

2018 PLRonline 1305

DELHI HIGH COURT

(DB)

Before:-Mr. G.S. Sistani and Sangita Dhingra Sehgal, JJ.

Attar Singh & Ors. – Petitioners

Versus

Govt. of NCT of Delhi – Respondent

W.P.(C) 1450 of 2015.

19.1.2018.

Land Acquisition Act, 1894 Section 18 – Orders passed by the Land Acquisition Collector quashed, wherein it has rejected the application under Section 18 of the Act – Without expressing any opinion on merit, issued directions to the Land Acquisition Collector to issue notice to the landowners, granting personal hearing and allowing them an opportunity to show that the petition under Section 18 of the Act was filed within the period of limitation.

Cases Referred :-

1. Bhagwan Das v. State of Uttar Pradesh, (2010) 3 SCC 545.
2. Premji Nathu v. State of Gujarat, AIR 2012 Supreme Court 1624.

For the Petitioner:- Mr. S.B.S. Vashistha, Advocate. For the L&B/LAC:- Mr. Yeeshu Jain, Standing Counsel With Ms. Jyoti Tyagi, Advocates.

JUDGMENT

G.S. Sistani, J.(Oral) – CM.APPL 45001/2017

This is an application under Order 6, Rule 17 of the Code of Civil Procedure filed by the petitioners seeking amendment to the writ petition.

2. Notice was issued in this application on 11.12.2017. No reply has been filed by the respondent. The prayer made in the application is not opposed. The application is allowed. Let the amended writ petition be taken on record.

3. The application stands disposed of.

W.P.(C) 1450/2015

4. This is a petition under Article 226 of the Constitution of India filed by the petitioners. Aggrieved by two orders both dated 12.09.2012 passed by the Land Acquisition Collector with respect to seeking a reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') filed by petitioners, wherein the reference petitions were declared time barred, has led to the filing of the present writ petition.

5. The petitioners claim to be owners of land comprised in Khasra nos.0/487/1(1-16), 0/247(0-9), total area 2 bighas and 5 biswas, (petitioner no. 1 having half share and petitioners no. 2 to 4 (being son of Late Shri Bhoop Singh) having half share jointly), situated in the abadi area of the revenue estate of village Mundka, Delhi(hereinafter referred to as 'the subject land').

6. A notification under Section 4 of the Act was issued on 31.01.2007, a Section 6 declaration was made on 24.05.2007. Possession under Section 17 was taken on 19.10.2007, 26.11.2007 and 24.04.2008. It is the case of the petitioners that no notice under Section 12(2) of the Act was given to the petitioners. It is the case of the petitioners that the petitioners were not present at the time or represented before the Collector when the Award was made, nor a notice under Section 12(2) of the Act was received from the Collector. As per the writ petition, it came to the knowledge of the petitioners that the Award was declared on 25.05.2009. The petitioners made an application for payment on 16.09.2009 and made two reference petitions on 14.05.2010. The reference petitions were dismissed by the Collector by an identical order on the ground of being barred by limitation. The order dated 12.09.2012, is reproduced below:

"In this regard, it is to inform that the award was announced on 23.05.2009. You filed an application for payment of awarded compensation on dated 16.9.2009, therefore, it can be said that you had come to knowledge of the award by then. You filed reference under section 18 only on dated 14.5.2010, which is beyond the permissible period according to section 18 of the Land Acquisition Act, 1894.

Hence, the said petition is time barred and cannot be forwarded to the ADJ Court."

7. The petitioners filed objections on 23.11.2012 after the petition under Section 18 was rejected explaining the reasons how the reference was within the period of limitation, which was not considered by the Collector.

8. Mr. Vashistha, learned counsel for the petitioners submits that the Land Acquisition Collector is a quasi judicial authority and he could not have rejected the reference petition without issuing a show cause notice and granting an opportunity of hearing to the petitioners. Mr. Vashistha further submits that since neither the petitioners were present at the time when the Award was made nor a notice under Section 12(2) of the Act was given, thus the period of limitation would be six months. Counsel further submits that in case an opportunity of hearing would have been given, the petitioners would have brought to the notice of the Collector the law laid down by the Supreme Court of India in the case of **Premji Nathu v. State of Gujarat and Anr., reported at AIR 2012 Supreme Court 1624**, wherein the Apex Court has held that in a case where the interested person is not

present at the time of making the award, nor a Section 12(2) notice has been received, the period of six months would commence from the date he gains knowledge about the contents of the award. Paragraph 14 of Premji Nathu(supra), is reproduced below:

“14. In ***Bhagwan Das v. State of Uttar Pradesh (2010) 3 SCC 545***, this Court interpreted Section 18 and laid down the following propositions:

“(i) If the award is made in the presence of the person interested (or his authorised representative), he has to make the application within six weeks from the date of the Collector’s award itself.

(ii) If the award is not made in the presence of the person interested (or his authorised representative), he has to make the application seeking reference within six weeks of the receipt of the notice from the Collector under Section 12(2).

(iii) If the person interested (or his representative) was not present when the award is made, and if he does not receive the notice under Section 12(2) from the Collector, he has to make the application within six months of the date on which he actually or constructively came to know about the contents of the award.

(iv) If a person interested receives a notice under Section 12(2) of the Act, after the expiry of six weeks from the date of receipt of such notice, he cannot claim the benefit of the provision for six months for making the application on the ground that the date of receipt of notice under Section 12(2) of the Act was the date of knowledge of the contents of the award.”

The Court then held:

“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 not to do so.”

9. Mr. Vashistha, submits that the period of limitation would run after the petitioners had obtained a copy of the Award and gained actual knowledge with regard to the contents of the Award.

10. Mr. Jain, learned counsel appearing for the LAC submits that there is no infirmity in the orders passed by the Land Acquisition Collector. The reference applications are patently beyond the period of limitation in view of the fact that admittedly the petitioners had made an application seeking payment of compensation on 16.09.2009 and such an application could not have been made without the knowledge with regard to the contents of the Award. The learned counsel for the LAC further submits that the Land Acquisition Collector has no power to condone the delay and it is incumbent upon the Land Acquisition Collector to consider the application and in case it is made beyond the period of limitation, the same is to be rejected and no reference can be made.

11. We have heard the learned counsel for the parties. section 18 of the Land Acquisition Act, 1894 reads as under:

“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 persons 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.”

12. A reading of the aforesaid Section would show that an application under Section 18 is to be presented within six weeks if the person making an application is present or represented before the Collector at the time of making of the Award, which is not so in the present case. The period of limitation is fixed at six weeks in case a notice is received from the Collector under Section 12(2) of the Act which is also not the case. A period of six months has been fixed from the date of the Collector’s Award. The counsel for the petitioner has urged before us that the case of the petitioners falls in the third category. He has further submitted that constructive notice of the Award would not be enough and once he gained knowledge with

respect to the contents of the award, the actual period of limitation would begin, while it is the stand of learned counsel for the LAC that the petitioners had both actual and constructive knowledge with regard to the contents of the award which is evident from the fact that the applications for grant of compensation were filed on 16.09.2009 and in case a period of six months is to be calculated from the said date, the period of limitation would expire by 15.03.2010. In response to this submission of the learned counsel for the respondent, Mr.Vashistha, learned counsel for the petitioners submits that the petitioners gained actual knowledge with regard to the contents of the award when they received the payment which was of 09.02.2010 and the period of limitation would, in fact, commence from the said date. Mr Jain, learned counsel for LAC while relying on the original record submits that while furnishing a bond, the petitioners have given a complete number of the award which would show that the petitioners had received a copy of the award. Mr. Vashistha, learned counsel for the petitioners submits that the petitioners neither received the copy of the award nor he applied for certified copy nor did he inspect the record.

13. Without expressing any opinion on the merits of the matter, we allow this writ petition and quash the orders dated 12.09.2012 passed by the Land Acquisition Collector.

14. We issue a direction to the Land Acquisition Collector to issue a notice to the petitioners, grant one personal hearing and allow the petitioners an opportunity to show that the petition under Section 18 of the Act has been filed within a period of limitation. The Land Acquisition Collector would pass the orders unaffected by any observations made by this Court in this order and decide the petition on the merits of the case.

15. The parties would appear before the Land Acquisition Collector on a date to be fixed by the LAC within two weeks from the date of receipt of this order. It would be open to the Land Acquisition Collector to issue fresh notice and after hearing a reasoned order would be passed. Legal objections are kept open.

16. The writ petition stands disposed of.