures.

6. It is not disputed that the appellant-Company had filed **CWP No.16514 of 1998** challenging the said acquisition. Eventually, the writ petition was disposed off on 25.09.2000 by the Division Bench after it had been clubbed with bunch of cases, lead case of which was **CWP No.14931 of 1998 'Vijay Partap Pannu and others Vs. State of Haryana and others'**. The Division Bench had directed that a Sub-Committee, will be set up by the State, who would consider the submissions and grant hearing to the petitioners as to whether the land was to be released or not, as it was the case of the petitioners that they had built up structures and vacant areas, which could not be utilized due to their isolated location. The Sub-Committee had declined to release the land of the petitioners and thereafter they had filed **CWP No.10122 of 2002**, which was dismissed on 02.08.2002. The order reads as under:-

“It is admitted position that out of total land owned by the petitioner measuring 53 kanals 5 marlas, an area measuring 17 kanals 2 marlas has since been left out from the array of acquisition. Further, still another area measuring 6 kanals 16 marlas, wherein too some construction has been raised has since already been released. The dispute is with regard to the remaining area which is lying vacant. In the impugned memo (Annexure P-14) dated 6.3.2002, Sub Committee made every endeavour to accommodate the existing construction. With regard to the vacant area and some structure, which came into being after notification under Section 4 of the Act was issued, the Sub Committee

recommended that it was not a fit case where exemption could be granted because the petitioner had raised construction after issuance of notification under Section 4 of the Act and for the unauthorised construction FIR was lodged by the DTP, Sonapat for violating the Act/Rules of the Town and Country Planning Department. It has been mentioned in the impugned memo. that the land falls within right of way of 60 meter of Master Plan Sector dividing road necessary for link with NH-I. It has also been observed that if exemption is granted, it will disturb continuity of project and the case is not covered under any of the guiding principles mentioned in the letter dated 10.7.1998.

Contention of Mr. Chatrath that the Sub Committee is not a competent authority to consider the objections under Section 5 of the Act and, therefore, memo (Annexure P-14) deserves to be quashed has no substance whatsoever, as memo (Annexure P-14) is only a report of the Sub Committees, which has made recommendations accordingly Order of the Government that might have been passed and it is assumed, that it must have passed against the petitioner in tune with the recommendations made by the Sub Committee, has not been annexed with the present petition. It is not even the case of the petitioner that Annexure P-14 is the final decision in the matter, Further, the Sub Committee consisting of two senior officers was constituted in view of the undertaking of the Advocate General given in the earlier writ petition, which was to hear the objections of the petitioner as would be clearly made out from the decision rendered in CWP No.14931 of 1998 1Annexure P-13) annexed with the petition itself. The only other contention raised by the learned counsel is that some other area can be easily acquired to make link road and had the department made endeavour on that behalf, the petitioner could have been accommodated with regard to its entire land. This Court in its jurisdiction

under Article 226 of the Constitution of India would not like to substitute its opinion with that of the experts, who are engaged in the job of finding out the exact area that may be required for the purpose.

Finding no merit in this writ petition, the same is dismissed in limine.”

7. It is not disputed that the matter was taken to the Apex Court by the appellant-Company as such and eventually the **SLP Nos.15988-15989 of 2003** were dismissed on 20.11.2003. Firstly a Civil Suit No.609 of 2003 was filed for permanent injunction on 22.12.2003 in which interim injunction was granted on 22.01.2004 against the State while giving up the claim against HSIIDC. Thereafter, another Civil Suit No.415 of 2004 was instituted on 17.08.2004, after the dismissal of the SLP on 20.11.2003, in which interim injunction had been granted on 31.08.2004, which was vacated on 03.03.2005 by the Civil Judge (Senior Division), Sonapat, keeping in view the history of the case. The appeal filed before the Additional District Judge, Sonapat was dismissed on 07.06.2005 by noticing that award had already been passed by the Land Acquisition Collector and amount of compensation had also been accepted by the appellant-company. It was also noticed that suit land was subject of land acquisition proceedings and even after accepting the amount of compensation, the appellant-company wanted to retain the possession of the land and the litigation of the appellant-company was dishonest.

8. The petition filed under Section 18 on 30.09.2004 after the

second suit would go on to show that it was received by the Land Acquisition Collector on 08.10.2004 and, therefore, the observation of the Reference Court to the extent that the same was filed on 04.01.2005 is not correct. It was only on 04.01.2005 that the matter was referred by the Land Acquisition Collector to the District Judge by forwarding letter as such and, therefore, it cannot be said that the reference petitions as such was filed only on 04.01.2005. The observations qua the date of filing as such are not correct. It is further verified from the fact that alongwith the petition under Section 18, an application for condonation of delay was also filed which was also dated 30.09.2004. The date of knowledge was sought to be pleaded as 21.07.2004 that a notice had been received from the Land Acquisition Collector and, therefore, the delay was sought to be condoned.

9. From the above facts, one aspect would be clear that the appellant-Company was well aware of its legal rights. The moment when the Award was passed by the Land Acquisition Collector on 15.12.1998, the first writ petition bearing CWP No.16514 of 1998 was filed, which was disposed off on 25.09.2000. Being not satisfied with the recommendations of the Sub-Committee, who had declined to release all of the land of the appellant-Company, another writ petition bearing CWP No.10122 of 2002 was filed. Eventually, the same was also dismissed on 02.08.2002. The appellant filed two appeals before the Apex Court bearing SLP Nos.15988-15989 of 2003, which were dismissed on 20.11.2003.

10. A perusal of the written statement filed by the Land Acquisition Collector (Ex.RB), which was produced in CWP No.16514 of 1998 would go on to show that the plea taken by the State was that application had been declined to grant Change of Land Use in respect of Khasra numbers given which fell within the 30 meters restricted belt along the National Highway No.1. It was further averred that due to the interim relief granted by the High Court, the company had started unauthorized construction on the land in dispute. It was further mentioned that objections had been filed under Section 5-A dated 09.09.1997 which were duly considered by giving personal hearing on 15.08.1997. Keeping in view notification under Section 6 issued, notices under Section 9 had been issued on 23.11.1998 by registered post and no objections being filed by the petitioners, the Award had been passed on 15.12.1998. It was further clarified that the land and factory building fell in Rectangle No.54 and partly in Rectangle No.55, which has not been acquired, keeping in view the fact that the industrial unit of the petitioner-company was running and offences committed by it had been compounded.

11. The sub-Committee also noticed in its Minutes of Meeting that an FIR had also been lodged by the DTP for violating the provisions of the Town and Country Planning Department and land was falling within 60 meters of master plan of dividing road, which was necessary for link with the National Highway and that it would disturb the continuity of the project.

12. Thus, it is apparent that the appellant-Company was well aware about the fact that the litigation has come to an end in the highest Court on 20.11.2003. However, no effort as such was made for filing a petition under Section 18, thereafter also, but a second suit for permanent injunction was filed on 17.08.2004. The petition was only prepared on 30.09.2004 and thereafter filed on 08.10.2004 almost a year later. Section 18 of the Act reads as under:-

“18. Reference to Court. -

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person 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.”

13. In the affidavit filed in support of the Section 18 petition, PW-4, Shri P.R. Malhotra, Director of the Company deposed that there was a stay while issuing notice of motion and that the Land Acquisition

Collector had awarded only ₹24,57,525.25 per acre. In CWP No.16514 of 1998, the High Court had restrained the Land Acquisition Collector from taking the possession. It is, thus, apparent that the appellant-Company had constructive knowledge of the award in question and was litigating for releasing of the land on account of the fact that they were running a industry therein.

14. In cross-examination also it has come forth that they had moved the High Court for releasing of land. It has further been admitted that Mr. O.P. Arora and S.K. Kapur had appeared before the Sub-Committee and the Director had identified the signatures at Point 'A' in the report Mark RX. He further admitted that civil suit was filed on 22.12.2003 and he did not remember that defendant had filed the written statement on 20.01.2004 detailing all the facts.

15. RW-8, Gopi Chand Kanungo had stated that the petitioners had withdrawn the payment regarding the land on 16.09.2004.

16. A perusal of the written statement filed in the suit for permanent injunction would go on to show that the stand of the State was that the petitioner had specifically been declined the change of land use and the petitioner had raised unauthorized construction on the land. It had further been mentioned that the petitioner had filed objections under Section 5-A on 09.09.1997, which were duly considered by giving personal hearing on 15.08.1997. Section 9 notices were also issued on 23.11.1998 by registered post and no objections were filed by the

petitioner and Award was passed on 15.12.1998.

17. All these facts, thus, would go on to show that the appellant company as such was having constructive knowledge of the acquisition proceedings. The Apex Court in '**The Officer On Special Duty(Land Acquisition) and another vs Shah Manilal Chandulal Etc.**' 1996 (2) **SCR 366** has held that the Collector as such is not a Court and is only to make reference under Section 18. It has further been held that in view of the limitation prescribed under sub-Section 2 of Section 18, Section 5 of the Limitation Act, 1963 cannot be applied for extension of the period. Resultantly, while allowing the appeal, the order of the High Court was set aside, which had condoned the delay and directed the Land Acquisition Officer to make the reference, which was in a case directed against the rejection of the petition by the Collector on the ground that it was time barred.

18. Reliance as such had rightly been placed by the Reference Court upon the judgment passed in **Raja Harish Chandra Raj Singh (supra)**. The said view was followed by the Apex Court in '**Mahadeo Bajirao Patil vs State Of Maharashtra And Others**', 2005 (7) **SCC 440**, wherein it was held that if the person was present and represented before the Land Acquisition Collector when the Award was made, the application shall be made within six weeks from the date of the Collector's Award. It was, accordingly, held that once the application under Section 18 was not filed within six weeks from the receipt of the

notice under Section 12 (2), the High Court did not commit any error in holding that the application was barred by limitation. It was held that once the award was in possession of the applicant, he should have filed the petition within six weeks if the date of knowledge was taken into consideration.

19. The argument which has been raised that under Section 28-A the same amount of compensation is liable to be paid also would merit no such benefit to the appellant. In similar circumstances, a legal entity had approached this Court in CWP No.23688 of 2016 challenging the order of the Land Acquisition Collector passed under Section 28-A. The Company as such had not filed the petition under Section 18 and the Reference Court had enhanced the compensation on 16.11.2011 at the behest of other landowner. An application was filed on 01.02.2012 seeking re-determination under Section 28-A and the benefit of enhancement was allowed on 06.03.2014. However, other landowners had come to this Court and got the compensation further enhanced on 24.05.2016, which was finally disposed on 05.09.2017 by the Apex Court by reducing the claim to 15%. The order of the Land Acquisition Collector dated 06.03.2014 was thus challenged by the Company seeking re-determination of compensation on the ground that in '**Babua Ram and others Vs. State of U.P. and another, 1995 (2) SCC 698**, it has been held that the Land Acquisition Collector should stay his hand till the superior Court determines the compensation. The Division Bench of this Court on 10.10.2017 came to the conclusion that it was a Limited

Company and therefore, cannot as such claim higher compensation on the ground that it was not knowing the status of other cases or the remedy against the award passed by the Collector on the application under Section 28-A of the Act and the writ petition was dismissed on 10.10.2017.

20. The matter was, thereafter, taken to the Apex Court in **SLP (Civil) No.618 of 2018 'M/s Model Economic Township Ltd. Vs. Land Acquisition Collector'**. The Apex Court declined to interfere in the matter on 26.02.2019, though Section 28A as such provides that the same amount of compensation has to be granted to all the landowners. It was held that once the Company itself had adequate knowledge on the said front, the explanation offered was not satisfactory. Therefore, once the Company was having a profile, inaction on the front followed by delay in filing the petition would disentitle it to claim any relief under Article 226 of the Constitution of India. Relevant portion of the order passed in the said judgment reads as under:-

“10. It is neither the case of the petitioner nor it is even remotely contended that despite being aware of such pending challenge, the Collector had proceeded with the matter and decided the application under Section 28A. It is also not the case that the petitioner had made the Collector aware or brought it to the notice of the office about pendency of such matter/further challenge. The petitioner approached the High Court on 15.11.2016 only after the compensation was enhanced by the High Court to the level of Rs.2,80,00,000/- per acre in respect of comparable lands vide judgment dated 24.5.2016. Again, there is nothing in the petition as to why the petitioner

took so much time to realise that the course undertaken by the Collector was not in keeping with the principles laid down by this Court. Looking to the profile of the petitioner which is a limited company, it can certainly be said to be having resources to equip itself with adequate knowledge on the front. The explanation offered by the petitioner in the affidavit pursuant to the direction issued on 06.02.2019, in our view, is not satisfactory. The explanation that the petitioner became aware for the first time on 03.08.2016 does not appear to be correct and reliable. Again, if Shri Satyawar who swore the affidavit as wholtime Director of the petitioner-company, was aware on 03.08.2016 that the compensation stood enhanced by the High Court vide judgment and order dated 24.05.2016, there is no reason why the filing of the writ petition was delayed till 15.11.2016. For an entity who held more than 10% of the land under acquisition the way it conducted itself does not inspire any confidence. The idea under Section 28A is certainly to extend benefit of equal compensation to landholders who, for some reasons had not preferred appropriate applications for Reference in time but for a company having profile such as the petitioner, inaction on the front followed by delay in filing petition in the High Court, in our view, disentitles the petitioner from claiming any relief under Article 226 of the Constitution.

11. The High Court was, therefore, justified in rejecting the petition. We see no reason to interfere. This Special Leave Petition is dismissed.”

21. The facts are identical in the present case also. As noticed above, the appellant had litigated unsuccessful upto the Apex Court and had got the dismissal order on 20.11.2003. The Company should have filed the petition under Section 18 expeditiously before the Reference Court for seeking the benefit of higher compensation. Having slept over

its rights with the filing having been done only on 08.10.2004, the petition has rightly been held time barred by the Reference Court in view of the provisions of Section 18 (2) (b). The same is in consonance with the law laid down by the Apex Court discussed above and, therefore, the claim as such for higher compensation on the strength of the similar landowners having been granted the same is not available to the appellant.

22. A perusal of the reply filed to the Section 18 petition would go on to show that it was the case of the respondents all improvements had been made by the petitioner after the publication of notification under Section 4 of the Act, illegally to create evidence before this Court to release the land from acquisition. The factum of both the civil suits having been filed and that there was no stay against HSIDC was mentioned. The notification showed that 53 kanals 5 marlas of land was deemed to be acquired, but only the land in which the factory was present was left out from acquisition and the land measuring 29 kanals 7 marlas was acquired.

23. Thus, it is apparent that the second civil suit was filed on 17.08.2004 after dismissal of the SLP on 20.11.2003 instead of filing reference within time, civil litigation was initiated to hold on the possession in spite of knowing that an award had been passed. Keeping in view the above factors, it is apparent that the appellant is not an ordinary set of litigant who can fall on the plea that it is not in constructive knowledge of the awards in question and resultantly, the

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finding which has been recorded by the Reference Court as such on the issue of limitation in filing the Section 18 petition cannot be faulted in any manner.

24. In '**Popat Bahiru Govardhane etc. Vs. Special Land Acquisition Officer and another**' (2013) 10 SCC 765, the Apex Court while dealing with the limitation prescribed under Section 28-A of the 1894 Act has held that the Court has no power to extend the period of limitation on equitable grounds, "though the law is hard but it is the law".

25. CM-12630 & 12631-CI-2017, CM-7736-CI-2018, CM 3405-CI-2019 in RFA-6934-2012 and CM-12632 & 12633-CI-2017, CM-7976-CI-2018, CM 3404-CI-2019 in RFA-6935-2012, which have been filed for leading additional evidence and for placing on record documents showing the market value, thus, would warrant no such consideration as the applications would not help this Court on adjudicating upon the primary issue, which is pertaining to the maintainability on the ground of limitation itself.

26. Resultantly, the present appeals alongwith all pending civil miscellaneous applications stand dismissed.

SEPTEMBER 11, 2019
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No