

Before N. C. Jain, J.

JASWANT RAI,—Appellant.

versus

LAND ACQUISITION COLLECTOR AND ANOTHER,—Respondents.

Regular First Appeal No. 818 of 1985.

December 17, 1988.

Land Acquisition Act (I of 1894)—Ss. 12(2) and 18—Collector's Award not in presence of landowner—Notice of Award also not served—Application for seeking reference for enhancement—Period of Limitation for filing such application—Commencement of such period—Date of acquiring knowledge—Relevancy of.

Held. that the Court of law cannot give a literal and mechanical construction of the words "six months from the date of the Collector's award" occurring in the second part of Clause (b) of the proviso to Section 18 of the Land Acquisition Act, 1894. The true interpretation of Section 18(2) (b) would be that if a claimant has not been served with the notice under Section 18 (2) of the Act, he can file an application for reference within six months from the date of the acquiring knowledge. This is the only interpretation which can be put to Section 18 (2) (b) of the Act. Even otherwise wherever two interpretations are possible, the one which favours the subject of the State should be put upon the relevant statute. This is the precise requirement of the law as well as the equity. In these circumstances it has to be held that limitation of six months would start running from the date of the knowledge of the award which was acquired by the claimant—a knowledge either actual or constructive. (Paras 6, 7).

Regular First Appeal from the order of the Court of Shri Jai Singh Sekhon, District Judge, Ludhiana dated 20th March, 1985 dismissing the appeal as time barred. However the compensation of the acquired land of the petitioner is assessed at Rs. 22,870 and so the compensation of the acquired land is enhanced to that extent and they shall also be entitled to 30 per cent solatium over and above the market value besides 9 per cent interest in the view of the amended provisions of the Land Acquisition Act.

S. K. Pipat, Advocate, for the appellant.

H. S. Bedi, A.A.G. with Mr. S. K. Syal, Assistant Advocate-General, for respondents.

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JUDGMENT

Naresh Chander Jain, J. (Oral)

(1) This judgment of mine will dispose of Regular First Appeal Nos. 818 and 1372 of 1985, the former preferred by Jaswant Rai son of Yog Raj whereas the latter has been filed by the State of Punjab and another. Since both the appeals have been filed against the same award of the District Judge, they are being disposed of together.

(2) The facts of the case leading to the filing of the Regular First Appeals are that on March 1, 1974 notification under Section 4 of the Land Acquisition Act (hereinafter to be referred as 'the Act') was issued for acquisition of the land measuring 756.69 acres in the revenue estate of village Jamalpur Awana for setting up a residential urban estate in the area of Ludhiana. The aforesaid area was later on reduced to 731.32 acres. The Land Acquisition Collector assessed the market value of the entire land at the rate of Rs. 39,400 per acre. In these appeals this Court is concerned only with land measuring 1 Kanal 17 marlas belonging to Yog Raj, father of Jaswant Rai in Regular First Appeal No. 818 of 1985.

(3) On a reference having been made under Section 18 of the Act, the learned District Judge held that Jaswant Rai appellant is entitled to the same amount of compensation at which he had purchased the disputed land in the year 1971 i.e. the subject matter of acquisition and assessed the compensation of the acquired land at Rs. 22,870. Besides this, solatium and interest at the rate of 30 per cent and 9 per cent respectively were awarded. In spite of the fact that the claimant was held entitled to enhanced compensation, it was held by the learned District Judge that the enhanced compensation could not be granted to him because petition under Section 18 of the Act was barred by time. Against the award of the learned District Judge the appellant has preferred an appeal. The State has also filed an appeal against the award of the District Judge contending apparently that no enhancement was warranted. This is how, as has been observed above, both these appeals are being disposed of together.

(4) Mr. S. K. Pipat, learned counsel for the appellant has vehemently contended that the learned District Judge has fallen

into legal error in holding reference under Section 18 to be barred by time. In order to appreciate the question of law pertaining to limitation, it is necessary to recount a few facts. The land in dispute was purchased by the father of the appellant on August 3, 1971 for residential purposes. The appellant who being the only son of his father **Yog Raj** was settled in England at that time and it is his case that his father had purchased the land on his behalf and he being a care-free person did not bother to get the mutation sanctioned in his name and, therefore, no notice was given to him by the Collector. **Yog Raj** the father of the appellant died on December 27, 1980 and the appellant came back to India in the month of February, 1981 and got the mutation of inheritance of his father entered for the first time on May 14, 1981 at Serial Nos. 5387 and 5388. No notice under Section 12(2) of the Act was either served upon him or his father and thus they were not aware of on going proceedings under the Land Acquisition Act. The reference was admittedly filed on July 16, 1981 i.e. within two months and two days of his acquiring the knowledge of the award. The learned District Judge held that the reference was time barred as the same was filed after the expiry of two months and two days of the alleged date of knowledge and that the same was required to be filed within six weeks from the date of Collector's award or from the date of knowledge or within six months from the date of the award, whichever period first expires in view of proviso to sub-section (2) of Section 18 of the Land Acquisition Act. To appreciate the question of law which arises for determination in this appeal, it is necessary in the first instance to have a look on the bare provisions of law which is reproduced for facility of ready reference :—

“S. 18(2) (a)(b) :—

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

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Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

(5) In view of the admitted position between the parties that since the claimant was not present at the time of the announcement of the award, clause (a) of sub-section (2) of Section 18 of the Act shall not apply *qua* his case. As regards the applicability of Section 18(2) (b) of the Act, the learned counsel for the appellant Mr. S. K. Pipat has argued that the appellant was entitled to file an application under Section 18 for reference within six months from the date of the knowledge which he acquired on May 14, 1981, whereas, on the other hand, the learned counsel for the State Mr. S. K. Syal, A.A.G. has argued that the appellant was obliged under the law to file an application for enhancement within six weeks of his acquiring of the knowledge about the award.

(6) After giving my thoughtful consideration to the entire matter, I am of the view that the submission of Mr. Pipat merits acceptance. In view of the conceded position of the parties that no notice from the Collector was ever received either by the appellant or his father under Section 12(2) of the Act, the first part of the proviso in clause (b) sub-section (2) of Section 18 would not apply. The words "in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2)" i.e. the first part of the proviso in sub-clause (b) would only come into play in those cases where the notice has been received by a claimant from the Collector under Section 12(2) of the Act. Since no notice was ever sent, the question of applicability of first part of the provision contained in clause (b) of Section 18 stands ruled out. Once it is held that the first part of the proviso in clause (b) of sub-section (2) of Section 18 of the Act is inapplicable, a claimant can seek reference under Section 18 of the Act within six months from the date of the Collector's award. As regards the expiry of six months in the second part of clause (b) of sub-section (2) of Section 18 of the Act, the court of law cannot give a literal and machanical construction of the words "six months from the date of the Collector's award" occurring in the second part of clause (b) of the proviso. In other words, in these circumstances it has to be held that limitation of six months would start running from the date of the knowledge of the award which was acquired by the claimant—a knowledge either actual or constructive. In my opinion this is the only interpretation

of sub-section (2) of Section 18 of the Act. In support of the view which I have taken, I am fortified by the ratio laid down in *State of Punjab v. Mst. Qaisar Jehan Begum and another* (1). In *Mst. Qaisar Jehan Begum's case* (supra) the precise facts of the case were that the Collector made the award on October 25, 1953 and the application for reference was made on September 30, 1955. The claimants in *Mst. Qaisar Jehan Begum's case* (supra) came to acquire knowledge of the award on July 22, 1955 and this was the date fixed by the court as regards the date of knowledge was concerned in the reported case before the Supreme Court. The application for reference was held to be within time by holding that knowledge of the award does not mean a mere knowledge of the fact that the award has been made. It was held by the Apex Court that knowledge must relate to the essential contents of the award and that such contents may be either known actually or constructively. The following observations of the Apex Court may be reproduced with advantage :—

“* * * * Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under S. 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly when a party is present in court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award.”

* * * * *

(7) In the light of the observations made above, this Court is of the considered view that the true interpretation of Section 18(2)(b) would be that if a claimant has not been served with the notice under Section 18(2) of the Act, he can file an application for reference within six months from the date of the acquiring knowledge. This is the only interpretation which can be put to Section 18(2)(b) of

(1) A.I.R. 1963 S.C. 1604.

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the Act. Even otherwise wherever two interpretations are possible, the one which favours the subject of the State should be put upon the relevant statute. This is the precise requirement of the law as well as the equity.' In view thereof, it is held that the application for reference in the present case is within time.

(8) As regards the question of enhancement, the learned District Judge, has paid only that much of the compensation which was the price paid by Yog Raj father of the appellant for purchasing the disputed land. Admittedly a period of three years had elapsed between the date of the sale transaction and the notification under Section 14 of the Act. By taking judicial notice of the price rise, I am of the view that the appellant is entitled to Re. 1 per square yard per year. The claimant is, therefore, entitled to the enhancement by Rs. 3 per square yard over and above the compensation determined by the learned District Judge. The appellant shall further be entitled to other statutory benefits under the amended sections of 23 (1-A), 23(2) and 28 of the Act. The amount would be recalculated by the learned District Judge before whom the parties are directed to appear on January 19, 1989. The appellant shall also be entitled to proportionate costs of these appeals. The counsel's fee stands quantified at Rs. 1000 in both the appeals. As a consequence of the acceptance of the appeal of the claimant, State Appeal No. 1372 of 1985 would stand dismissed.

For the foregoing reasons the appeal filed by the Appellant-claimant i.e. R.F.A. No. 818 of 1985 is allowed whereas the State appeal i.e. R.F.A. No. 1372 of 1985 is dismissed.

S.C.K.

Before J. S. Sekhon, J.

VIR BHAN,—*Petitioner.*

versus

SURJAN SINGH,—*Respondent.*

Civil Revision No. 505 of 1980.

December 19, 1988.

Code of Civil Procedure (V of 1908)—O. 38, Rl. 5 and O. 39, Rl. 2A—Suit for recovery of money—Application for attachment before judgement—Court issuing interim injunction—Wilful disobedience