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

RFA No. 1814 of 2018 (O&M)

Date of Decision: 16.11.2023

Nihali and others

...Appellants

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Amit Jain, Advocate
for the appellants-landowners.

Ms. Vibha Tewari, Assistant Advocate General, Haryana

HARKESH MANUJA, J. (ORAL)

The appellants-landowners, by way of present appeal preferred under Section 54 of the Land Acquisition Act, 1894 (**for short “the Act”**), are seeking setting aside of the Award dated 28.09.2017 passed by learned Additional District Judge, Gurugram (**hereinafter to be referred as “Reference Court”**), whereby the reference petition filed at their instance invoking Section 18 of the Act, stands dismissed being barred by limitation.

[2] Briefly, the facts are that in pursuance to Haryana Govt. Notification under Section 4 of the Act issued on 17.11.2003, followed by Notification dated 18.11.2003 under Section 6 thereof, land measuring 0.54 acres, including the land of appellants, situated in revenue estate of Village **Wazirabad**, Tehsil & District Gurgaon / Gurugram, was acquired. The public purpose for acquisition of the land was stated to be development and

utilization of the land for providing road for Sector 52-52A & Sector 56-57 at Gurgaon / Gurugram. The Land Acquisition Collector, Gurgaon / Gurugram (for short "LAC"), vide Award No. 36, dated 19.03.2004, assessed the market value of acquired land @ Rs. 12,00,000/- per acre for all types of land alongwith other statutory benefits.

[3] Dissatisfied with the aforesaid Award, the appellants-landowners filed objections under Section 18 of the Act, which came to be dismissed being barred by limitation vide award dated 28.09.2017 passed by Reference Court. Hence, the present appeal.

[4] Impugning the aforesaid award dated 28.09.2017 passed by Reference Court, learned counsel for the appellants-landowners submits that though the award in the present acquisition was passed on 19.03.2004 by the LAC; however, neither any notice under Section 12(2) of the Act was served upon the appellants, nor they were even present at the time of passing the said award. He further submits that in pursuance to the aforesaid award, amount of compensation was released in favour of the landowners on 07.05.2007, while reference petition was filed immediately thereafter on 08.06.2007, i.e. within a period of six weeks thereafter and thus, the same could not have been dismissed being barred by limitation.

[5] On the other hand, learned State Counsel submits that the appellants-landowners assailed the acquisition proceedings by virtue of filing a writ petition bearing CWP No. 1896 of 2004 and thus, they were in the knowledge of factum of passing of the award dated 19.03.2004 by the LAC and still invoked the reference under Section 18 of the Act after delay of almost three years; thus, the same was rightly declined by the Reference Court on the point of limitation. She also submits that the remedy of Section 28-A of the Act was still available with the appellants-landowners.

[6] I have heard learned counsel for the parties and gone through the paper-book as well as records.

[7] A perusal of the record shows that a specific averment was made in the reference petition filed at the instance of appellants-landowners that the amount of award was released in their favour on 07.05.2007 and the reference petition under Section 18 of the Act was filed immediately thereafter on 08.06.2007, i.e. within a period six weeks thereafter. This fact was even corroborated from statement No. 19, filed at the instance of LAC before the Reference Court, which also records that the amount of compensation was released in favour of the landowners on 07.05.2007. Even, appellant No. 4-Suresh Kumar, who is one of the landowners, while appearing as PW-1, reiterated the same in his examination-in-chief, however, there was no cross-examination to the part of his deposition that the amount of award was received by the landowners on 07.05.2007.

In this view of the matter, once no evidence at all was adduced from the side of respondents so as to show that either the notice of award as contemplated under Section 12(2) of the Act was ever served upon the appellants-landowners or they were even present at the time of passing of the award, the reference petition filed at their instance, within a period of six weeks of having received the amount of compensation, could not have been held to be barred by limitation. The only reliance placed upon by the learned State Counsel about the filing of CWP No. 1896 of 2004 cannot come to her rescue as neither copy of writ petition nor any other record relating thereto was produced in evidence so as to show that the copy of award dated 19.03.2004 passed by the LAC was part of those proceedings, thereby conferring knowledge of the same upon the appellants-landowners.

[8] Also, in the humble opinion of this Court, no merit can be formed in the submissions made on behalf of learned State Counsel that the appellants-landowners could have availed the remedy under Section 28-A of the Act. In fact, the cause of action in favour of landowners as regards the remedies available under Sections 18 & 28-A of the Act is totally different and distinct. Once, in the given facts and circumstances, remedy under Section 18 of the Act is available, the appellants-landowners cannot be made to invoke Section 28-A of the Act as the said remedy is to be enforced and available when the landowners fails to invoke Section 18 of the Act or has even lost for some lawful reason.

[9] In view of the discussion made hereinabove, the award dated 28.09.2017 passed by Reference Court is set aside and the matter is remitted back to the Reference Court for its fresh adjudication upon merits. Considering the fact that the acquisition pertains to the year 2003, the Reference Court is requested to decide the proceedings as expeditiously as possible, preferably within a period of one year from the date of receipt of this decision.

[10] The parties through their respective counsels are directed to appear before the Reference Court on 30.11.2023.

[11] **Disposed off.**

[12] Pending application(s), if any, shall also stand(s) disposed off.

November 16, 2023

‘dk kamra’

**(HARKESH MANUJA)
JUDGE**

Whether Speaking / Reasoned :	Yes	No
Whether Reportable :	Yes	No