

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

RFA-420-2021 (O&M)

Date of decision:31.08.2021

State of Haryana and another

....Appellants

Versus

Leela Ram and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Shivendra Swaroop, AAG, Haryana

ANIL KSHETARPAL, J

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

On 02.08.2021, after noticing that the notice issued to the respondents has been received back served, however, no one has entered appearance on their behalf, the Court considered it appropriate to direct the Land Acquisition Collector, Faridabad, to inform respondent no.1 and 2 about the pendency of the appeal. Learned State counsel on instructions from Sudeep Dabas, ADA, Faridabad, submits that the Land Acquisition Collector has informed respondent no.1 and 2. But, still the respondents remain unrepresented.

In this case, the award passed by the Land Acquisition Collector under Section 11 of the Land Acquisition Act, 1894, was announced on 20.05.2013. On 23.05.2017 the landowners filed an application under Section 18 for forwarding reference to the court. The learned State counsel contends that the Additional District Judge has no

jurisdiction to entertain and condone the delay in filing the application under Section 18 of the Land Acquisition Act, 1894, as Section 5 of the Limitation Act, 1963, is not applicable. While drawing the attention of the Court to para 25 of the impugned judgment passed by the Additional District Judge, learned counsel contends that after recording a finding that the land owners had constructive knowledge of the award on 05.07.2013 (the day when the land owners received the amount of compensation) opted to condone the delay.

The respondents sought condonation of delay in filing the application under Section 18 of the Land Acquisition Act, 1894, on the ground that they engaged Sh.D.P.Bhatti, Advocate, for filing reference petition for enhancement of the compensation in the year 2013, however, he fell ill and subsequently died within a period of few months. Learned Additional District Judge has found that the respondent no. 1 and 2 failed to produce any cogent and concrete evidence. However, the court allowed the petition while observing that the benefit of enhanced compensation cannot be denied on technical grounds and consequently, treated the petition to have been filed within the period of limitation. Para 25 of the impugned judgment is extracted as under:-

“25. According to the petitioners, they engaged Sh. D.P.Bhatti, Advocate and handed over papers to him but he did not file objections within time, thereafter, he passed away. But in order to substantiate this evidence they have not brought on record any cogent, concrete evidence except the bald statement of the petitioners. Here, it is necessary to point out that as per statement no. 19 petitioners had

received the amount of compensation on 5.7.2013, meaning thereby, this date can be construed as date of their constructive knowledge about the acquisition of their land and passing of impugned award. But, they remained in dormant condition from 5.7.2013 to 23.05.2017. They filed the objections on 23.5.2017. In the light of above discussed factual matrix and keeping in view the above stated ratio of law this court is of the opinion that benefit of enhanced compensation cannot be denied to the petitioners on technical grounds. Therefore, the present petition is treated within limitation. However, it is made clear that petitioners will not be entitled for the interest for the period i.e 5.7.2013 (date of receiving the payment of compensation amount) till 23.5.2017 i.e date of filing of petition. Accordingly, both these issues are answered against the respondents.”

The arguments of the learned counsel representing the appellant raises interesting issues. The following questions arise for determination:-

- i) Whether the Land Acquisition Collector, while exercising powers under Section 18 of the Land Acquisition Act, 1894, is a court?
- ii) Whether the Land Acquisition Collector has the power to exercise jurisdiction under Section 5 of the Limitation Act, 1963, to condone the delay?
- iii) Whether the Court, on receipt of reference under Section 18 of the Land Acquisition Act, 1894, is required to examine the validity of the reference received?

A larger Bench of the Supreme Court in **Mohd. Hasnuddin vs. State of Maharashtra (1979) 2 SCC 572**, while answering the aforesaid three questions, held that firstly the Collector does not have the power to condone the delay as it does not fall in the definition of court. Further, it was held that if such reference is sent by the Collector, it is the duty of the court to reject the same if found that the delay has been improperly condoned. While adjudicating upon the issues as noticed above, it was held 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* [LR (1855) 6 MIA 134 (PC)] 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.”

Subsequently, in **Officer on Special Duty (Land Acquisition) & another vs. Shah Manilal Chandulal and others 1996 (9) SCC 414** the Supreme Court held that neither Section 4 to 24 of the Limitation Act, 1963, are applicable nor the provisions of Section 5 thereof which extends the period of limitation, can be invoked either by the Collector or by the court while deciding a reference under Section 18. The relevant discussion is in para 8, which is extracted as under:-

“8. The right to make application in writing is provided under Section 18(1). The proviso to sub-section (2) prescribes the limitation within which the said right would be exercised by the claimant or dissatisfied owner. In *Mohd. Hasnuddin v. State of Maharashtra* [(1979) 2 SCC 572] , this Court was called upon to decide in a reference under Section 18 made by the Collector to the court beyond the period of limitation, whether the court can go behind the reference and determine the compensation, though the application for reference under Section 18 was barred by limitation? This Court had held that the Collector is required under Section 18 to make a reference on the fulfilment of certain conditions, namely, (i) written application by interested person who has not accepted the award; (ii)

nature of the objections taken for not accepting the award; and (iii) time within which the application shall be made. In paragraph 22 after elaborating those conditions as conditions precedent to be fulfilled, it held that the power to make a reference under Section 18 is circumscribed by the conditions laid down therein and one such condition is a condition regarding limitation to be found in the proviso. The Collector acts as a statutory authority. If the application is not made within time, the Collector will not have the power to make reference. In order to determine the limitation on his own power, the Collector will have to decide whether the application presented by the claimant is or is not within time and specify the conditions laid down under Section 18. Even if the reference is wrongly made by the Collector, the court will have to determine the validity of the reference because the very jurisdiction of the court to hear a reference depends upon a proper reference being made under Section 18. If the reference is not proper there is no jurisdiction in the court to hear the reference. It was, therefore, held that it is the duty of the court to see that the statutory conditions laid down in Section 18 including the one relating to limitation, have been complied with and

the application is not time-barred. It is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It has to proceed to determine compensation and if it is time-barred, it is not called upon to hear the same. It is only a valid reference which gives jurisdiction to the court. Therefore, the court has to ask itself the question whether it has jurisdiction to entertain the reference. If the reference is beyond the prescribed period by the proviso to sub-section (2) of Section 18 of the Act and if it finds that it was not so made, the court would decline to answer the reference. Accordingly, it was held that since the reference was made beyond the limitation, the court was justified in refusing to answer the reference.”

In the present case, the court itself found that since the respondents received the compensation on 05.07.2013, therefore, it would be treated as constructive date of knowledge of the award. The respondents applied to the Collector for referring the matter to the court under Section 18 on 23.05.2017 i.e. after a period of nearly 4 years following the award, announced on 20.05.2013. Therefore, it is the well settled proposition of law that the court being a Special Tribunal under the Land Acquisition Act, 1894, is required to examine as to whether the reference under Section 18 of the Land Acquisition Act, 1894, made to it by the Collector is beyond the period of limitation or not. It has been

conclusively held that the court has the jurisdiction to go behind the reference to determine whether it is properly made. It was further held that once the application made to the Collector is beyond the prescribed period, it is not a valid reference and does not give jurisdiction to the court to decide the matter. In such circumstances, it becomes the duty of the court to decline to answer the reference. Keeping in view the aforesaid facts, the court below committed an error in condoning the delay of nearly 4 years.

In view of the aforesaid, the judgment under appeal is not sustainable and therefore, set aside. Appeal allowed.

All the pending miscellaneous applications, if any, are also disposed of.

31 .08.2021

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE