

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

205

- 1. XOBJR-154-2021(O&M) in & and
RFA-82-2019(O&M)
Date of Order: 13.12.2021**

NANDU (DECEASED) THROUGH LRS ..Appellant

Versus

STATE OF HARYANA AND ANR. ..Respondents

- 2. XOBJR-13-2021(O&M) in/and
RFA-83-2019(O&M)**

RAM KARAN AND OTHERS ..Appellants

Versus

STATE OF HARYANA AND ANR. ..Respondents

- 3. XOBJR-153-2021(O&M) in/and
RFA-84-2019(O&M)**

GURDYAL SINGH (DECEASED) THROUGH LRS ..Appellant

Versus

STATE OF HARYANA AND ANR. ..Respondents

- 4. XOBJR-157-2021(O&M) in/and
RFA-85-2019(O&M)**

SHIV KUMAR AND OTHERS ..Appellants

Versus

STATE OF HARYANA AND ANR. ..Respondents

- 5. XOBJR-149-2021(O&M) in/and
RFA-448-2020(O&M)**

SUCHA RAM AND OTHERS ..Appellants

Versus

STATE OF HARYANA AND ANR. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Brijender Kaushik, Advocate
Mr. Suresh Kumar Arya, Advocate
for the landowners.

Mr. Shivendra Swaroop, AAG, Haryana and
Ms. Vibha Tewari, AAG, Haryana.

ANIL KSHETARPAL, J(Oral)

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

The Reference Court after recording a finding that the various applications under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as “the 1894 Act”), were filed beyond the time prescribed, has condoned the delay while observing that the landowners shall not be entitled to interest for the period of delay.

It may be noted here that Section 18 of the 1894 Act, prescribes that a landowner who is not satisfied with the award passed by the Land Acquisition Collector, is entitled to file an application for forwarding his request to the Court for redetermination of the compensation. The proviso (a) to Sub-Section 2 of Section 18 of the 1894 Act provides that if the person making the application was present or represented before the Collector at the time when he made his award, the application is required to be filed within six weeks from the date of the Collector's award, whereas, under Clause (b) of the proviso to Sub-Section 2 of Section 18 of the 1894 Act, the period of limitation for filing an application is within six weeks from the date of receipt of the notice from the Collector under Section 12(2) of the 1894 Act. There is another provision in proviso (b), itself, which provides that if the notice under Section 12 has not been received, the period of limitation for filing an application under Section 18 of the 1894, will be six months from

the date of Collector's award.

The Hon'ble Supreme Court, while interpreting the last-mentioned provision, has held that the period of limitation is required to be calculated from the date the landowner has the knowledge of the award.

In all these cases, the reference Court, itself, has held that the date of passing of the award was in the knowledge of the landowners as they had received the payment of the awarded amount.

The learned counsel representing the State of Haryana has pointed out that the landowners have, already, received the amount of compensation and the details, provided by him, are as under:-

<i>Sr. No.</i>	<i>Case bearing No.</i>	<i>Date of receiving compensation</i>	<i>Date of filing reference petition</i>
1.	RFA-82-2019	03.02.2010	09.07.2015
2.	RFA-83-2019	03.02.2010 & 21.04.2010	09.07.2015
3.	RFA-84-2019	03.03.2010	09.07.2015
4.	RFA-85-2019	03.02.2010	09.07.2015
5.	RFA-448-2020	31.03.2010	22.6.2016

Now, the question arises “whether the Land Acquisition Collector has the power to condone the delay or can the Reference Court exercise powers under Section 5 of the Limitation Act, 1963, to condone the delay in filing the reference application?”

This issue has been examined in detail in RFA-420-2021, titled as “State of Haryana and others Vs. Leela Ram and others”, decided on 31.08.2021, wherein, after discussing the relevant judgments passed by the Supreme Court, this Court has held as under:-

“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 timebarred, 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.”

Keeping in view the aforesaid facts, it is evident that the Reference Court has erred in condoning the delay of nearly 6 years in filing the application under Section 18 of the 1894 Act before the Land Acquisition Collector.

In fact, in ***Mohd. Hasnuddin (supra)***, the Supreme Court held that the Tribunal of limited jurisdiction is required to see as to whether the reference made to it by the Collector under Section 18 of the 1894 Act complies with the conditions laid down, therein, so as to give the Court the required jurisdiction to hear the reference.

In the present appeals, the Reference Court has clearly committed an error in overlooking the various judgments passed by the larger Bench of the Supreme Court.

Accordingly, the cross-objections are allowed, whereas, the Regular First Appeals filed by the landowners are dismissed.

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

December 13, 2021

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**(ANIL KSHETARPAL)
JUDGE**

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