

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

CR-6466-2018

Date of Decision: July 12, 2023

VARINDA CONSTRUCTION COMPANY

..... Petitioner

Versus

STATE OF PUNJAB AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. S. K. Arora, Advocate for the petitioner.
Ms. Anju Sharma Kaushik, DAG Punjab.
Mr. Pardeep Bajaj, Advocate for respondents No.3 and 4.

HARKESH MANUJA, J. (ORAL)

1. By way of present revision petition, challenge has been laid to orders dated 03.10.2011 as well as 05.05.2018 passed by reference Court-cum-Addl. District Judge, Moga whereby a petition filed at the instance of petitioner, invoking Section 18 of Land Acquisition Act, 1894 came to be dismissed in default followed by dismissal of application seeking its restoration.

2. I have heard learned counsel for the parties and gone through the paper-book.

3. A perusal of order dated 03.10.2011 shows that reference filed under Section 18 of Land Acquisition Act, 1894 was ordered to be dismissed in default by Reference court-cum-Addl. District Judge, Moga on account of non-appearance of petitioner-landowners and application seeking its restoration was also dismissed on 05.05.2018 inter alia on account of the same being delayed by four years.

4. In view of the law laid down by this Court in “**Smt. Kamla**

Devi Vs. State of Haryana 1986 R.R.R. 133” and “State of Punjab

vs. Garja Singh 1993(3) R.R.R. 104”, reference petition filed under Section 18 of 1894 Act cannot be dismissed in default as the same is required to be adjudicated upon on merits by the Reference Court. Paragraph 4 of the judgment passed in case of “**Smt. Kamla Devi**” (**Supra**) is reproduced hereunder for reference:-

4. After hearing the learned counsel for the parties and going through the orders passed in the reference file, I find that it was a fit case which should have been restored by the learned Addl. District Judge in exercise of his inherent powers. It was held by the Patna High Court in Shyam Shankar Sahai’s case (supra) that a land acquisition reference case cannot be dismissed for default on non-appearance of the claimant. Order 9, Rule 8 read with Section 141 of the Code or Section 53 of the Act will not apply to such a case. The Court has to make an award even in absence of any evidence. The Court may be obliged to accept and determine the amount of compensation mentioned in the Collector’s award as correct. But that is not to say that a Court can dismiss the reference case for default. No judgment taking the contrary view has been cited on behalf of the State. Thus, in view of the said judgment the order dated 15.12.1977 dismissing the reference application for default was without jurisdiction and the reference was thus liable to be restored in exercise of the inherent powers.

5. Besides this, I am unable to accept the reasoning recorded by the reference Court while passing the order dated 05.05.2018, dismissing the prayer for restoration made on behalf of the petitioner, wherein it was recorded that the prayer for restoration had no merits as the reference itself was being barred by time. To my mind, the aforesaid observation amounts to pre-judging the issue of limitation regarding which the parties were yet to lead their evidence before Reference Court and the limitation being mixed question of law and fact was required to be adjudicated upon after affording opportunity to both the parties to lead their evidence on the same.

CR-6466-2018**-3-**

5. In view of the discussions made hereinabove, the orders dated 05.05.2018 and 03.10.2011 are hereby set aside. The reference i.e .LR11-7.12.2010 titled as 'Varindra Construction Company Vs. State of Punjab and Ors.' is ordered to be restored to its original number and the Reference Court is directed to decide the same on merits, however, the same shall be subject to cost of Rs.25,000 to be paid to respondent No.3.

6. The aforesaid exercise of adjudicating the reference in question on merits be concluded within a period of one year from today which shall include adjudication upon the plea of limitation as raised by respondents No.3 and 4.

12.07.2023

tejwinder

**(HARKESH MANUJA)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>