

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

R.F.A.No.7076 of 2015(O&M)

Date of Order:26.07.2021

DineshYadav

..Appellant

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.K.Saini, Advocate,
for the appellant.

Mr. Shivendra Swaroop, AAG, Haryana
for respondent no.1 and 2.

ANIL KSHETARPAL, J(Oral)

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

This appeal has been filed by the appellant assailing the correctness of the award passed by the learned Additional District Judge, Gurgaon, on 05.02.2014, while dismissing the reference petition under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act').

Some facts are required to be taken into consideration.

The acquisition proceedings were initiated by issuing notification under Section 4 read with Section 17(1)(c) of the Act to acquire 799 kanals 1 marla land, located in village Sultanpur, Tehsil and District Gurgaon. The Land Acquisition Collector vide award No.15, dated 12.05.2006, assessed the compensation for the land acquired @ Rs.12,50,000/- per acre. The compensation as assessed by the Land

Acquisition Collector was paid. Certain other owners being dis-satisfied with the assessment made by the Land Acquisition Collector applied for reference under Section 18 of the Act. On being referred, learned Additional District Judge vide judgment dated 27.08.2012, assessed the market value of the acquired land @ Rs.43,17,841/- per acre. The appellant filed an application under Section 18 of the Act on 08.11.2011, with a request to refer the matter to the Court which was allowed and the Land Acquisition Collector referred the matter to the Court of learned District Judge which was, later on, assigned to the Court of learned Additional District Judge, Gurgaon. It is important to note that the petitioner has asserted that since he did not receive the compensation, therefore, he had no knowledge of the award. Hence, the appellant claimed that the application under Section 18 of the Act has been filed within time.

The learned Additional District Judge, Gurgaon, has found that the assertion made by the appellant that he did not receive the compensation is factually incorrect. It has come on record that the appellant was paid compensation, as assessed by the Land Acquisition Collector, on 02.06.2006. Learned Court after recording a finding that neither the Land Acquisition Collector has no power to condone the delay in seeking reference under Section 18 of the Act nor the appellant has successfully explained the delay, dismissed the petition.

I have heard the learned counsel for the parties at length and with their able assistance perused the paper book.

The learned counsel representing the appellant does not dispute the factual position, however, submits that the appellant is entitled to be paid the same compensation as has been paid to the other similarly situated

owners. He in support relies upon the judgment passed by the Hon'ble Supreme Court in Samlyathal & Ors vs. Spl. Tehsildar and others, 2015(3) Law Herald (P&H) 2161(SC).

Per contra, learned Senior Deputy Advocate General, Haryana, has submitted that the Land Acquisition Collector is not a Court and therefore, has no power to condone the delay. He submits that Section 5 of the Limitation Act, 1963, is applicable on the Court and empowers it to condone the delay and since the Land Acquisition Collector is not a Court, therefore, he has no power.

This Bench has considered the submissions of learned counsel for the parties.

At the outset, it must be noticed that the word “Court” has been defined in the Civil Procedure Code, 1908. On careful reading of the definition of the “Court”, it is apparent that the Land Acquisition Collector does not fall within the definition of “Court”. Still further, the Land Acquisition Act, 1894 has defined the expression “Collector” in Section 3 (c), which is extracted as under:-

3.(a) XX XX

(b) XX XX

(c) *the expression “Collector” means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the [appropriate Government] to perform the functions of a Collector under this Act.”*

The attention of the Court has not been drawn to any provision equating the Land Acquisition Collector with the “Court”. Section 53 of the Act itself provides that the Civil Procedure Code, 1908 shall apply to the proceedings before the Court. It does not provide that the Collector has

been conferred the powers of the Court.

Still further, Section 5 of the Limitation Act, 1963, uses the expression “the Court”. Since, the Land Acquisition Collector is not the “Court” as defined under the Civil Procedure Code, 1908, or under any other Act, therefore, he does not have the power to condone the delay.

In *Sakuru vs. Tanaji (1985) 3 SCC, 590*, the Hon'ble Supreme Court after examining the provisions of Section 5 of the Limitation Act, 1963 and Section 90 of Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, held that the “Collector” under Section 90 has no power to condone the delay.

Further in *Nikko and others vs. State of Haryana and another, 2012(3) PLR 511*, this Court has held that the Collector has no power to extend the period as provided under Section 12(2) of the Land Acquisition Act, 1894. It may be noted here that Section 18 of the Act provides that if the person applying was present or represented before the Collector at the time when he made the award, the application under Section 18 of the Act can be filed within 6 weeks from the date of the Collector's award. Whereas in the second eventuality, the application under Section 18 of the Act can be filed within 6 weeks of the receipt of notice from the Collector under Section 12(2) or within 6 months from the date of Collector's award, whichever period shall first expire.

Keeping in view the aforesaid facts, the learned Additional District Judge Gurgaon, was correct while dismissing the reference under Section 18 of the Act.

Still further, the matter can be examined from another perspective. The appellant has tried to project before the Court that since he

had no knowledge of the award passed on 12.05.2006 as he has not received compensation, therefore, the application under Section 18 has been filed within time from the date of knowledge.

The learned Additional District Judge after examining the record, has as a matter of fact, found that the appellant did receive the compensation paid by the Land Acquisition Collector on 02.06.2006. The compensation is paid only after the award has been passed. Thus, the assertion of the appellant is against the record.

Consequently, this Bench finds no merit in the appeal.

Hence, dismissed.

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

26th July, 2021
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(ANIL KSHETARPAL)
JUDGE

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