

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

CR-4011-2023(O&M)

Date of Decision: July 19, 2023

RAJESH @ RAJESH MAGO

..... Petitioner

Versus

STATE OF HARYANA AND ANOTHER

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Navmohit Singh, Advocate for petitioner.
Mr. Shivendra Swaroop, DAG Haryana.

HARKESH MANUJA, J. (ORAL)

1. By way of present Civil Revision, challenge has been laid to an order dated 15.09.2018 passed by Reference Court-cum-Addl. District Judge, Yamuna Nagar at Jagadhari whereby Reference under Section 18(2)(b) of Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act') filed at the instance of petitioner-landowner has been dismissed being time-barred.

2. In the present case, learned counsel for the petitioner submits that the land owned by petitioner, situated in Hadbast No.404, village Gulamnagar, Teshil Jagadhari, District Yamuna Nagar was acquired vide notification dated 30.05.2005 issued under Section 4 of 1894 Act followed by notification dated 22.05.2006 issued under Section 6 thereof. The land was acquired for the public purpose namely development and utilization of the same as a residential, commercial area for Sector 22, 23 and 24 part of Jagadhari and the award under Section 11 was passed on 16.07.2007. Thereafter, reference under

CR-4011-2023(O&M)**-2-**

Section 18(2)(b) of the 1894 Act was invoked which stands declined being barred by limitation.

3. Impugning the findings recorded by Reference Court, learned counsel for petitioner submits that in the present case neither any notice of award was ever served upon petitioner as contemplated under Sub-Section 2 to Section 12 of 1894 Act nor her or his representative was present at the time of passing of award and thus the reference could not have been declined being barred by limitation, the same having been filed within six months from the date of knowledge of contents of award.

4. On the other hand, learned State counsel submits that though the plea of non-serving of notice under Sub-Section 2 to Section 12 of 1894 Act was pleaded in the petition, however, the petitioner-landowner never appeared as witness in support thereof before the Reference Court and the same was never substantiated during trial.

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

6. Once the petitioner-landowner specifically and categorically pleaded in his reference about non-compliance of Sub-Section 2 to Section 12 of 1894 Act, besides pleading that neither he nor his representative were present at the time of passing of award, the onus shifted upon respondent to rebut the same by producing evidence to the contrary so as to confer knowledge of contents of the award upon the petitioner-landowner, may be, directly or in an implied manner. The

petitioner-landowner could not have been called upon to prove something in negative.

7. The Reference Court while passing impugned order went wrong while declining the reference being barred by limitation only on the ground that the petitioner-landowner could appear as a witness in support of the averments made in the reference petition. In the absence of there being any evidence to the contrary or there being any specific and categoric averment in the written statement by respondents about service of notice under Section 12(2) of the Act upon the landowner, the reference could not have been declined being barred by limitation.

8. Resultantly, the present petition is allowed and the impugned order dated 15.09.2018 passed by the Reference Court is hereby set aside and the matter is remanded back for its afresh adjudication upon affording opportunity to both the parties to lead their evidence in support of the respective claims. However, it is made clear that issue of limitation shall be adjudicated upon by the Reference Court, afresh. Considering the fact that the land in the present case was acquired in the year 2005, the Reference Court is requested to dispose of the proceedings preferably within a period of one year from today.

19.07.2023
tejwinder

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No