

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

**RFA No.923 of 2020 (O&M)
Date of Decision:05.10.2021.**

Rajmati and others**...Appellants****Versus****State of Haryana and others****...Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL****Present: Mr. Ashish Pannu, Advocate
for the appelalnts.****Mr. Shivendra Swaroop, AAG, Haryana****Mr. Pritam Singh Saini, Advocate
for HSIIDC.****ANIL KSHETARPAL, J.**

This appeal under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act') has been filed while assailing the correctness of the award passed by the learned Additional District Judge, Sonapat,(hereinafter referred to as Reference Court) on 05.12.2019.

The Reference Court after finding that the reference application under Section 18 of the 1894 Act, has been filed after the prescribed period of limitation, has ordered the dismissal of the reference application. The necessary particulars of the acquisition are extracted as under:-

Date of notification under Section 4	2/1/4-IIB-II-2010 dated 1.4.2010
Date of notification under Section 6	2/1/4-IIB-II-2010 dated 4.4.2011
Number and Date of award	Award No.53, dated 03.04.2013

Total Land Acquired	85 Acres 2 Kanal 19 Marlas
Name of Village	Saidpur
Purpose	For development of Industrial and Modern Township in revenue estate of village Gopalpur, Pipli, Saidpur, Kundal, Rampur, Forozpur, Bangar, Nizampur Kurd, Sohati, Pahaldpur and Borana, Tehsil Kharkhoda and District Sonapat
Rate awarded by LAC	Rs.35,00,000/- per acre up to the depth of 5 acres from Kharkhoda Delhi road and Rs.30,00,000/- per acre for remaining land.

The Land Acquisition Collector (hereinafter referred to as LAC) announced the award for the abovesaid land acquired on 03.04.2013. The Reference Court found out that the appellants were paid the amount of the compensation for the land so acquired on 21.01.2014, whereas the application under Section 18 of the 1894 Act was filed before the LAC, on 02.09.2014, for sending reference to the Court. The Reference Court had, thus, found out that the application was filed after the prescribed period of limitation had expired. As there is no provision for condonation of delay as a consequence, the reference application itself was not maintainable before the LAC due to the expiry of such prescribed period of limitation.

This Bench has heard the learned counsel representing the appellants and with his able assistance perused the paper book.

The learned counsel representing the appellants contends that the Land Acquisition Collector did not pay the entire compensation on 21.01.2014 as some part of the amount of Rs.1,07,343/- was paid to the each appellant only on 25.07.2017, that is 3 years, 6 months and 5 days including the end date. He, hence, contends that the limitation would begin to run from the date on which complete payment has been paid to the land owners.

Proviso to Sub-section (2) of Section 18 of the Land

Acquisition Act, 1894, provides for three different eventualities while prescribing the period of limitation for submitting an application under Sub-section(1) thereof. Clause (a) of proviso to Sub-section (2) of Section 18 provides that if the person submitting the application was present or was represented at the time when the award was made before LAC, the application is required to be submitted within a period of six weeks from the date of the Collector's award. Clause (b) to the aforementioned section is in two parts. Under the first part of Clause (b) of the said sub-section, it is provided that if the person applying under Section 18 of the 1894 Act was not present or was not represented before the Collector at the time of making of the award, in that case, the application can be submitted within six weeks from the date of receipt of notice from the Collector under Section 12 (2) of the Land Acquisition Act, 1894. The second part of Clause (b) of the said sub-section further provides that, in case, there is no evidence that the notice under Section 12 was served on the person applying under Section 18, then the limitation period for submitting such application is six months from the date of Collector's award, depending on whichever of the period shall first expire. The Hon'ble Supreme Court while examining Section 18 of the 1894 Act has laid down that in case there is no evidence of receipt of the notice from the Collector under Section 12, then the date of payment of the amount of compensation shall be deemed to be the date of knowledge to the claimants in absence of the evidence to the contrary and the limitation of 6 months will begin to run from the date of such knowledge to the claimants. In **Parsottambhai vs. State of Gujrat, (2005) 7 SCC 431**, the Supreme Court while relying upon a previous judgment in **Raja Harish Chandra Raj Singh**

Vs. Dy. Land Acquisition Officer, AIR 1961 SC 1500, held as under:-

“6. Learned counsel for the appellants rightly placed reliance upon the judgment of this Court in Raja Harish Chandra Raj Singh v. Dy. Land Acquisition Officer and submitted that since the appellants were not present when the award was made, and no notice was given to them under Section 12(2) of the Act, the application for making a reference under Section 18 of the Act must be held to be within time if it is filed within six months of the date of knowledge of the declaration of the award. In our view, the submission is sound and must be accepted. This Court in Raja Harish Chandra Raj Singh was dealing with a case in which an award was declared under the Act on 25-3-1951. No notice under Section 12(2) of the Act was given to the claimants. It was only on 12-1-1953 that the claimants came to know about the declaration of the award whereafter they filed an application claiming a reference under Section 18 of the Act on 24-2-1953. The High Court of Allahabad held that the case fell under the latter part of clause (b) of the proviso to Section 18 and since the application made by the appellants before the Land Acquisition Officer for claiming a reference under Section 18 was made beyond six months from the date of the award in question, it was beyond time. This view of the High Court was overruled by this Court and in doing so the Court made the following pertinent observations:-

“Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award

cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office; it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words 'the date of the award' occurring in the relevant section would not be appropriate.

There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party

even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice the expression 'the date of the award' used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words 'from the date of the Collector's award' used in the proviso to Section 18 in a literal or mechanical way."

7. This Court, therefore, held that the limitation under the latter part of Section 18(2)(b) of the Act has to be computed having regard to the date on which the claimants got knowledge of the declaration of the award either actual or constructive. This principle, however, will apply only to cases where the applicant was not present or represented when the award was made, or where no notice under Section 12(2) was served upon him. It will also apply to a case where the date for the pronouncement of the award is communicated to the parties and it is accordingly pronounced on the date previously announced by the Court, even if, the parties are not actually present on the date of its pronouncement. Coming to the facts of the instant case the High Court has not rejected the plea of the appellants that they came to know of the award only when compensation was being paid to them in July 1988. They had admittedly no notice under Section 12(2) of the Act. They had therefore filed

the application under Section 18 of the Act on 22-9-1988 well within the period of limitation. The Reference Court recorded a finding in favour of the appellants but the High Court has reversed that finding without applying the principle laid down in Raja Harish Chandra. Moreover, we find from the grounds of appeal filed before the High Court that the assertion of the claimants that they came to know of the declaration of the award only when compensation was being paid to them in July 1988, has not even been challenged.”

However, the aforesaid judgment does not solve the problems of the appellants. In **Parsottambhai (supra)**, the Supreme Court by judicial interpretation has held that the date of payment shall be deemed to be the date of knowledge to the claimants in the case where there is no evidence of the service of notice under Section 12(2) of the 1894 Act. In the present case, the appellants do not dispute that some part of the amount was paid to the appellants on 21.01.2014. It is nowhere held by the Supreme Court that for purposes of knowledge of the award to the respective claimants, the payment means the complete payment. Rather the Hon'ble Supreme Court has only held that for the purpose of knowledge of the award the date of payment shall be deemed to be the date of knowledge to the claimants in the absence of proper evidence to prove that the service of notice under Section 12 of the 1894 Act is on an earlier date. Thus, the complete payment of the compensation is not the sine-qua-non for the period of limitation to begin to run.

In **Mohammad Hasnuddin vs State Of Maharashtra (1979) 2**

SCC 572, the larger Bench of the Hon'ble Supreme Court while interpreting

the provisions of the Land Acquisition Act, 1894, has laid down that as there is no provision for condonation of the delay because the LAC is not a Court, consequently, the application itself is not applicable. It has been laid down in para 24, 25, 26 and 27 that if such reference has been forwarded to the Court which is a Special Tribunal, then it becomes the duty of the Tribunal to decline the same as proper reference has not been made. The relevant discussion reads as under:

“24. From these considerations, it follows that the court functioning under the Act being a tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector under Section 18 complies with the conditions laid down therein so as to give the court jurisdiction to hear the reference. In view of these principles, we would be extremely reluctant to accept the statement of law laid down by the Allahabad High Court in Abdul Karim case.

25. Every tribunal of limited jurisdiction is not only entitled but bound to determine whether the matter in which it is asked to exercise its jurisdiction comes within the limits of its special jurisdiction and whether the jurisdiction of such tribunal is dependent on the existence of certain facts or circumstances. Its obvious duty is to see that these facts and circumstances exist to invest it with jurisdiction, and where a tribunal derives its jurisdiction from the statute that creates it and that statute also defines the conditions under which the tribunal can function, it goes without saying that before that tribunal assumes jurisdiction in a matter, it must be satisfied that the conditions requisite for its acquiring seisin of that matter have in fact arisen. As observed by the Privy Council in Nusserwanjee Pestonjee v. Meer Mynodeen Khan wherever jurisdiction is given to a court by an Act of Parliament and such jurisdiction is only given upon certain specified terms contained in that Act it is a universal principle that these terms

must be complied with, in order to create and raise the jurisdiction for if they be not complied with the jurisdiction does not arise.

26. If an application is made which is not within time, the Collector will not have the power to make a reference. In order to determine the limits of his own power, it is clear that the Collector will have to decide whether the application presented by the claimant is or is not within time, and satisfies the conditions laid down in Section 18. Even if a reference is wrongly made by the Collector the court will still have to determine the validity of the reference because the very jurisdiction of the court to hear a reference depends on a proper reference being made under Section 18, and if the reference is not proper, there is no jurisdiction in the court to hear the reference. It follows that it is the duty of the court to see that the statutory conditions laid down in Section 18 have been complied with, and it is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It is only a valid reference which gives jurisdiction to the court and, therefore, the court has to ask itself the question whether it has jurisdiction to entertain the reference.

27. In deciding the question of jurisdiction in a case of reference under Section 18 by the Collector to the court, the court is certainly not acting as a court of appeal; it is only discharging the elementary duty of satisfying itself that a reference which it is called upon to decide is a valid and proper reference according to the provisions of the Act under which it is made. That is a basic and preliminary duty which no tribunal can possibly avoid. The court has, therefore, jurisdiction to decide whether the reference was made beyond the period prescribed by the proviso to sub-section (2) of Section 18 of the Act, and if it finds that it was so made, decline to answer reference.”

In view of aforesaid discussion, indubitably, the

conclusion in this appeal has ended up at, is harsh for the appellants, in spite of that, in view of the settled law, this Bench has no other option but to dismiss the appeal.

Accordingly, the appeal is dismissed.

05th October, 2021
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(ANIL KSHTARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No