

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMA 972 of 2015

Smt. Baby Chatterjee (Mondal)

Vs.

State of West Bengal & Ors.

with

FMA 973 of 2015

Smt. Bani Ghosal

Vs.

State of West Bengal & Ors.

with

FMA 974 of 2015

Smt. Sandhya Chakraborty

Vs.

State of West Bengal & Ors.

with

FMA 1186 of 2015

Sri Shyama Prosad Chatterjee

Vs.

State of West Bengal & Ors.

with

FMA 1188 of 2015

Smt. Pratima Mukherjee

Vs.

State of West Bengal & Ors.

with

FMA 1190 of 2015
Smt. Jyotsna Banerjee
Vs.
State of West Bengal & Ors.
with
FMA 1191 of 2015
Smt. Nilima Chatterjee (Ghosh)
Vs.
State of West Bengal & Ors.
With
FMA 1193 of 2015
Smt. Purnima Bhattacharjee
Vs.
State of West Bengal & Ors.
with
FMA 1194 of 2015
Smt. Lekha Chatterjee (Roy)
Vs.
State of West Bengal & Ors.
with
FMA 1195 of 2015
Smt. Reba Chatterjee (Bhattacharjee)
Vs.
State of West Bengal & Ors.

For the Appellants

: Mr. Debayan Bera

Mr. Sakti Prasad Chakraborti

For the State

: Mr. Chandi Charan De, Ld. AGP

Mr. Anirban Sarkar

Heard on

: August 3, 2023

Judgment on

: August 3, 2023

DEBANGSU BASAK, J.:-

1. Ten appeals are taken up for analogous hearing as they emanate out of the same order passed in ten different writ petitions.
2. The orders under appeal are all dated September 24, 2014.
3. By the impugned order, the learned Trial Judge, held that the application made under Section 18 of the Land Acquisition Act, 1894 was not within the prescribed time. Therefore, the learned Trial Judge proceeded to dismiss the writ petitions.
4. Aggrieved, the appellants/writ petitioners are before us.
5. Learned Advocate appearing for the appellants submits that, neither a copy of the award was served upon any of the appellants nor was a notice under Section 12 (2) of the Land Acquisition Act, 1894 served upon any of the appellants. He submits that, the period of limitation prescribed under Section 18 of the Act of 1894 commences, upon fulfilment of the criteria specified therein. None of the appellants were aware of the award or its contents. No notice, as noted

above, under Section 12(2) of the Act of 1894 was served upon the appellants.

6. Relying upon *AIR 2018 Supreme Court 3536 (Vijay Mahadeorao Kubade v. State of Maharashtra & Anr.)*, he submits that, limitation prescribed under Section 18 of the Act of 1894 will not commence till the notice of the award is served upon land owner. He relies upon *(2002)1 CAL LT 170 (HC) (Sambhu Nath Kshetry & Ors. Vs. State of West Bengal & Ors.)* in support of the contention that acquiring details of the award does not constitute a notice under Section 12 (2) of the Act of 1894.
7. Learned Senior Advocate appearing for the State submits a status report on behalf of his client which be taken on record. He submits that each of the appellants were aware of the date of the award. He refers to the averments made in the writ petitions in which, the impugned orders were passed, in particular to Paragraph 17 thereof. He submits that a copy of the notice under Section 12(2) was annexed to the writ petitions. That apart, he refers to a letter issued by the appellants dated January 1, 2003, where the appellants

claimed that they were aware of the award. Consequently, he submits that, since each of the appellants were aware of the award, no interference is called for in respect of the impugned orders.

8. The appellants as writ petitioners approached the Writ Court, requiring a reference petition filed by the appellants under Section 18 of the Act of 1894 in respect of specified Land Acquisition cases, to be made to the appropriate Civil Judge. Such writ petitions were considered by the learned Trial Judge and by the impugned order dated September 24, 2014, the learned Judge held that the appellants were served with a notice under Section 12 (2) of the Act of 1894. Therefore, the learned Judge held that the application under Section 18 of the Act of 1894 was not within the prescribed period of time.
9. We required the State to produce materials to establish that any of the appellants was served with the notice under Section 12(2) of the Act of 1894. State submitted a report which we took on record today. The report does not speak of

any notice under Section 12(2) of the Act of 1894 being served individually upon any of the appellants.

10. In the report submitted today, the State relies upon averment made in paragraph 17 of the writ petitions by the appellants to the effect that, notices under Section 12(2) of the Act of 1894 were issued to Himangshu Ghoshal and Sambhu Nath Ghoshal. Neither Himangshu Ghoshal nor Sambhu Nath Ghoshal are appellants in any of the ten appeals under consideration. They did not approach the Writ Court also. Notices under Section 12(2) of the Act of 1894 served on Himangshu Ghoshal and Sambhu Nath Ghoshal cannot be construed to mean service of notice under Section 12(2) of the Act of 1894 upon the appellants. Appellants and the Ghoshals are not connected with each other. State failed to establish service of notice under Section 12(2) of the Act of 1894 upon any of the appellants before us.
11. *Vijay Mahadeorao Kubade (supra)* found that no notice under Section 12(2) of the Act of 1894 was served upon the land

owner. In such circumstances, the reference petition under Section 18 of the Act of 1894 was held to be within time.

12. In *Sambhu Nath Kshetry & Ors. (supra)*, a Single Bench of this Court held that, Section 18 of the Act of 1894 prescribed the time-limit for making the application for reference. Such time-limit commences from the date of making of the award.
13. In the facts of the present case, the appellants filed an application before the appropriate authority under Section 18 of the Act of 1894 for reference to the Court. The appellants are aggrieved by the award passed. The authorities did not make the reference.
14. Section 18 of the Act of 1894 is as follows:

“18. Reference to Court.- (1) *Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.*

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made, -

(a) if the person making it was present or represented before the Collector at the time when he made his

award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

15. Sub-Section (2) of Section 18 requires an applicant to state the grounds on which objection to the award is taken. Proviso to Sub-Section (2) of the 18 prescribes the limitation for the purpose of making an application under Section 18 of the Act of 1894. The proviso to Sub-Section (2) of Section 18 contemplates two scenarios and proceeds to prescribe different period of limitations in respect of the two scenarios contemplated. The first scenario is where, the person making the application under Section 18 was present or represented before the Collector at the time when the Collector made the award. In such a scenario, the time-limit prescribed is six weeks from the date of the award of the Collector. It is to be noted that, the person making the application under Section 18 of the Act of 1894 must be present or represented before the Collector when the Collector was making the award for the time period

prescribed in such scenario, for the period of limitation prescribed therein to operate.

16. In the second scenario, which is all other scenarios except the first, the time-limit is six weeks from the receipt of the notice from the Collector under Section 12 (2) or within six months from the date of the award of the Collector whichever expires first. In the second scenario, the person making the application under Section 18 of the Act of 1894 is not present or represented before the Collector when the Collector makes the award. In respect of such person, notice under Section 12 (2) of the Act of 1894 is required to be served. The time period commences from the date of receipt of such notice. It is for a period of six weeks from the date of receipt.
17. In the facts and circumstances of the present case, notice under Section 12(2) of the Act of 1894 is yet to be served upon the appellants. The appellants filed an application under Section 18 of the Act of 1894. It cannot be said on the strength of Section 18 of the Act of 1894 that such an application is beyond the period prescribed.

18. In such circumstances, we set aside the impugned orders dated September 24, 2014 passed in the ten several writ petitions. We direct the appropriate authority to send the reference petition filed by the appellants under Section 18 of the Act of 1894 to the appropriate Civil Court for adjudication within a period of a fortnight from the date of communication of this judgment and order.
19. **FMA 972 of 2015, FMA 973 of 2015, FMA 974 of 2015, FMA 1186 of 2015, FMA 1188 of 2015, FMA 1190 of 2015, FMA 1191 of 2015, FMA 1193 of 2015, FMA 1194 of 2015, FMA 1195 of 2015** are disposed of accordingly.

(Debangsu Basak,J.)

20. I Agree.

(Md. Shabbar Rashidi, J.)