

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

Date of Decision:- July 05 , 2023

- 1. CWP-6346-2022 (O&M)**
Krishna Devi ...Petitioner
vs.
State of Haryana & Others ...Respondents
- 2. CWP-6372-2022 (O&M)**
Phul Wanti @ Phul Pati ...Petitioner
vs.
State of Haryana & Others ...Respondents
- 3. CWP-6475-2022 (O&M)**
Veena Rani ...Petitioner
vs.
State of Haryana & Others ...Respondents
- 4. CWP-6427-2022 (O&M)**
Mulakh Raj ...Petitioner
vs.
State of Haryana & Others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Himanshu Arora, Advocate
for the petitioner(s) (in all cases)

Mr. Shivendra Swaroop, DAG Haryana.

Mr. Ankur Mittal, Advocate, for respondent No.2.

HARKESH MANUJA, J.

1. By way of present writ petitions, challenge has been laid to order(s) dated 16.04.2021 passed by Land Acquisition Collector, Urban Estate Deptt., Hisar, Haryana, rejecting the application(s) made by the

petitioner(s) under Section 18 of Land Acquisition Act, 1894 (hereinafter referred as “the Act”). Since the factual matrix as well as the point of law involved in all these cases is identical, the same are being taken together. For convenience, the facts are being taken from CWP 6346 of 2022.

2. Briefly stated, facts of the case are that land of the petitioner was acquired for the purpose of development of commercial and residential Sectors 3, 5, 1 & 4 in the revenue estate of Hisar. Notification under Section 4 of the Act was issued on 19.05.2003, while declaration under Section 6 thereof was issued on 14.05.2004. Award No.13 pertaining to the acquisition was passed by respondent No 3 on 12.05.2006. It is pertinent to mention here that reference related to this acquisition was decided by Addl. District Judge, Hisar vide LAC Case No.181-LA on 05.08.2015 and this Award was upheld with modification by this Court vide judgment dated 04.03.2016 passed in RFA No.71 of 2016. It is claimed by the petitioner that she came to know about the acquisition of land on 04.08.2020 and immediately filed an application under Section 18 of the Act on 07.12.2020 before Land Acquisition Collector i.e. respondent No.3, but the same was rejected on 16.04.2021, simply on the ground of delay.

3. By way of present writ petition, challenge has been laid to order dated 16.04.2021 for quashing the same.

4. Learned counsel for the petitioner submits that Award dated 12.05.2006 was passed without any notice as well as in the absence of petitioner and no notice was received by her as contemplated under Section 12 (2) of the Act. Learned counsel further submits that despite categoric of the fact mention in the application

filed under Section 18 of the Act that petitioner got the knowledge about the acquisition of land only on 04.08.2020, the same was rejected without even affording her an opportunity of hearing and adhering to the principles of natural justice. He also submits that the Land Acquisition Collector rejected the application of petitioner on the ground of delay only, the import of Section 18 of the Act was completely nullified, therefore, order dated 16.04.2021 is liable to be set aside. In support of his contentions, he places reliance upon:

- i. **"Bhagwan Dass and others v. State of UP and others"** in Civil Appeal No. 2069-2070 of 2010 before Hon'ble Supreme Court, reported as **(2010) 3 SCC 545**.
- ii. **"Attar Singh and others v. Government of NCT of Delhi"** in W.P.(C) 1450 of 2015, decided on 19.01.2018, before Hon'ble Delhi High Court.
- iii. **"Shanti Devi & ors. Versus Union of India"** in W.P. (C) No. 10039 of 2016, decided on 30.11.2017 before Hon'ble Delhi High Court

5. On the other hand, prayer made herein has been opposed by learned State Counsel as well as the counsel representing respondent No. 3 while submitting that the reference related to this acquisition was decided vide LAC Case No.181-LA on 05.08.2015 and the said Award was affirmed by this Court vide judgment dated 04.03.2016 in RFA No.71 of 2016 and therefore, the application filed under Section 18 of the Act on 06.11.2020, being after considerable delay, was rightly rejected.

6. I have heard learned counsel for parties and gone through the paper-book as well as the law cited at the Bar. I find substance in

the arguments raised by learned counsel for the petitioner. For the purpose of detail examination of the arguments in the facts and circumstances of the present case, it would be necessary to first gaze through the definition of Section 18, which is reproduced hereunder :-

“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 person 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.”

7. It is the specific case of petitioner that neither she; nor her representative was present before the Collector when the Award was passed as stipulated under Section 18(2)(a) of the Act, as well as no notice was received by her as mandated under Section 12(2) thereof and nothing to the contrary has either been pleaded, or established by the respondents through their written reply. Therefore, only condition on the basis of which respondent No.3 could reject the application made by the petitioner under Section 18 of the Act would be the second condition stipulated under section 18(2)(b) *ibid*, i.e. the application was not made within six months from the date of passing of

Award by the Collector. This condition has been repeatedly interpreted by the Hon'ble Apex Court to the effect that the period of limitation would not commence from the date when the Award was announced by the Collector; rather it has to start from the date when the Award came into the knowledge of landowner. In this regard, reference can be made to para 6 of the judgment of Hon'ble Apex Court in **"Harish Chandra Raj Singh vs. Land Acquisition Officer"**, reported as **AIR 1961 SC 1500**, which is reproduced hereunder:-

"6. There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect person, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot, consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector : it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it, it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made

when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way."

8. Similar preposition of law has been reiterated by Hon'ble Supreme Court in ***Bhagwan Dass's case (supra)*** as well, relied upon by the learned counsel for the petitioner, wherein it was observed that:-

"11. When a land is acquired and an award is made under section 11 of the Act, the Collector becomes entitled to take possession of the acquired land. The award being only an offer on behalf of the Government, there is always a tendency on the part of the Collector to be conservative in making the award, which results in less than the market value being offered. Invariably the land loser is required to make an application under section 18 of the Act to get the market value as compensation. The land loser does not get a right to seek reference to the civil court unless the award is made. This means that he can make an application seeking reference only when he knows that an award has been made. If the words six months from the 'date of the Collector's award' should be literally interpreted as referring to the date of the award and not the date of knowledge of the award, it will lead to unjust and absurd results. For example, the Collector may choose to make an award but not to issue any notice under section 12(2) of the Act, either due to negligence or oversight or due to any ulterior reasons. Or he may send a notice but may not bother to ensure that it is served on the land owner as required under section 45 of the Act. If the words 'date

of the Collector's award' are literally interpreted, the effect would be that on the expiry of six months from the date of award, even though the claimant had no notice of the award, he would lose the right to seek a reference. That will lead to arbitrary and unreasonable discrimination between those who are notified of the award and those who are not notified of the award. Unless the procedure under the Act is fair, reasonable and non-discriminatory, it will run the risk of being branded as being violative of Article 14 as also Article 300A of the Constitution of India. To avoid such consequences, the words 'date of the collector's award' occurring in proviso (b) to section 18 requires to be read as referring to the date of knowledge of the essential contents of the award, and not the actual date of the Collector's award."

9. In these circumstances, learned counsel for the petitioner rightly contends that her case is covered under scenario 3 as categorized in ***Bhagwan Dass's case (supra)***, particularly in view of the specific averment by the petitioner in her application under Section 18 of the Act that she came to know about the acquisition of land only on 04.08.2020. On that account, application filed by her on 06.11.2020 cannot be said to be delayed at this stage without any further enquiry in the matter. Relevant para of ***Bhagwan Dass's case (supra)*** is reproduced here under:-

- "12. The following position therefore emerges from the interpretation of the proviso to section 18 of the Act :-*
- (i) If the award is made in the presence of the person interested (or his authorised representative), he has to make the application within six weeks from the date of the Collector's award itself.*
 - (ii) If the award is not made in the presence of the person interested (or his authorised representative), he has to make the application seeking reference within six weeks*

of the receipt of the notice from the Collector under section 12(2).

- (iii) If the person interested (or his representative) was not present when the award is made, and if he does not receive the notice under Section 12(2) from the Collector, he has to make the application within six months of the date on which he actually or constructively came to know about the contents of the award.*
- (iv) If a person interested receives a notice under section 12(2) of the Act, after the expiry of six weeks from the date of receipt of such notice, he cannot claim the benefit of the provision for six months for making the application on the ground that the date of receipt of notice under section 12(2) of the Act was the date of knowledge of the contents of the award.*

A person who fails to make an application for reference within the time prescribed is not without remedy. It is open to him to make an application under section 28A of the Act, on the basis of an award of the court in respect of the other lands covered by the same acquisition notification, if there is an increase. Be that as it may.”

10. In that eventuality, procedure specified in ***Bhagwan Dass’s case (supra)*** should have been followed, rather than rejecting the application of the petitioner at the first instance and petitioner should have been given an opportunity of hearing and examined on oath regarding the averments made in the application under Section 18 of the Act. Relevant para in ***Bhagwan Dass’s case (supra)*** specifying the procedure is reproduced here under:

- “13. When a person interested makes an application for reference seeking the benefit of six months period from the date of knowledge, the initial onus is on him to prove that he (or his representative) was not present when the award was made, that he did not receive any notice*

under Section 12(2) of the Act, and that he did not have the knowledge of the contents of the award during a period of six months prior to the filing the application for reference. This onus is discharged by asserting these facts on oath. He is not expected to prove the negative. Once the initial onus is discharged by the claimant/person interested, it is for the Land Acquisition Collector to establish that the person interested was present either in person or through his representative when the award was made, or that he had received a notice under Section 12(2) of the Act, or that he had knowledge of the contents of the award. Actual or constructive knowledge of the contents of the award can be established by the Collector by proving that the person interested had received or drawn the compensation amount for the acquired land, or had attested the Mahazar/Panchnama/proceedings delivering possession of the acquired land in pursuance of the acquisition, or had filed a case challenging the award or had acknowledged the making of the award in any document or in statement on oath or evidence. The person interested, not being in possession of the acquired land and the name of the state or its transferee being entered in the revenue municipal records coupled with delay, can also lead to an inference of constructive knowledge. In the absence of any such evidence by the Collector, the claim of the person interested that he did not have knowledge earlier will be accepted, unless there are compelling circumstances to not to do so.”

11. It is pertinent to note here that Division Bench of Hon'ble Delhi High Court in **Attar Singh's case (supra)**, relying upon the judgment in **Bhagwan Dass's case (supra)**, quashed the orders passed by the Land Acquisition Collector rejecting the application under Section 18 of the Act, and without expressing any opinion on merit, issued directions to the Land Acquisition Collector to issue notice

to the landowners, granting personal hearing and allowing them an opportunity to show that the petition under Section 18 of the Act was filed within the period of limitation.

12. Additionally, in ***Shanti Devi's case (supra)*** also, Division Bench of Hon'ble Delhi High Court quashed the order passed by the Land Acquisition Collector rejecting the application under Section 18 of the Act on the ground that once petitioner raise a *prima facie* ground to show that the application under Section 18 of the Act is within the limitation, prior to rejecting the application, it is mandatory for the Land Acquisition Collector to follow the principles of natural justice and thereafter, give a personal hearing to the applicant. Relevant para of ***Shanti Devi's case (supra)*** is reproduced here under:

“11. The objective of noting the submissions made by both the counsel for the parties is only to highlight that the petitioners have been able to raise a prima facie ground to show that the application under Section 18 of the Act is within the limitation. In our view, either the Collector did not apply his mind or in the absence of any hearing the grounds sought to be raised before this Court, could not be raised on account of lack of opportunity. While we are of the view that it is not necessary for this Court to give its opinion on the merits of the matter as this issue is to be first decided by the Land Acquisition Collector and then by the Court of the ADJ, we are of the view that in all cases whether pertaining to lack of limitation or otherwise prior to rejecting the application, it is mandatory for the Land Acquisition Collector to follow the principles of natural justice, to inform the applicant about the defects or deficiencies in the reference petition to enable the applicant to be aware of the same and thereafter give a personal hearing to the applicant or his duly authorized representative and thereafter pass a reasoned order to

enable the applicant to assail the same in accordance with the law.”

13. From a careful perusal of the above mentioned exposition of law on the issue in hand, it is safe to conclude that once a land owner presents an application under Section 18 of the Act and *prima facie* establishes that it is within limitation, there shall not be any outright rejection of the same. Even in case, any shortcoming or lacuna is observed, petitioner shall be given an opportunity to explain the same and the procedure as specified in ***Bhagwan Dass’s case (supra)*** shall be followed. There could be a possibility that the Collector has relevant material to show that the averment made in the application is not correct and in that case he could take a considered decision depending on the material present before him. There could be another possibility that the Collector, after considering the entire material on record, finds that limitation in that particular case is a mixed question of fact and law requires evidence from both sides to reach on a conclusion. In that circumstance, reference could be made after specifying all the details as enumerated under Section 19 of the Act as well as bringing all relevant facts on record regarding the limitation and the Reference Court would be bound to decide on this aspect as well after obtaining evidence from both the sides.

14. Thus, in the facts and circumstances of the present case, Land Acquisition Collector / respondent No 3 should have given due consideration to the averments made in the application, and rather than straight away rejecting the application of the petitioner, she should have been given an opportunity to explain whether her application is

barred on the ground of delay after following the procedure specified in ***Bhagwan Dass's case (supra)***.

15. In view of the discussion made hereinabove and without expressing any opinion on the merits of the case, order(s) dated 16.04.2021 passed by the Land Acquisition Collector in all the writ petitions are set aside. Land Acquisition Collector is directed to issue notice to the petitioners in all writ petitions to grant them personal hearing to show that the application under Section 18 of the Act has been filed within a period of limitation and decide the same on the merits of each case. The parties would appear before the Land Acquisition Collector on a date to be fixed by it within two weeks from the date of receipt of certified copy of this order.

16. In view of the above, all writ petitions are disposed of.

17. Pending miscellaneous application(s), if any, shall also stand disposed of.

July 05 , 2023

sanjay

**(HARKESH MANUJA)
JUDGE**

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