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**(1975) 02 AP CK 0005**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Petition No. 2129 of 1972**

M. Farhatullah

APPELLANT

Vs

The Special Tahsildar, Land Acquisition, Hyderabad and others

RESPONDENT

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**Date of Decision :** 05-02-1975

**Acts Referred:**

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 40(4)  
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13  
Constitution of India, 1950 — Article 226  
Land Acquisition Act, 1894 — Section 10, 11, 12, 12(2), 14  
Limitation Act, 1963 — Section 5

**Citation :** (1975) 02 AP CK 0005

**Hon'ble Judges :** Ramachandra Rao, J

**Bench :** Single Bench

**Advocate :** Jaleel Ahmed and . B.G. Paropakari, for the Appellant; C.R. Pratap Reddy, for the Respondent

**Final Decision :** Allowed

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## Judgement

Ramachandra Rao

1. This Writ petition is filed, under Article 226 of the Constitution of India, for the issuance of a writ of certiorari calling for the records relating to the order of the Special Tahsildar, Land Acquisition. Hyderabad dated 1-5-1972 passed in file No. B1/25/1969, to quash the same and to give a further direction to the first respondent to refer the matter of apportionment of compensation amount to a Civil Court. The Petitioner has also filed two WPMPs. of which WPMP. No. 10488 of 1974 is for amending the prayer in the writ petition by adding in paragraph 24 of the writ petition the following prayer, after the words to refer the matter of apportionment of the amount to a Civil Court.

In view of the fact that the respondent-I has illegally paid amounts of Rs. 6,39,882-87 paise to R-2, and as such the said payment is not binding on the

petitioner and consequently, R-1, representing, the Government be kindly ordered to pay the above amount over again to the petitioner, and the Special Tahsildar, Land Acquisition, Housing Board, Hyderabad, R-1, be directed to refer the petition for enhancement of compensation dated 10-4-1942, to the Civil Court u/s 18, of Land Acquisition Act.

and the other W.P.M.P. No. 10489 of 1974 is for raising certain additional grounds. It is stated by the petitioner that the amendment sought in WPMP. 14488 of 1974 has become necessary, because this prayer was omitted to be made in the main writ petition by inadvertence or mistake.

2. The facts relevant for the purpose of this writ petition are as follows. The Government acquired lands in survey numbers 45, 46, 47, and 48 of Yusufguda village of Hyderabad urban taluk, under the provisions of Land Acquisition Act, 1894, for the purpose of the Housing Board. Notification u/s 4(1) was made on 1-3-1968 and the declaration u/s 6 was approved by the Government in G.O. Rt. 346, Housing Dated 20-12-1968 and published in the Gazette dated 9-1-1969. Thereafter notices under sections 9 and 10 were issued to the parties concerned, including the petitioner herein. The Land Acquisition Officer passed Award No, 5 dated 31st December, 1971 determining the total area under acquisition as Ac. 44.19 guntas and 58 Sq. yards and the total compensation, including solatium as Rs. 11,16,565-49 paise. By the same award the Land Acquisition Officer held that the petitioner herein Mr. M. Farhatullah was the pattadar and the second respondent Marpakole Agamma was the protected tenant and apportioned the compensation between the petitioner and the second respondent in the ratio of 40% 60 and awarded Rs. 4,26,588-59 paise to the petitioner representing 40% and Rs. 6,39,882-87 to the second respondent representing 60% of the compensation amount.

3. It does not appear that at the time of passing of this award neither the petitioner nor the second respondent was presents nor does it appear from the record that any copy of the award was communicated to the parties, i.e., the petitioner and the second respondent. The advocate for the petitioner put in an application on 1-2-1972 before the Land Acquisition Officer requesting permission for inspection of the records, which was granted and the advocate for the petitioner also perused the record, including the award.

4. On 3-2-1972 the petitioner filed an application under Order 9 Rule 13 C.P.C. for setting aside the award, and again on 5-3-1972 filed another application purporting to be u/s 30 of the Land Acquisition Act, contending that the award dated 31-12-1971 was passed exparte behind the back of the petitioner without fixing any date and without giving any hearing and that no copy of the claim petition, filed on 7-9-1971 by the second respondent that her husband was a protected tenant of the lands in question was served on the petitioner, that the petitioner was not aware of the said claim petition until the advocate of the petitioner inspected the record on 1-2-1972, that the award was passed behind the back of the petitioner under most suspicious circumstances and that the

second respondent's claim as protected tenant was not true or tenable. The petitioner further stated therein that a reference should be made to a Civil Court under Sec. 30 of the Act to decide whether the second respondent was entitled to 60% of the compensation amount as a protected tenant. The respondents have filed counters to these petitions denying that the award was passed *ex parte* or behind the back of the petitioner, that the petitioner was fully aware of the land acquisition and the award proceedings, and the claim petition filed by the second respondent, that a copy of the claim petition dated 7-9-1971 filed by the second respondent, was actually served on the advocate for the petitioner, who was appearing before the Land Acquisition Officer, that the petitioner did not raise any dispute with regard to the claim of the second respondent as protected tenant, that when there was no dispute at all about her claim, the question of referring the matter under Sec. 30 of the Act to a Civil Court did not arise and that the petitions are liable to be dismissed.

5. It appears that the petitioner has applied some time in February, 1972 for a certified copy of the award and the same was furnished to him on 6-4-1972. On 10-4-1972 the petitioner filed two more applications, both u/s 18 of the Land Acquisition Act, one for referring the matter to the Civil Court for enhancement of compensation and the other for deciding the dispute with regard to the apportionment of the compensation. The second respondent filed counters to these petitions denying the several allegations made in the applications filed u/s 18 of the Act. On merits also it is contended that the said petitions were barred by limitation as not having been filed within the period prescribed by proviso (b) to sub-sec. 2 of section 18 of the Land Acquisition Act.

6. While all these four petitions of the petitioner, were pending with the Land Acquisition Officer, the petitioner filed writ petition No. 1034 of 1972 in this court, under Article 226 of the Constitution of India for the issue of a writ of *Mandamus* or appropriate writ or direction, directing the Special Deputy Collector, Land Acquisition, Housing Board, Hyderabad, to decide the petitioners filed by the petitioner on 3-2-1972 for setting aside the *ex parte* award 31st December, 1971 and for directing him to forward the award to the Civil Court under Sec. 30 of the Act for determining the rights of the parties. This writ petition was disposed of on 20-4-72 with the following order:--

This application is filed for the issue of a writ of *manamus* directing the Land Acquisition Officer to decide and dispose of the applications filed by the petitioner, one under order 9 rule 13 CPC to set aside an award and the other u/s 30 to make a reference as regards the apportionment of compensation. The learned counsel for the respondent has no objection for the Land Acquisition Officer disposing of these two applications on merits. Hence there will be a direction to the Land Acquisition Officer to dispose of these applications expeditiously as soon as this order is received. Till the applications are disposed of, there will be a further direction not to disburse the amounts. It is stated that there is also another application filed, If so that application also will be

considered.

7. Subsequent to the disposal of the above writ petition, the Special Tahsildar, Land Acquisition, Housing Board, disposed of all the four applications filed by the petitioner, So far as the petition under Order 9 Rule 13 CPC is concerned the first respondent held that the provisions of CPC were not applicable to the proceedings before the Land Acquisition Officer, that a petition for setting aside an exparte award under Order 9 Rule 13 CPC would not lie and he accordingly dismissed that petition.

8. With regard to the petition u/s 30 of the Land Acquisition Act the first respondent held that the petitioner's advocate Smt. Prasannakumari, who was appearing before the Land Acquisition Officer was served with a copy of the claim petition filed by the second respondent, that the petitioner had therefore notice of the claim made by the second respondent, that there is no provision under the Land Acquisition Act to give notice of the claim of one claimant to other, that the petitioner did not raise any objection to the claim put forward by the second respondent, and the petitioner did not make out any case involving a dispute which could be adjudicated upon by the Civil Court and therefore the first respondent was not inclined to refer the matter u/s 30 of the Act to a Civil Court In that view the first respondent dismissed the said petition.

9. The two other petitions filed u/s 18 of the Act were dealt with together. Before the Land Acquisition Officer it was contended that the petition filed by the petitioner under Sec. 30 of the Act should be treated as an application under Sec. 18 of the Act, and the said petition filed on 5-2-1972 was within the period of limitation i.e., from 1-2-1972 the date on which the advocate of the petitioner perused the record. The first respondent however did not accept this contention on the ground that the petition under Sec. 30 is distinct and separate from a petition u/s 18 of the Act and that the petitioner could not be allowed to circumvent the provisions of the Limitation Act by treating the application filed u/s 30 as one u/s 18 of the Act. In the above view the first respondent came to the conclusion that the petitioner's advocate had perused the records, including the award, on 1.2.1972, it must be deemed that the petitioner had constructive notice of the award and therefore the period of limitation prescribed under the proviso (b) to sub-section 2 of Section 18 of the Act, should be computed from the said date, that the petitions filed on 10-4-1972 are beyond the period of two months and therefore barred by limitation.

10. After close of the arguments in the above petitions and the matter was reserved for orders, the petitioner again filed two petitions on 29-4-1972 for condoning the delay in riling the applications u/s 18 of the Act and for re-opening the matter. But the first respondent held that these applications were not bonafide and the provisions of sec. 5 of the Limitation Act were also not applicable. In that view the 1st respondent dismissed those applications also.

11. The petitioner has now filed this writ petition, under Article 226 of the

Constitution of India, challenging the aforesaid orders of the first respondent and also seeking a direction to the first respondent to refer the matter to the Civil Court for a decision with regard to the enhancement of compensation and also apportionment of the amount.

12. This Application is opposed by the second respondent by filing her counter denying the allegations in the petition.

13. Sri Jaleel Ahmed, Learned counsel appearing for the petitioner first contended that the petition filed by his client u/s 30 of the Land Acquisition Act on 5-2-1972 for referring the matter to the Civil Court for determining the dispute relating to the apportionment of the compensation amount, should be treated as one filed u/s 18 of the Act that the said petition having been filed on 5-2-1972 within two months from the date of knowledge of the award was within time and that the view taken by the first respondent that there was no dispute raised by the petitioner before the Land Acquisition Officer with regard to the claim of the second respondent as a protected tenant and therefore the question of referring the matter to a Civil Court did not arise, is erroneous. Secondly the learned counsel argued that both the petitions filed by his client u/s 18 of the Act, were within the time and not barred by limitation. The argument of the learned counsel is that the Land Acquisition Officer did not give any notice to the petitioner about the date on which the award was going to be passed, nor was the petitioner intimated about the date on which the award was passed, nor was the petitioner communicated a copy of the award passed on 31st December 1971, that u/s 12 (2) of the Act, it is obligatory on the part of the Land Acquisition Officer (Collector) to give notice of his award to the parties interested when they were not present personally or by their representatives when the award is made, that in the instant case the award having not been communicated at all to the petitioner the period of limitation would not commence to run until the petitioner was served with the notice of the award as required by section 12 of the Act. The learned counsel alternatively contended that the petitioner applied for a certified copy of the award in the month of February and that it was furnished to him on 6-4-1972, that it is only then that he came to know of the award and therefore the application filed on 10-4-1972 u/s 18 of the Act being within the period of two months from the date on which the certified copy of the award was furnished to the petitioner would be within the time.

14. Sri M.S. Rajalingam, the learned Government Pleader for Revenue submitted that the petitioner was served with a notice during the enquiry proceedings by the Land Acquisition Officer and therefore he must be deemed to be aware of the proceedings, which culminated in the award, that the notices under Sec. 12 (2) of the Act is merely informative and not obligatory or mandatory and therefore the applications filed on 10-4-1972 were barred by limitation. Secondly the learned Government pleader contends that the application filed u/s 30 of the Act was not maintainable on the ground that there was no dispute raised by the

petitioner with regard to the claim of the second respondent for a share in the compensation amount as a protected tenant, and that when there is no dispute with regard to the apportionment of the compensation amount raised before the Land Acquisition Officer, the question of making a reference to the Civil Court u/s 30 would not arise.

15. Sri C.R. Pratapa Reddy, learned counsel appearing for the second respondent contended that the petitioner had notice or knowledge of the essential contents of the award when the petitioner's advocate made an inspection of the file, including the award on 1-2-1972, that the petitioner previously filed writ petition No. 1034/72 in this court and got a direction issued from this court, that the application filed by him before the Land Acquisition Officer should be disposed of and that his conduct precludes him from challenging the order of the first respondent rejecting the applications filed by the petitioner under Sections 30 and 18 of the Land Acquisition Act. The learned counsel also contends that when the petitioner's advocate inspect the record on 1-2-1972 it must be deemed that the petitioner had voluntarily waived his right to the service of a notice u/s 12 of the Act. His further contention is that the petitioner was fully aware of the claim raised by the second respondent as a protected tenant, that he did not raise any objection to the claim of the second respondent before the Land Acquisition Officer and therefore, it is not open to him to raise such a dispute by seeking a reference u/s 30 or 18 of the Act, that u/s 40 (4) of Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 the interest of a protected tenant in the land held by him as a protected tenant is 60% of the market value of all the interests in the land, that the interest of the land-holder and the persons claiming under him is limited to the remaining 40%, that in the instant case there is voluminous evidence to support the claim of the second respondent as a protected tenant and that therefore the apportionment of compensation in the ratio of 60 : 40 between the second respondent and the petitioner cannot be challenged. His further contention is that by a reference to the Civil Court with regard to the dispute relating to the rights of the second respondent as protected tenant cannot be decided by a Civil Court.

16. On these contentions, the first question that arises for consideration is, whether the petition filed by the petitioner u/s 30 of the Act, on 5-2-1972 can be treated as a petition u/s 18 of the Act, and the matter can be directed to be referred to the Civil Court for deciding the dispute relating to the apportionment of the compensation amount between the petitioner and the second respondent. Mr. Jaleel Ahmed, learned counsel for the petitioner submits that the mere nomenclature employed in the petition is not conclusive of the matter and that the substance of the application that should be looked into and in the instant case from the contents of the petition it is clear that the petitioner was seeking a reference to the Civil Court with regard to the apportionment of the amount and that this is a matter which squarely falls within section 18 of the Act and therefore the first respondent should have treated the said application, though filed u/s 30, as one filed u/s 18 of the Act, and referred the matter to the Civil

Court.

17. Section 18 (1) of the Act reads as follows:--

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 to be 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.

18. Under this section the four matters, which could be referred to a Civil Court for determination are (1) the objection to the measurements of the land, (2) the amount of compensation, (3) the persons to whom it is payable; and (4) the apportionment of the compensation among the persons interested. From these provisions it is very clear that in a case where apportionment has been made by the Land Acquisition Officer, it is open to the parties interested to seek a reference to the Civil Court u/s 18 of the Act. But in the instant case the petition filed by the petitioner on 5-2-1972 was styled as one filed u/s 30 of the Act, Section 30 of the Act reads as follows:--

When the amount of compensation has been settled u/s 11, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable the Collector may refer such dispute to the decision of the Court.

19. From the provisions of this section it may be seen that where a dispute arises with regard to the apportionment of the compensation or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court. In other words in a petition u/s 30, if any dispute is raised before him with regard to the apportionment of the compensation, he may refer such dispute to the decision of the court, but the Collector himself would not decide the matter. The power to refer the dispute u/s 30 of the Act has to be exercised before the Collector decides the dispute. Once he decides the dispute and makes the apportionment, the question of making a reference u/s 30 would not arise. In the instant case from a perusal of the award made on 31st December, 1971 it is clear that the first respondent had already decided the question of title and also the apportionment of the compensation amount between the second respondent and the petitioner. Therefore, on the date i.e., 5-2-1972 on which the petition was filed u/s 30 of the Act, by the petitioner, questioning the apportionment of the compensation amount, the matter was already decided by the Land Acquisition Officer, holding that the second respondent was entitled to 60% of the amount as the protected tenant. There was, therefore, no scope for making a reference u/s 30 of the Land Acquisition Act, because the matter was already decided by the first respondent. Still I do not see any reason why the petition should not be treated as u/s 18 of the Act. On a careful perusal of the contents of the petition it is clear that the petitioner was really seeking a reference with regard to the apportionment of the

compensation, as decided by the Land Acquisition Officer. The petition, therefore, really falls u/s 18 of the Act and not u/s 30. It is well settled that merely because a petition is filed by quoting a wrong provision of law, it would not entail outright rejection of the petition provided it is established that in substance the petition was maintainable, under another provision of Law and that there is no legal impediment to the maintainability of the said petition. In the circumstances of the present case I do not see any legal impediment in treating the petition filed by the petitioner on 5-2-1972 as one u/s 18 of the Act.

20. Admittedly the award was passed in the presence of the parties. No notice of the date of passing of the award was also given to the parties by the land acquisition Officer, the first respondent. The parties were also not communicated a copy of the award. Even the second respondent stated in her counter affidavit, to the petition filed by the petitioner u/s 30 of the Act, as follows:--

It is true that the award was passed on 31-12-1971. The second respondent herein came to know this fact only after the writ petition of the petitioner was filed in the High Court.

21. Therefore, it is the common case that the parties were not aware of the passing of the award itself. It is only on 1-2-1972 when the advocate for the petitioner perused the record, including the award, that he came to know about passing of the award. Therefore the petition filed on 5-2-1972, though purported to be one u/s 30, it could be treated as one filed u/s 8 of the Act. If so the petition will be within two months from the date of knowledge of the award and therefore it would be in time. Section 18 (2) of the Act reads as follows:-

18(1) - - - ?

(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 awards;

b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

Clause (b) to sub-section 2 of section 18 has been amended by the Andhra Pradesh Act XX of 1959, as follows:

In other cases, within two months from the date of service of the notice from the Collector u/s 12, sub-section (2).

22. In the instant case it is the proviso (b) to sub-section (2) of Section 18 that applies and not proviso (a). The period of limitation is two months from the date

of service from the Collector u/s 12. Assuming that the petitioner had notice of the award on 1-2-1972 the petition filed on 5-2-1972 would be within the period of limitation. Therefore the Land Acquisition Officer should have entertained the said petition and made a reference to the Civil Court to decide the question relating to the apportionment of the compensation.

23. The contention raised on behalf of the second respondent is that no dispute was raised before the Land Acquisition Officer with regard to the apportionment of the compensation and therefore, no reference can be made now u/s 30 or 18 of the Act. This view apparently prevailed with the Land Acquisition Officer, but I find it difficult to accept this contention. Even assuming that the petition did not raise any objection to the claim of the second respondent before the Land Acquisition Officer, it would not preclude him from raising the dispute with regard to the apportionment made by the Land Acquisition Officer in this award. In fact the dispute arises only on and after passing of the award by the Land Acquisition Officer. The Land Acquisition Officer himself states in his order that there was no provision in the Land Acquisition Act to give notice of the claim of one claimant to the other. If so the absence of an objection to the claim of the second respondent during the enquiry proceedings would not in any way preclude the petitioner from raising such an objection after the award was made. The view taken by the Land Acquisition Officer that because no dispute was raised earlier with regard to the claim of the second respondent, the question of making a reference of the dispute to the civil court would not arise, is erroneous in law. Whether the objection raised by the petitioner to the claim of the second respondent as protected tenant is valid or not is not a matter for consideration in these proceedings. That is a question which has to be determined by the Civil Court after the dispute is referred.

24. It is contended by Sri Pratap Reddy, the learned counsel for the second respondent that the Civil Court had no jurisdiction to determine the dispute relating to the right of the second respondent as a protected tenant, under the Hyderabad Tenancy and Agricultural Lands Act. But this objection can very well be taken before the Civil Court itself, I am not therefore inclined to express any opinion on this contention.

25. The next question for consideration is whether the applications filed by the petitioner u/s 18 of the Act on 10-4-1972 are barred by limitation. Sri Jaleel Ahmed the learned counsel for the petitioner submits that a notice u/s 12 (2) is mandatory and in the absence of such a notice, the limitation would not begin to run. In support of this contention the learned counsel relied upon a decision of a Division Bench of this court in Mohammadunnissa Begum v. Government of Hyderabad, 1957 (II) An. W.R. I. In the above case an award was made on 28th Isfander 1346 F, in the absence of the appellant therein and her advocate. The advocate for the appellant came to know about the delivery of the award on 10th Farwardi 1346 F., and an application for a copy of the award was made on 10th Adibehisht 1346 F., and the same was furnished on 30th Ardbibehisht 1346 F.

Thereafter an application to make a reference to the Civil Court was made u/s 14 of the Hyderabad Land Acquisition Act, which is similar to section 18 of the Land Acquisition Act. This application was filed on 21st Khurdad, 1345 F, A notice was made by the office of the Collector, to the effect that if the time spent in obtaining the copy of the award was excluded the application would be in time. The Collector ordered that if the application was within time, the case could be referred to the Civil Court. After the reference was so made, an objection was taken on behalf of the respondents that the Collector had no power to refer the matter to the Civil Court, as the application for reference barred by time and that the court also had no jurisdiction to entertain such a reference. The learned Chief Judge, City Civil Court held that the application for reference, being beyond time, it could not be referred to the court and accordingly dismissed that reference. Against the said order of dismissal of the reference, the appellant preferred an appeal to this court. It was argued for the appellant that no question of limitation u/s 14 of the Hyderabad Land Acquisition Act would arise, as the statutory notice under the provisions of Section 11 was not given to the appellant. Sections 10 and 11 of the said Act read as follows:

At the close of the inquiry the Taluqdar shall make an award under his hand, relating to the following matters and obtain thereon the acknowledgement signatures of the persons interested as are present in person or by representative.....

Sec. 11, the Award shall be in the Taluqdar's office and notice thereof shall be given to such of the persons interested whose acknowledgement signatures were not obtained at the time when the award was made and it shall be conclusive evidence of the particulars therein.....

At the close of the enquiry the Taluqdar shall make an award under his hand as per this provision. Section 14 of the Act provides as follows:--

Every person interested who is aggrieved by the Taluqdar's award may within two months from the date of receiving notice of the award, apply to the Taluqdar in writing to refer the case to the Court for determination.....

26. In view of the foregoing provisions of the said Act, the learned Judges held that in the absence of service of notice of the award as required by the statute, the limitation would not begin to run and therefore the application filed by the appellant, though made beyond two months from the date of the award, or from the date of the knowledge of the award, would be within time. In coming to the said conclusion the learned Judges made the following observations:--

It would thus appear that when the Collector delivered his award neither the appellant nor his advocate were present: therefore, it was necessary for the Collector to issue the statutory notice u/s 11 of the Act. Since the requisite notice was not given to the appellant as has been admitted on behalf of the respondent, we are of opinion that no question of limitation arose in this case. When a statute provides that limitation would commence on the happening of a certain

contingency, limitation will not start unless that contingency happened. The authorities cited by the Court below in support of its conclusion are distinguishable and are based on law which is quite different from Hyderabad Law. Evidently before the lower court the point of statutory notice u/s II was not urged.

27. This decision is on all fours with the present case and fully supports the contention of the petitioner. Moreover the provisions of sections 11, 12 and 18 of the Land Acquisition Act are in pari materia with the provisions of the Act which fell for consideration in the aforesaid decision. The said decision is of a Division Bench of this Court and is therefore binding on me.

28. In the instant case also, it is common case that no copy of the award was served on the petitioner as required by section 12 (2) of the Act, Particularly after the amendment of proviso (b) to sub-section (2) of section 18, the reference application can be filed within two months from the date of service of notice from the Collector u/s 12 (2) of the Act, Section 12 (2) enjoins upon the Collector to give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made. When this statutory obligation is not complied with, the limitation u/s 18 (2) proviso (b), would not begin to run. Therefore the application filed on 10-4-1972 would not be barred by limitation.

29. It is contended by the learned Government Pleader that the notice u/s 12 (2) is merely informative and not obligatory.

30. But I find it difficult to accept this submission. The Land Acquisition Act is expropriatory in character. In the matter of acquisition as well as determination of compensation and apportionment thereof all the statutory steps have to be strictly complied with. Moreover the language of section 12 (2) is imperative and the Collector is bound to give notice of the award to the persons interested who were not present either personally or by representatives.

31. It is contended by Sri. C.R. Pratap Reddy learned counsel for the 2nd respondent, that the petitioner must be deemed to have had the constructive notice of the essential contents of the award on 1-2-1972 when the petitioner's advocate inspected the record. It may be, in one sense that the petitioner became aware of passing of the award; but in order to claim an effective reference under sec 18(1), it is necessary that he should have a copy of the award. In the circumstances, it is not possible to say that the petitioner had knowledge of the essential contents of the award. According to the petitioner he made an application for a copy of the award as early as in February, 1972, probably soon after the inspection of the record but he was furnished with a copy of the award on 6-4-1972, and within four days after the receipt of the copy of the award, he filed the application u/s 18 on 10-4-1972. In the circumstances of the case, it should be held that the petitioner was served with a notice of the award of the Land Acquisition Officer on 6-4-1972 and that he had knowledge of

the essential contents of the award only after receipt of the copy of the award. If so, the applications filed u/s 18 of the Act on 10-4-1972 being within two months from the date of notice of the award i.e., 6-4-1972 the applications u/s 18 are within limitation.

32. It is contended by Sri Pratap Reddy, learned counsel for the 2nd Respondent, that the petitioner must be deemed to have waived the right to serve notice u/s 12 (2) of the Act.

33. There is no merit in this submission Merely because the petitioner's advocate perused the record on 1-2-1972, it cannot be said that the petitioner had waived the statutory right conferred by Sec. 12 (2) read with section 18 (2) proviso (b) of the Act. A valuable right to claim reference is conferred by Sec. 18 (1), and this right has to be exercised within the period prescribed by section 18 (2) provisos (a) and (b). But in order to exercise the said right within the period aforesaid, a duty is cast on the Collector or the Officer passing the award to serve the notice as required by section 12(2) of the Act.

34. The learned counsel on either side have referred to several case law. But I do not think it necessary to refer to the same because the facts in this case are not similar to the facts which fell for consideration in the several rulings cited by the learned counsel.

35. In the result, the writ petition is allowed and the impugned order of the Land Acquisition Officer, quashed and a direction is given to the first respondent to make a reference to the Civil Court of the applications filed by the petitioner on 5.2.1972 and 10.4.1972 under Sec. 18 of the Act both with regard to the claim relating to the enhancement of compensation and with regard to the apportionment of the compensation. The order of the Land Acquisition Officer, dismissing the petition filed under Order 9 Rule 13 CPC and the applications filed under S. 5 Limitation Act, is not challenged in this writ petition. In the circumstances of the case, there will be no order as to costs. Advocate's fee Rs. 100/- WPMP. Nos. 10488 and 10489 of 1974 : These applications are ordered.