

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 76 of 2006****Reserved on 11.06.2020**
Pronounced on 23.06.2020

- Budhram, S/o Suklal Sahu, Aged about 56 years, R/o Village – Amandula, Tah – Malkharoda, District Janjgir-Champa (Chhattisgarh).

---- Appellant/Applicant**Versus**

1. State of Chhattisgarh through Collector, Janjgir-Champa (CG)
2. Land Acquisition Officer, Hasdeo Bango Project, Sakti, Distt – Janjgir-Champa (CG)

-- Respondents

For Appellant	:	Shri H.S.Patel, Advocate.
For Respondents/State	:	Shri Vimlesh Bajpai, G.A.

Hon'ble Shri Justice Sanjay S. Agrawal**C.A.V. Judgment / Order**

1. This Appeal has been preferred by the Applicant Budhram under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act of 1894) questioning the legality and propriety of the judgment dated 22.09.2005 passed by the Additional District Judge, Sakti (hereinafter referred to as the Reference Court) in Miscellaneous Civil Suit No.79/2005, whereby the Applicant's Reference Petition preferred under Section 18 (2) of the Act of 1894 has been rejected holding to be barred by time. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. Shri H.S. Patel, learned counsel appearing for the Appellant/Applicant submits that the judgment under appeal as passed by the Reference Court

holding the Reference Petition to be barred by time without taking note of the provision prescribed under Section 12 of the Act of 1894 is apparently contrary to law. It is contended by him that immediately after passing of the Award dated 26.08.2003 by the Land Acquisition Officer, Sakti, District Janjgir Champa, in Land Acquisition Case No.102/A-82/2002-03, an objection was made by the Applicant on 31.10.2003 before the said Authority and again a similar prayer was made on 31.12.2003. However, no action was taken on those applications, therefore, the Applicant moved another application by referring the provision of Section 18 (2) of the Act of 1894 on 08.02.2005. It is contended further that his application was rejected by the Court below without considering the earlier application as a Reference Petition and thereby erred in holding to be barred by time. In support, he placed his reliance upon the decisions rendered in the matters of *Union of India vs. Khazan Singh* and *M.T.Khan and others vs. Govt. of A.P. and others* reported respectively in 1993 Supp (1) SCC 583 and (2004) 2 SCC 267.

3. On the other hand, Shri Vimlesh Bajpai, learned Government Advocate supported the impugned judgment as passed by the Reference Court.

4. I have heard learned counsel for the parties and perused the entire record carefully.

5. From perusal of the record, it appears that for the construction of sub-canal at Amandula, a proceeding was initiated by the Land Acquisition Officer, Sakti, District Janjgir-Champa under the Act of 1894 while registering the case as Land Acquisition Case No.102/A-82/2002-03. In the said proceeding, the Land Acquisition Officer has passed an Award on 26.08.2003, which was duly approved by the Collector on 03.09.2003. In the said proceedings, Applicant's land was acquired and awarded him the amount of compensation

to the tune of Rs.34,552/- only while treating his land as non-irrigated land, instead of irrigated one, and the amount of compensation has thus been calculated as such. It was, therefore, objected by the Applicant by moving an application on 31.10.2003 (Ex.P.4) and thereafter on 31.12.2003 (Ex.P.5), which were duly acknowledged by the office of the concerned Authority. In the objection filed on 31.10.2003, it was stated by the Applicant that his land bearing Kh.Nos.590/1, 613/2, 589/1 and 1711/7 admeasuring respectively as 0.10 acres, 0.19 acres, 0.48 acres and 0.10 acres were acquired, however, no amount of compensation has been provided to him. It was alleged further therein that the land owned by him was of the nature of irrigated one, but it was considered as that of non-irrigated land at the time of determining the amount of compensation. Despite the aforesaid objection being raised in time, it was not referred by the Land Acquisition Officer to the Court having its jurisdiction for its determination. It appears that since the relevant provision, as provided under Section 18 of the Act of 1894, was not mentioned, therefore, it was not referred. Be that as it may, the Applicant was constrained to file another one on 08.02.2005 while mentioning the said relevant provision and this time, it was referred by the Collector to the Reference Court for its determination.

6. While considering the aforesaid Reference Petition, it was held by the Reference Court by entertaining the issues No.1 & 2 that the Applicant's land bearing Kh.No.609/1, 594/1, 592/1 and 610/3 admeasuring respectively as 0.15, 0.22, 0.20 and 0.53 acres of land are of irrigated land whereas amount of compensation has been determined illegally by treating the same as non-irrigated one and accordingly held further that it was required to be determined at the rate of Rs.4,77,000/- per hectare. Upto this, the Applicant has no grievance. His grievance was, however, with regard to the rejection of

his Reference Petition while entertaining the issue No.5, whereby it has been held to be barred by time. It is, however, to be noted at this stage that although the said issue was framed by the Reference Court, but from a bare perusal of the reply to the alleged application for reference, it is evident that in nowhere such an objection was raised by the Non-Applicants. Yet, the Reference Court has framed the said issue. That apart, I do not find that the notice of the said Award upon its approval by the Collector on 03.09.2003 was ever served upon the Applicant, as required under Section 12 of the Act of 1894.

7. The aforesaid provision is relevant to be noted at this juncture, which reads as under:-

“12. Award of Collector when to be final.--- (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.”

8. It is, thus, evident by virtue of sub-section (2) of the aforesaid provision that the notice of the Award, approved on 03.09.2003, was required to be served immediately upon the Applicant. In absence thereof, neither the said issue pertaining to the point of limitation was required to be framed nor the said Reference Petition could be rejected on that issue.

9. In view of the above facts and circumstances, the approach of the Court below rejecting the Reference Petition on the point of limitation even without considering the provision prescribed under clause (b) of sub-section

(2) of Section 18 of the Act of 1894, appears to be unreasonable and cannot be held to be sustainable in the eye of law. Besides, while considering the grievance of the Applicant, the Reference Court ought to have taken note of the objection as raised by the Applicant on 31.10.2003 irrespective of the fact that it did not contain the relevant provision, as it is a settled principles of law that non-mentioning of a provision would not deprive or defeat the right of the party. At this juncture, the principles laid down in the matter of **Union of India vs. Khazan Singh** (supra) are to be seen where it has been observed at paragraph 6 as under:-

“6.The appellate authority did not mention in its order as to under which sub-rule of Rule 25 (1) the appeal was being disposed of. The Tribunal while noticing Rule 25(1)(e) of the Rules and conceding that the appellate authority could remand the case to the disciplinary authority for further inquiry under the said sub-rule, grossly erred in setting aside the order on the concession of the learned counsel to the effect that the appellate authority had passed the order under Rule 25(1)(d) of the Rules. It is settled proposition of law that when the exercise of power can be justified under any provision of law then non-mention of the said provision in the order can not invalidate the same.”

10. Similarly, in the matter of **M.T.Khan and others vs. Govt. of A.P. and others** (supra), it has been observed by the Supreme Court at paragraph 16 as under:-

“16.It is now well settled principle of law that non-mentioning or wrong mentioning of a provision of law does not invalidate an order in the event it is found that a power therefor exists.”

11. In the light of the aforesaid principles, the findings of the Reference Court rejecting the Reference Petition on the ground of limitation without considering the earlier application (Ex.P.4) filed by the Applicant on 31.10.2003 cannot be held to be sustainable in the eye of law.

12. Consequently, the judgment under appeal passed on 22.09.2005 by the Additional District Judge, Sakti, in Miscellaneous Civil Suit No. 79/2005 is hereby set aside to the extent whereby the Reference Petition has been rejected on the point of limitation and, the matter is remitted back to the concerned Reference Court and/or Additional District Judge, Janjgir-Champa with a direction to decide the objection raised by the Applicant on 31.10.2003 (Ex.P.4) only with regard to the following points:

- a) Whether the Applicant's land bearing Kh.Nos.590/1, 613/2, 589/1 and 1711/7 admeasuring respectively as 0.10 acres, 0.19 acres, 0.48 acres and 0.10 acres has been acquired under the said land Acquisition Proceedings?
- b) If yes, what would be its actual market value payable to the Applicant?

13. The Reference Court is directed further to decide the aforesaid issues in accordance with law by providing sufficient and reasonable opportunity of hearing to the parties. The parties are directed to remain present before the concerned Court on 20.07.2020. No order as costs.

14. The Registry is directed to transmit the entire relevant record to the concerned Reference Court forthwith.

Sd/-

(Sanjay S. Agrawal)
Judge