

RFA No.3060 of 2018 (O&M)

2023:PHHC:148765

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

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RFA No.3060 of 2018 (O&M)
Date of Decision: 22.11.2023

AMAR SINGH AND ANR.**... Appellants****Vs****STATE OF HARYANA AND ANR.****...Respondents****CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: None for the appellants.

Ms. Vibha Tewari, Asstt. A.G., Haryana.

HARKESH MANUJA, J. (Oral)

[1]. By way of present appeal, challenge has been laid to an award dated 29.01.2018 passed by the Addl. District Judge, Kurukshetra (hereinafter to be referred as 'Reference Court'), whereby the reference petition invoked under Section 18 of the Land Acquisition Act, 1984 (hereinafter to be referred as 'the 1894 Act') at the instance of appellants/landowners was dismissed being time barred.

[2]. Briefly stating, land owned by the appellants, situated within revenue estate of village Chhapra, Tehsil Shahabad, District Kurukshetra was sought to be acquired vide notification dated 27.03.2012 issued under Section 4 of the 1894 Act, followed by notification dated 27.03.2013, issued under Section 6 thereof.

[3]. The award dated 04.07.2013 was passed by the Land Acquisition Collector under Section 11 of the 1894 Act, whereby the market value of the acquired land was determined @ 28 lakhs per acre, besides grant of other statutory benefits.

[4]. Aggrieved against the aforesaid award dated 04.07.2013, the appellants/landowners invoked Section 24 along with Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 read with Section 18 of the 1894 Act. The reference petition was filed on 24.03.2014 along with an application seeking condonation of delay in filing thereof.

[5]. No specific reply to the application seeking condonation of delay was filed on behalf of the respondent/Land Acquisition Collector. In the written statement filed on behalf of the respondents, no specific averment was made as regards issuance of notice under Section 12(2) of the 1894 Act upon the appellants/landowners informing them about passing of the award besides conveying them the contents thereof.

[6]. The Reference Court vide award dated 29.01.2018 dismissed the reference petition while holding the same to be barred by limitation observing that the award under Section 11 of the 1894 Act was passed on 04.07.2013, whereas the reference petition was filed on 24.03.2014, thereby the same was filed after expiry of limitation period prescribed under Section 18 of the 1894 Act.

[7]. No one has appeared for the appellants, while on the other hand, learned State Counsel submits that notice dated 14.06.2013 was

served upon the appellants/landowners in consonance with Section 9 of the 1894 Act, wherein the tentative date of passing of award was mentioned and thus the appellants/landowners were having due notice/knowledge of passing of the award. He further contends that even in application for condonation of delay, no averment has been made that the landowners did not receive any notice under Section 12(2) of the 1894 Act. Learned State counsel also relies upon the following para from the judgment of Hon'ble Apex Court in **"Bhagwan Das & Ors. v. State of U.P. and Ors."**, reported in AIR 2010 Supreme Court 1532:-

"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."

By referring to above para, Ld. State Counsel contends that even in application for the condonation of delay, there is no averment that notice as stipulated under Section 12(2) of the 1894 Act ever was received by them and so limitation in this case shall be for six weeks from the date of passing of award under Section 11 of the 1894 Act. She further contends that even otherwise, in absence of there being any such averment that they came to know about the award belatedly, knowledge thereof shall be presumed from the date of award and even in that case, the case has been filed beyond limitation period of 6 months. She also submits that by no means appellants have been able to discharge their onus to show that the petition under Section 18 of the 1894 Act was filed by them within limitation. On the basis of these submissions, Id. State Counsel submits that petition filed by the appellants has been rightly dismissed by the reference Court.

[8]. I have heard learned State counsel and gone through the paper book as well as the records of this appeal. I find merit in the present appeal.

[9]. I am unable to find any substance in contention raised by learned State Counsel that notice dated 14.06.2013 was served upon the appellants/landowners in consonance with Section 9 of the 1894 Act, wherein the tentative date of passing of award was mentioned and thus, the appellants/landowners were having due notice/knowledge of passing of the award.

[10]. Admittedly, the aforementioned notice was issued in exercise of powers under Section 9 of the 1894 Act and not under Section 12(2)

thereof. The object and purpose of Section 9 as well as Section 12(2) of the 1894 Act are totally different and distinct and both cannot be equated in any manner. The issuance of notice under Section 9 of the 1894 Act is merely for the purpose of granting an opportunity to the landowners so as to state about the nature and their interest in the land as well as the amount of compensation and to apprise the authorities of their claims towards compensation and interest thereupon, besides any objection qua the measurements of the land. Notice under Section 9 of the 1894 Act is the stage prior to passing of the award, whereas Section 12 thereof refers to a situation post passing of the award for making the landowner aware of the contents of the award and, therefore, contention of the learned State Counsel that on the basis of notice under Section 9 of the 1894 Act, appellants had the knowledge of date of passing of award, is devoid of any merit.

[11]. Another contention raised by Ld. State Counsel, that in the absence of there being any averment in application for condonation of delay regarding notice under Section 12(2) being received by appellants, they have not been able to discharge the onus regarding there being delay in filing the reference, requires detailed consideration. In the present appeal, the award was passed on 04.07.2013, whereas the amount of compensation was released in favour of the appellants/landowners on 27.01.2014. In the entire record of Reference Court, nothing has been produced from the side of respondents so as to establish that any statutory notice as contemplated under sub Section 2 of Section 12 of the 1894 Act, was ever served upon the appellants/landowners or they were present at

the time of passing of the award. In that circumstance, submission made by learned State Counsel that in the absence of any averment in the application in this regard, appellants had not been able to discharge their onus is without any substance.

Even while appearing as PW-1, one of the landowners/appellants, namely, Baldev Singh was never rebutted in his cross-examination about any service *qua* notice under Section 12(2) of the 1894 Act and thus in the absence of any notice under Section 12 of the 1894 Act having been served upon the appellants/landowners, the respondents failed to discharge its statutory obligation to make the landowners aware about the contents of the award.

[12]. More importantly, once the statute i.e. Land Acquisition Act, 1894 casts an obligation upon the Land Acquisition Collector and enjoins it to issue notice of the award to the person interested, as laid down under Sections 2 to 12 of the 1894 Act, then it becomes the primary duty and the burden is upon the Collector to prove and establish issuance of any such notice before raising any objection *qua* reference petition filed under Section 18 being barred by limitation. Onus to prove or even make any averment that no notice under Section 12(2) of the 1894 Act was received by appellants, cannot be shifted upon them until State through Land Acquisition Collector is able to discharge its initial burden that notice u/s 12(2) was ever sent/issued by them. Once the State is *prima facie* able to establish that a notice under Section 12(2) was sent/issued by it, only then the onus shifts towards the landowners to prove that no such notice was received by them. In the absence of there being any averment by the State

in the written statement or even during the testimony of any State witness to the effect that notice under Section 12(2) of the 1894 Act was ever issued/sent to the appellants, it cannot be said that onus shifted upon them to establish that they did not receive any such notice.

[13]. Additionally, reference Court framed issues in this case vide order dated 16.12.2014, but no issue regarding limitation was formulated. Even in the order dated 29.01.2018, while considering the application of the appellants for condoning the delay which though separately not maintainable, yet formed part of the reference itself and subsequently dismissing the case of the appellants, when no such issue was framed. Therefore, it cannot be held that onus was upon appellants to show that no such notice was received by them.

[14]. Explaining the distinction between burden of proof and onus of proof, Hon'ble Apex Court in case of "**A. Raghavamma and another vs. Chenchamma and another**", reported in AIR 1964 SC 136, held that essential burden of proof lies upon a person who has to prove the fact and the same never shifts and it is only the onus of proof which shifts and such a shifting of onus is a continuous process in the evaluation of evidence. Relevant para of this judgment is reproduced hereunder:

"12. Learned Advocate-General contends that the learned Subordinate Judge as well as the High Court did not draw the appropriate presumptions arising from the fact that the transaction were old ones; nor did they give sufficient weight to the entries in the revenue records, the admissions made by the parties and to the conduct of the parties and such other important circumstances and, therefore, their findings are liable to be questioned in this appeal. This argument in effect and substance means that the Courts below have not given due weight to particular pieces of evidence. There is an essential distinction between burden of proof and onus of proof :

burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts, but the onus of proof shifts. The burden of proof in the present case undoubtedly lies upon the plaintiff to establish the factum of adoption and that of partition. The said circumstances do not alter the incidence of the burden of proof. Such considerations, having regard to the circumstances of a partition. The said circumstances do not alter the incidence of the burden of proof. Such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of onus is a continuous process in the evaluation of evidence. The criticism levelled against the judgment, of the lower Courts, therefore, only pertains to the domain of appreciation of evidence. We shall, therefore, broadly consider the evidence not for the purpose of revaluation, but to see whether the treatment of the case by the Courts below is such that it falls in the category of exceptional cases where this Court, in the interest of justice, should depart from its usual practice.”

[15]. When this is not even the case of the State that a notice under section 12(2) of the 1894 Act was sent by them to the appellants, question of shifting onus upon appellants to show or plead that no notice was received by them does not arise. On account of a statutory obligation, burden to show that notice u/s 12(2) was sent, always lies on the State, and in the circumstance of no effort made by them to establish this fact, burden always remained with the State and the onus thus never shifted to appellants. So, case of the appellants would not be governed by limitation provided under Section 18 (2)(a) of the 1894 Act or by the first part of condition provided in Section 18(2)(b) and rather their case would be governed by the limitation provided in second part of Section 18(2)(b) i.e. six months from the date of Collector's award.

[16]. It has now been settled in catena of judgments by the Hon'ble Supreme Court that limitation period of six months cannot start to run from the date when award was passed by Collector, whereas it has to run from the date when landowner got knowledge of the fact that an award has been

passed pertaining to his land and mere passing of award by Collector does not amount to knowledge about the contents of the award. Even further, it has been held that it is not the knowledge of the award that is crucial rather it is the knowledge of the essential contents of the award which is required. Therefore, date of passing of the award cannot be taken as the start date for running the limitation of six months in the facts and circumstances of the present case.

[17]. There is nothing on record to suggest as to on which date appellants got knowledge of the award. Only earliest date coming on record is 27.09.2013, when possession was taken by the State and therefore, this can be taken as the date of knowledge of award by the appellants. In that eventuality, reference petition filed on 24.3.2014 is not beyond the limitation period of 6 months and hence, the same should not have been dismissed on account of being time barred.

[18]. There is another aspect as well which requires consideration. Appellants filed a writ petition i.e. CWP No.21729 of 2013, challenging the acquisition proceedings in which, vide order dated 30.09.2013, a Division Bench of this Court directed the respondents to consider their representation and take a decision in accordance with law within a period of one month. Relevant part of the order is reproduced hereinunder:-

“While clarifying in no uncertain terms that a suitable site for construction of Sewerage Treatment Plant must be acquired without wastage of time and the plant must be constructed and put into operation within a reasonable period, we dispose of this writ petition with a direction to respondent Nos.1 & 2 to consider and dispose of the petitioners' representation and/or of other stake-holders, if any received against the impugned acquisition and take an appropriate

decision in accordance with law, within a period of one months from the date of receiving a certified copy of this order.”

From the Affidavit of Ashok Kumar Khanduja, Executive Engineer, Public Health Engineering Division Kurukshetra, which is on record as RW1-A, it appears that decision on such representation was taken on 23.12.2013. So till then, appellants had even though half baked, but small hope of release of their land from this acquisition and filing of reference petition for the enhancement of compensation would have put them in a condition of dichotomy. It would have been completely in contrast if on one hand, they were representing the authorities to release their land from the acquisition proceeding, while on the other hand, they would have kept pursuing the proceeding before the reference Court for the enhancement of compensation. It was only after 23.12.2013 when representation was decided by Additional Chief Secretary to Government of Haryana, Public Health Engineering Department then their hopes were dashed and they were left with no other option but only to avail the remedy of enhanced compensation. For that reason as well, reference petition filed on 24.3.2014 cannot be said to be beyond limitation.

[19]. For the reasons mentioned above, this appeal is allowed. The impugned award dated 29.01.2018 passed by the Reference Court is set aside. Consequently, the matter is sent back to the Reference Court for its decision on merits. Considering the fact that acquisition in the present case commenced vide notification dated 27.03.2012, the Reference Court shall dispose of the reference petition as expeditiously as possible preferably within a period of one year from the date of receipt of certified copy of this

order, after issuance of notice to the parties concerned, upon procuring of their presence.

[20]. All pending applications, if any, shall stand disposed of.

November 22, 2023
Atik

(HARKESH MANUJA)
JUDGE

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