

**(2013) 05 GUJ CK 0017**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 2939 of 2013 with Spl. C.A. No's. 2940 and 2941 of 2013

Mavji Bhoja Koli

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

---

**Date of Decision :** 07-05-2013

**Acts Referred:**

**Citation :** (2014) 1 GLR 53

**Hon'ble Judges :** Mohinder Pal, J; Jayant M. Patel, J

**Bench :** Division Bench

**Advocate :** Vijay H. Nangesh, for the Appellant; Jayswal, A.G.P. and Patel, A.G.P. for Respondent Nos. 1 and 2, for the Respondent

---

## **Judgement**

Jayant M. Patel, J.—As in all the matters, common questions arise for consideration, they are being considered simultaneously. Rule. Mr. Jayswal, learned A.G.P. waives service of notice of Rule in Spl. C.A. Nos. 2939 and 2941 of 2013 and Mr. Patel, learned A.G.P. waives service of notice of Rule in Spl. C.A. No. 2940 of 2013 for the respondents. With the consent of the learned Advocates appearing for both the sides, the matter is finally heard.

2. The short facts of the case appear to be that the lands of the petitioners have been acquired for the project of the Narmada-Kutch Branch Canal. As per the petitioner, the notice under Sec. 12(2) of the Land Acquisition Act (hereinafter referred to as "the Act") without contents of the award was sent but the same was for compensation only. Whereas, only on 25-5-2012, with the contents of the award, the petitioner received the notice. On 4-7-2012, the petitioner filed the application under Sec. 18 of the Act for raising the dispute for compensation. On 20-9-2012, the application of the petitioners have been rejected on the ground that the applications were barred by time-limit. It may be recorded that so far as petitioner of Special Civil application No. 2941 of 2013 is concerned, he has not received any notice under Sec. 12(2) uptill now. The prayers are made in all the petitions for directing the respondents to treat the application within the

time-limit and to refer the matter to the reference Court.

3. We have heard Mr. Nangesh learned Counsel appearing for the petitioners and learned A.G.Ps. in the respective matters.

4. It appears that following positions are undisputed:

(A) The date of the award is 5th March, 2012.

(B) The so-called notice under Sec. 12(2) as per the respondent was served on 11-4-2012.

(C) The application has been made by the concerned petitioner under Sec. 18 on 4-7-2012.

(D) Vide impugned decision, all applications have been rejected on the ground that they are time-barred.

5. The only question to be considered in the present matter is, whether the application could be said as barred by time-limit or not?

6. Section 18 of the Land Acquisition Act (hereinafter referred to as "the Act") for ready reference, 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 [he 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 Sec. 12, sub-sec. (2), or within six months from the date of the Collector's award, whichever period shall first expire.

7. As per sub-sec. (2) of Sec. 18 of the Act and as per proviso (b) of sub-sec. (2) of Sec. 18 of the Act, the application has to be made within 6 weeks of the receipt of the notice under Sec. 12(2) of the Act or within 6 months from the date of the award whichever is expiring earlier. It has been contended on behalf of the respondent that the notice under Sec. 12(2) of the Act has been served on 11-4-2012, and therefore, the application was made after the expiry of the period of 6 weeks and under these circumstances, the Authority was justified in

rejecting the application as barred by law.

8. At this stage, we may refer to the decision of the Apex Court reported in the case of Bhagwan Das and Others Vs. State of UP and Others, and more particularly, the observations made by the Apex Court for interpretation of Sec. 18 at Paras 28 to 31 of the aforesaid decision, which reads as under:

28. The following position, therefore, emerges from the interpretation of the proviso to Sec. 18 of the Act:

(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 Sec. 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 Sec. 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 Sec. 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 Sec. 12(2) of the Act was the date of knowledge of the contents of the award.

29. A person who fails to make an application for reference within the time prescribed is not without remedy. It is open to him to make an application under Sec. 28A of the Act, on the basis of an award of the Court in respect of the other lands covered by the same acquisition notification, if there is an increase. Be that as it may.

30. 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 Sec. 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 Sec. 12(2) of the Act, or that he had knowledge of the contents of the award.

31. 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. The aforesaid shows that the burden is upon the respondent to show that the notice under Sec. 12(2) was served and the another aspect is that notice under Sec. 12(2) for the above-referred decision should state the contents of the award.

10. In order to appreciate the contention further, we have called upon the learned Counsel appearing for the petitioners to show the notice which was served upon the petitioners on 11-4-2012. The said notice though mentions the title as under Sec. 12(2) of the Act but it states only for the intimation of the award on 5-3-2012. The contents of the award by showing the descriptions of the land, the date of the notification under Sec. 4, the date of the notification under Sec. 6, the date of the inquiry under Sec. 9, etc. are not at all mentioned.

11. Under these circumstances, when the notice under Sec. 12(2) did not include the contents of the award, it cannot be said as a valid notice under Sec. 12(2) of the Act. Once, the said conclusion is arrived at, the requirement of 6 weeks would not operate but the matter will have to be considered as from the date of the award. The award is dated 5-3-2012, whereas, the application has been made on 4-7-2012 i.e. within a period of 6 months from the date of the award. Therefore, it cannot be said that the applications made by the petitioner were barred on the date when it was made.

12. In view of the aforesaid observations and discussions, the impugned order passed by the respondent No. 2 are quashed and set aside with the observation that the application made by the petitioner under Sec. 18 of the Act for raising the dispute for compensation were filed within a period of limitation, and consequently, the respondent No. 2 shall be required to refer the matter to the appropriate Court for adjudication in accordance with law. Such exercise shall be completed within a period of 3 months from the date of receipt of the order of this Court. All petitions are allowed to the aforesaid extent. Rule made absolute. No order as to costs. Direct Service is permitted.