

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

CWP-15253-2022 (O&M)
Date of decision: 09.12.2022

Haryana Shahri Vikas Pradhikaran Gurugram

....Petitioner

Versus

Land Acquisition Collector and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Ankur Mittal and
 Mr. Jugam Arora, Advocate for the petitioner
 Mr.J.S.Pannu, AAG, Haryana
 Mr. Sandeep Sharma, Advocate for respondent no.2 and 3

ANIL KSHETARPAL, J (Oral)

CM-18281-CWP-2022

1. Allowed as prayed for.

Main case

2. Haryana Shehari Vikas Pradhikaran Limited has sought issuance of a writ in the nature of Certiorari to quash the Land Acquisition Collector's award, dated 21st April, 2015. The Collector has allowed the application under Section 28A of the Land Acquisition Act, 1894 (hereinafter referred to as the '1894 Act') in order to modify the amount of compensation qua the respondents from Rs. 90,00,000/- per acre to Rs. 1,64,75,000/- per acre, along with all the statutory benefits.

3. Admittedly, respondent No. 2 and 3 did not file an application under Section 18 of the 1894 Act. They filed application under Section 28A on 26th October, 2012, on the basis of judgment passed by the Reference Court on 24th May, 2012 while deciding the cases of various other owners.

4. Section 28A of the 1894 Act is extracted as under:-

"28-A. Re-determination of the amount of compensation on the basis of the award of the Court.

—(1) *Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:*

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to reference under Section 18."

5. It is evident that application for re-determination of the amount of compensation on the basis of award of the Reference Court can be filed within a period of three months from the date of award of the court. Proviso to Section 28A(1) enables the court to exclude the date on which the award was announced and the time requisite for obtaining a copy of the award. There is no other provision to enable the LAC to condone the delay caused.

6. In the present case, the application was filed on 26 October, 2012 i.e nearly five months and one day after the passing of the RC's award dated 24th May, 2012. A copy of the application filed under Section 28A is Annexure P-3. The respondent No. 2 and 3 claim that the same has been filed within the limitation period. They have not prayed for excluding any time period that was taken for getting the certified copy of the award relied upon.

7. The LAC has proceeded to re-determine the amount without examining whether the application was filed within the prescribed limitation period or not. The LAC has just made an observation that the application is moved within the limitation period and it fulfills all the required conditions for re-determination.

8. An application under Section 28A is maintainable before the LAC. Similar is the position of application under Section 18 of 1894 Act. A larger bench of the Hon'ble Supreme Court in 'Mohd. Hasnuddin vs. State of Maharashtra (1979) 2 SCC 572', has held that the LAC is not a court and hence, the provisions of Limitation Act, 1963 including Section 5 of the Limitation Act, 1963, will not be applicable on the LAC. The relevant discussion is in paras 24 to 27 of the said judgment, which are extracted 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.”

9. As far as the question of condoning the delay under the Limitation Act, 1963 is concerned, Section 18 and 28 are parallel provisions. In both the situations, the application is maintainable before the LAC, which is not a court. Hence, the LAC does not have any power to condone the delay.

10. At the cost of repetition, it may be noted here that respondent No. 2 and 3 have not filed an application for seeking the condonation of delay. In fact, the LAC has passed the award without examining the question of limitation.

11. In view of the aforesaid, the writ petition is allowed. The award passed by the LAC on 21st April, 2015 is quashed.

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

09.12.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE