

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

RFA-442-2015 (O&M)

Reserved on :- **July 13 , 2023**

Date of Pronouncement:- **October 13, 2023**

Dinesh Kumar & Others

...Appellants

vs.

State of Haryana & Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Shailendra Jain, Senior Advocate with
Ms. Ashmita Sandhu, Advocate,
for the appellants.

Mr. Shivendra Swaroop, DAG, Haryana,
for respondents No.1 and 2.

Mr. Pritam Singh Saini, Advocate,
for respondent No.3.

HARKESH MANUJA, J.

CM-582-CI-2023 in RFA-442-2015

Present application filed under Order 6 Rule 17 is merely an attempt to correct the course of action at a belated stage. If application for amendment as sought for is allowed, which removes the basis of the order of a Court, then Appellate Court will be flooded with such requests and would make the hearing before the lower Court redundant. The futility of this amendment application is also substantiated from the fact that the present appeal is pending before this Court since 2015 while the amendment application has been filed in 2023, and thus, the same is dismissed.

MAIN CASE :

1. Present appeal has been filed against the decision dated 25.08.2014 passed by Ld. Additional District Judge, Gurgaon (hereinafter referred to as 'Reference Court'); whereby reference filed by the appellants Under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred as '1894 Act') against the award dated 24.01.2007 was dismissed on the ground of limitation.

2. Briefly stated, facts of the case are that notification under Section 4 of 1894 Act was issued on 27.09.2005 through which 819K 6M land, including that of the appellants, of Village Kasan, Tehsil and District Gurgaon was sought to be acquired, for public purpose, namely, setting up of Ch. Devi Lal Industrial Model Township, Manesar and completing the infrastructure facilities as well as other public utilities such as roads, water supply, sewerage, electrification, drainage, transport hub, communication etc. Declaration under Section 6 of the 1894 Act was issued on 02.06.2006 & subsequently on 24.01.2007, Land Acquisition Collector (for short 'LAC') announced Award No.4 dated 24.01.2007 whereby the landowners were awarded compensation @ Rs.12.5 lac per acre for all kinds of land. Aggrieved thereof, the appellants preferred reference petition before LAC on 26.03.2010, who, in turn, forwarded the same to the Reference Court for its adjudication in exercise of powers under Section 18 of the 1894 Act.

3. The Reference Court dismissed the petition vide its award dated 25.08.2014 on the point of limitation, disbelieving the version of

appellants for delay, primarily on the ground that in cross-examination he admitted the factum of having received notice of acquisition as well as notice pertaining to the compensation. It would also be appropriate to mention here that the Reference Court also found that compensation was received by the appellants on 08.02.2007 and thus, the reference filed on 26.3.2010 was beyond limitation.

4. Impugning the aforesaid Award dated 25.08.2014, learned Senior counsel for the appellants has made comprehensive arguments. Learned Senior counsel submits that land acquisition is a special enactment for the purpose of acquiring the land by the State and special procedure specified in the 1894 Act has to be followed. He further submits that State while filing written statement before the reference Court did not mention anywhere that the appellants had knowledge of the award and no specific issue in this regard was framed as such. He further submits that even if it was admitted that the compensation under the award was received by the appellant on 08.02.2007, it cannot be presumed that he had the knowledge of contents thereof, as in view of Section 31(1) of 1894 Act, it is obligatory for the LAC to tender amount and it nowhere relates to the service of notice of award and specifically its content. He further points out that all the Sections of 1894 Act are independent to each other and they are not inter-dependent and even Section 18, which pertains to filing of reference petitions is independent and has no bearing on payout of compensation. For further arguments he refers to Section 18 of the 1894 Act which is reproduced below:-

“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.”

Referring to the proviso of Section 18 of 1894 Act, he submits that while it is admitted position of fact that as neither appellants were present when award was made; nor any notice under Section 12 was given to them, their case would not fall under Section 18(2)(a) or first part of 18(2)(b) of 1894 Act and would be covered by the second condition specified in Section 18(2)(b) i.e. reference should be filed within six months from the date of the award passed by the LAC.

Further referring to the judgment of **“Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition officer”**, reported as AIR 1961 Supreme Court 1500, he contends that the date of award has been interpreted by the Hon’ble Apex Court to be the date of

knowledge of award. Also, referring to “**State of Punjab v. Mst Qaisar Jehan Begum and another**”, reported as AIR 1963 Supreme Court 1604, he contends that knowledge must relate to the essential contents of the award which must be made known either actually or constructively. On the basis of these judgments, he contends that appellants at no point of time had the knowledge of the essential contents of the award and merely because appellant Dinesh Kumar while appearing as PW1, in his cross-examination, admitted the fact that he got notice of award or on the basis of acceptance of the compensation amount, it cannot be said that he had knowledge of essential content of award which he is required to have in order to effectively challenge the award and make reference under Section 18 of the 1894 Act.

5. In addition to that he also submits that just because the appellants did not make relevant averment in the reference petition that they have no knowledge of the award, the reference could not have been decided against them as no counter argument to this effect was taken by the State before the Reference Court and in any case appellants have filed an application under Order 6 Rule 17 before this Court to amend the reference petition. He further contends that in view of “**Bhagwan Das & Ors. v. State of U.P. and Ors.**”, reported in AIR 2010 Supreme Court 1532, once the landowner takes a plea in his reference petition that he did not know about the contents of award, initial burden is discharged by him and the onus shifts upon the respondent to rebut it by leading evidence in this regard.

6. On the other hand, learned counsel for respondent No.3 submits that neither in the reference petition; nor in the application for condonation of delay before the reference Court, any averment has been made that despite having received the compensation amount, appellants did not have any knowledge about the contents of the award. He further submits that even in the affidavit of landowner produced on record as PW1/A before the Reference Court, there is no averment to this effect. He also submits that once as a matter of fact, compensation is received by the landowner, it amounts to constructive notice and implied knowledge of the contents of the award as has been held in ***Bhagwan Das's*** case (supra).

Referring to the cross-examination of the landowner before the Reference Court, he also points out that the landowners signed the power of attorney in English and thus, cannot be said to be an uneducated person. Drawing the attention of the Court towards amendment application, he submits that for the first time it has been averred that he did not have any knowledge about the contents of award and this is in fact an afterthought as this application has been filed before this Court in year 2023 only; whereas the present appeal was filed in 2015 and therefore, even this amendment application is liable to be dismissed. He also places reliance upon ***Bhagwan Das's*** case (supra) to contend that once the payment is received by the landowners it means they have the knowledge of the contents of the award. Arguments raised by learned State counsel are also on the same line and are not being reiterated for the sake of brevity.

7. I have heard learned counsel for parties and gone through the paper-book as well as the record of the case. I am not able to find much substance in the arguments raised by the learned counsel for the appellants.

8. Though learned counsel for the appellants contends that appellants could not file any reference in the absence of knowledge of the essential contents of the award, however, there is no such averment in the reference petition or even in the application for condonation of delay filed before the reference Court. Rather, in the application for condonation of delay as well as in reference petition, it has been pleaded that appellants being poor daily wagers do not have the knowledge of the intricacies of law and therefore, on that account delay has been caused. Relevant part from the application for condonation of delay is reproduced hereunder:

“The applicant/petitioner most respectfully submits as under:-

- 1. That the applicant are quite innocent villagers and illiterate persons and they are engaged in daily basis labourer.*
- 2. That the applicants have no knowledge of law applicant could not file the reference u/s 18 of L.A.C. Before the competent authority within the time due to insufficient knowledge of law points.*
- 3. That the applicants have not delayed this reference willfully but due to the lack of knowledge of law. That the reference is delayed only by 36 months in filing the same..*

It is therefore, most respectfully prayed that the application of the applicant may kindly be allowed and the delay may kindly be ordered to condone and the petition U/s 18 of L.A Act may kindly be deemed as filed within limitation.”

A perusal of the above reveals that only ground taken is ‘no knowledge of law’; but no averment was made that they had no knowledge about the contents of the award. It is settled principle of law that ignorance of law is no excuse. In reference petition as well, only ground taken is no knowledge of law which also stands requires to be negated on the same ground.

9. Additionally, appellant Dinesh Kumar himself in the cross-examination admitted before the Reference Court that he got notice of the award and had knowledge about the same. Relevant part of his cross examination is reproduced here:

“...I have received the notice of said acquisition personally. The said notice was related to the receiving of compensation/awarded amount. Even then, I did not file any reference against said acquisition.....”

10. This admission by the appellant is also in sync with the finding of the reference Court based on the record of acquisition which was produced by the concerned Patwari, that compensation was received by appellants on 08.02.2007. In view of **Bhagwan Das’s** case (supra), actual or constructive knowledge of the contents of the award can be established by proving that the person interested had received or drawn the compensation amount for the acquired land. Relevant para of this judgment 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. Even in **Qaisar Jehan Begum's case (supra)**, relied upon by the learned counsel for the appellants, the date on which

compensation was received was taken as the date of knowledge and the limitation, for the purpose of filing of petition under Section 18 of 1894 Act, was calculated accordingly. Relevant para of the same is reproduced hereunder:-

“This evidence was not seriously contradicted on behalf of the appellant and the learned Subordinate Judge did not reject it. It is worthy of the note that before the Collector also the appellant did not seriously challenge the statement of the respondents that they came to know of the award on July 22, 1955 the date on which the compensation was paid. On the reply which the appellant filed before the learned Subordinate Judge there was no contradiction of the averment that the respondents had come to know of the award on July 22, 1955. That being the position we have come to the conclusion that the date of knowledge in this case was July 22, 1955. The application for a reference was clearly made within six months from the date and was not therefore barred by time within the meaning of the second part of clause (b) of the proviso to Section 18 of the Act.”

12. Learned Senior counsel argues that knowledge of award does not mean that the appellants had the knowledge of essential contents of the award and to make a reference, one is required to have knowledge of the essential contents of the award so as to make an appropriate challenge, and in support of his contention, he places reliance upon judgment of Bombay High Court (Nagpur Bench) in **"Maharashtra State Power Generation Co. Ltd. v. Dr. Sheshrao**

Baliram Ingole", reported as 2016(2) AIR Bom.R 681, wherein it was held:-

- "43. Keeping in view the law laid down by the Apex Court in the decisions in the cases of (a) Raja Harish Chandra, (AIR 1961 Supreme Court 1500) (b) Mst. Qaisar Jehan Begum, AIR 1963 SC (c) Bhagwan Das, AIR 2010 Supreme Court 1532 (d) Premji Nathu, AIR 2012 Supreme Court 1624 and (e) Madan and another, AIR 2014 Supreme Court 846 cited supra, the following principles emerge –*
- "i) In the cases falling under clause (a) of the proviso below Sub-Section (2) of Section 18 of the Land Acquisition Act, if the person making the reference ("the claimant") was present or represented before the Collector at the time when the award is made, it can be said to be made when it is so pronounced and the period of limitation starts running from that date, and after expiry of the period of six weeks from such date, the reference has to be dismissed as barred by the law of limitation.*
- (ii) If the date for pronouncement of the award is communicated to the claimant and it is accordingly pronounced on the date so previously announced, the said award is said to be communicated to the claimant concerned even if he is not actually present on the date of its pronouncement and the period of limitation shall lapse after six weeks from the date of such pronouncement.*
- (iii) In the cases falling in first part of clause (b) in the proviso below Sub-Section (2) of Section 18 of the said Act, what is relevant to be established is the receipt of notice from the Collector under Section 12, Sub-Section (2) of the Land Acquisition Act, and the period of six weeks*

prescribed therein starts running from the date of either actual or constructive knowledge of essential contents of the award and it is not a mere knowledge of the fact that the award has been made is sufficient, to hold that the period of limitation starts running from such date without there being any communication, bringing to the notice of the party concerned, the essential contents of the award, either actual or constructive.

- (iv) *In the cases falling in second part of clause (b) in the proviso below Sub-Section (2) of Section 18 of the Land Acquisition Act, the same principles laid down in respect of first part of clause (b) therein, would apply for starting the period of limitation, but in such a case, the limitation would expire after expiry of six months from the date of the Collector's award."*

13. However, reliance placed by learned Senior counsel in this regard is misplaced. The purpose of giving 6 months, when limitation in a particular reference is covered by the second part of Section 18(2)(b) of 1894 Act, is that once the landowner gets knowledge of the award, he could make sincere efforts to get a copy of the award and then accordingly make a reference. Reliance in this regard can be placed on **"Premji Nathu v. State of Gujarat and Anr."**, reported as AIR 2012 Supreme Court 1624, relevant para of which is reproduced here under:

- "11. The reason for providing six months from the date of the award for making an application seeking reference, where the applicant did not receive a notice under Section 12(2) of the Act, while providing only six weeks from the date of receipt*

of notice under Section 12(2) of the Act for making an application for reference where the applicant has received a notice under Section 12(2) of the Act is obvious. When a notice under Section 12(2) of the Act is received, the landowner or person interested is made aware of all relevant particulars of the award which enables him to decide whether he should seek reference or not. On the other hand, if he only comes to know that an award has been made, he would require further time to make enquiries or secure copies so that he can ascertain the relevant particulars of the award. What needs to be emphasised is that along with the notice issued under Section 12(2) of the Act, the land owner who is not present or is not represented before the Collector at the time of making of award should be supplied with a copy thereof so that he may effectively exercise his right under Section 18(1) to seek reference to the Court.”

14. This Court might have been in a position to show some indulgence in case the appellants had proved that after receipt of compensation under the Award, they made sincere efforts to get a copy thereof and further that they were prevented by some sufficient reasons, but there is nothing on record to show that any such efforts were made by the appellants and while the knowledge of the award was obtained on 08.02.2007 with receipt of compensation, reference was made in 2010 only without there being much on record to justify this long delay.

15. The argument raised by learned Senior counsel that no issue regarding limitation was framed by the Reference Court, is also without substance. In view of the mandate of the Section 18 of the

1894 Act, it is obligatory for the reference Court to determine whether a reference petition is within limitation or not. Reliance in this regard can be placed on the following paragraphs of Judgment of Hon'ble Apex Court in "**Mohd. Hasnuddin v. State of Maharashtra**" reported as (1979) 2 SCC 572, wherein it held that:

- "25. The conditions laid down in Section 18 are 'matters of substance and their observance is a condition precedent to the Collector's power of reference', as rightly observed by Chandavarkar J. in Re Land Acquisition Act (supra). We are inclined to the view that the fulfilment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of the Collector to make the reference exists. It must accordingly be held that the making of an application for reference within the time prescribed by proviso to Section 18, sub-Section (2) is a sine qua non for a valid reference by the Collector.*
- 26. 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's case (supra)."*

16. Thus, as a crux of the discussion made hereinabove, following points of law may be summarized on the basis of the judgments of the Hon'ble Apex Court:-

- i) "The date of the award" used in the Section 18(2)(b) must be the date when the award is either communicated to the party or is known by him either actually or constructively. [**Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition officer**”, reported as AIR 1961 Supreme Court 1500]
- ii) Date on which compensation was received can be conclusively taken as the date of knowledge of award and application for a reference has to be made within six months from this date. [**State of Punjab v. Mst Qaisar Jehan Begum and another**”, reported as AIR 1963 Supreme Court 1604]
- iii) 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. [**Bhagwan Das & Ors. v. State of U.P. and Ors.**”, reported in AIR 2010 Supreme Court 1532]
- iv) The purpose of giving 6 months, when limitation in a particular reference is covered by the second part of Section 18(2)(b), is that once the landowner gets knowledge of the award, he could make sincere efforts to get a copy of the award and then accordingly make a reference application. [**Premji Nathu v. State of Gujarat and Anr.**”, reported as AIR 2012 Supreme Court 1624]
- v) Making of an application for reference within the time prescribed by proviso to Section 18, sub-Section (2) is a sine qua non for a valid reference by the Collector and therefore, it is

the duty of reference Court 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. [**“Mohd. Hasnuddin v. State of Maharashtra”** reported as (1979) 2 SCC 572]

17. In view of the discussion made hereinabove, this appeal is dismissed being devoid of merits.
18. Pending miscellaneous application(s), if any, shall also stand disposed of.

October 13, 2023
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes