

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

RFA-1274-2018 (O&M)

Decided on:-21.08.2023

Bakhtawari Devi and others

....Appellants..

vs.

State of Haryana and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Deepak Girotra, Advocate,
for the appellants.

Mr. Shivendra Swaroop, DAG, Haryana.

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been laid to an award dated 24.11.2017 passed by the Reference Court-cum-Additional District Judge, Rohtak, whereby, reference petition filed under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as “1894 Act”), at the instance of appellants-landowners, stands rejected being barred by limitation.

2. In the present case, the land of the appellants, situated in the revenue estate of Village Para, Tehsil and District Rohtak, was acquired vide notifications dated 15.12.2006 and 14.12.2007, issued under Sections 4 and 6, respectively, of the 1894 Act, for the public purpose of residential Sector 36, Rohtak. Award under Section 11 of the 1894 Act was announced on 09.12.2009. Aggrieved thereof, appellants filed reference petition under

Section 18 of the 1894 Act on 13.12.2010, seeking enhancement of compensation alongwith an application under Section 5 of Limitation Act, 1963 with the averments that no notice under Section 12(2) of the 1894 Act was ever served upon the appellants, thus, the reference petition was within limitation from the date of knowledge of the award.

3. Upon notice, though a detailed written statement was filed on behalf of the respondents, however, no particulars were mentioned as to whether the appellants or their representatives were ever present at the time of passing of the award or any notice thereof was served upon them in compliance of Section 12(2) of the 1894 Act. Even no reply to the content of the application seeking condonation of delay was ever filed.

4. Although, the application seeking condonation of delay filed on behalf of the appellants/landowners was not *per se* maintainable, however, even if the same was considered to be the part of the reference petition having been filed simultaneously, no specific reply controverting the said contents having been filed by the respondents, the same went un-controverted.

5. The reference Court vide impugned award dated 24.11.2017, dismissed the reference petition filed by the appellants/landowners being barred by limitation with the averments that the award in the present case was passed on 09.12.2009, whereas, reference petition under Section 18 of the 1894 Act was filed on 13.12.2010 and while interpreting first two lines from the cross-examination of PW-2, inference was drawn that the appellants were having knowledge about the passing of the award and thus, the petition was barred by limitation.

6. Impugning the aforementioned award, learned counsel for the appellants submits that the reference Court wholly misinterpreted the cross-examination of PW-2/Naresh Kumar, who merely as a matter of fact mentioned the date of passing of the award, but never admitted the factum of its knowledge, soon after it was made and thus, the reference petition filed on behalf of the appellants on 13.12.2010 after having received compensation amount on 11.11.2010 was clearly within limitation.

7. On the other hand, learned State counsel submits that the appellants were having complete knowledge about the factum of passing of the award and thus, the reference petition filed on 13.12.2010 was wholly barred by limitation. He also submits that the application filed at the instance of appellants invoking Section 5 of the Limitation Act was not maintainable and thus, the contents stated thereupon could not have been relied upon and prays that the impugned award does not warrant any interference.

8. I have heard learned counsel for the parties and gone through the paper book, I find substance in the submissions made on behalf of the appellants/landowners.

9. For the purpose of adjudication of the present case on merit, it would be appropriate to refer to first few lines from the cross-examination of PW-2-Naresh Kumar, which upon translation are reproduced hereunder:-

“It is correct that award No.38 dated 09.12.2009 was passed regarding the land under acquisition. It is correct that reference under Section 18 of the 1894 Act was filed before the Collector Urban Estate on 13.12.2010. It is correct that the reference was filed after one year”.

A perusal of the relevant portion of the cross-examination of PW-2/Naresh Kumar, shows that the witness/landowner never admitted the factum of knowledge of passing of the award, soon after it was made by the Collector, but merely mentioned the date of passing of the award as a matter of fact only. Thus, the learned Reference Court while declining the reference petition being barred by limitation wholly misinterpreted the statement made by PW-2/Naresh Kumar.

10. No doubt, an application filed under Section 5 of the Limitation Act, 1963 would not be maintainable at the instance of appellants/landowners, however, once the same was filed along with reference petition under Section 18 of the 1894 Act, the contents thereof can be treated as forming part of it and thus, could be relied upon being a fact pleaded, in the absence of any specific rebuttal to the same by the respondents either in their written statement or by way of filing any specific reply to the said application. In the application, it was specifically mentioned that no notice or information about the award was ever served upon the appellants/landowners.

11. Moreover, no document whatsoever was placed on record by the respondents to establish that any notice under Section 12(2) of the 1894 Act was ever served upon the appellants/landowners or none was even present at the time of passing of the award. Still further, no evidence was brought on record to establish or attribute any knowledge about the contents of the award to the appellants/landowners by the respondents. In the absence of any such evidence having been brought on record, the reference petition having been filed in less than two months of receipt of compensation by the

appellants could not have been dismissed by the reference Court being barred by limitation.

12. Accordingly, in view of the discussion made herein above, the findings recorded by the reference Court on issue No.3 regarding dismissal of reference being barred by limitation, are hereby reversed.

13. At this stage, learned counsel for the appellants-landowners submits that the matter in issue on the point of determination of market value is squarely covered by the decision rendered by this Court in ***RFA-9727-2014, “Jai Pal Singh and another vs. State of Haryana and others”***, decided on 29.03.2022, wherein also the land situated in the same revenue estate of village Para, Tehsil and District Rohtak was acquired vide notifications dated 15.12.2006 and 14.12.2007, issued under Sections 4 and 6 of the 1894 Act, respectively, and for the same purpose, he relies upon para 6.9 thereof, which reads as under:-

“6.9 As already noticed, the most appropriate sale exemplar is sale deed No.1498, dated 19.05.2006, which reflects as per acre price at the rate of Rs.40,00,000/-. There is a gap of 7 months’ between the same exemplar and the notification under Section 4 of the 1894 Act. Therefore, the price is increased at the rate of 10% per annum. Hence, the base value of Rs.40,00,000/- shall be liable to be increased by 6%. Accordingly, the price is worked out at Rs.42,40,000/- per acre.”

14. On the other hand, learned State counsel has not been able to controvert the aforementioned factual aspects of the matter.

15. Accordingly, present appeal is disposed of in terms of the above mentioned decision dated 29.03.2022, passed in the case of ***Jai Pal Singh’s***

case (supra) and the appellants are held entitled for similar market value @ Rs.42,40,000/- per acre along-with all statutory benefits and interest available under the amended Land Acquisition Act, 1994.

15. Pending miscellaneous applications, if any, in which no separate orders have been passed, stand disposed of accordingly.

21.08.2023
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(HARKESH MANUJA)
JUDGE

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