

(2002) 07 MP CK 0045
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3255 of 2000

Parmanand and Hariram

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 24-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 12, 12(2)

Citation : (2003) 2 MPHT 49 : (2003) 2 MPLJ 43

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : N.M. Shah, for the Appellant; B.N. Mishra, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

In this writ petition petitioners are praying for issuance of writ of mandamus commanding the respondents to issue notices under Sub-section (2) of Section 12 of Land Acquisition Act, 1894. Petitioners submit that the award was passed, but notice of passing the award was not issued. Thus, they have been deprived of their statutory right u/s 12 of the Act and consequently of seeking reference u/s 18. It is the further grievance the petitioners that payment has not been made of the additional compensation at 12% on the market value, and 30% solatium under Sections 23(1-A) and 23(2) and interest at 9% u/s 28 of the Act. These payments cannot be denied. Land was acquired for the purpose of construction of dam for supply of water to city of Sagar. Notification u/s 4 was issued on 2-12-97; declaration u/s 6 was published on 23-1-98 after passing of the award (P-4); notices have not been given under Sub-section (2) of Section 12.

In the return filed by the respondents it is contended that it is false that notices under Sub-section (2) of Section 12 have not been given to the petitioners. Collector got served the notices and petitioners duly received the same; memo

dated 14-5-98 (Annexure R-1) has been placed on record. Appearance was put on 18-5-98; in any case the petitioners came to know of the award, but no application u/s 18 of the Act has been filed.

Shri N.M. Shah, learned Counsel for the petitioners submits that it is a case where notice (R-1) was issued on 14-5-98 to Shri Puranlal Patel, Patwari of village cannot be treated to be a notice under Sub-section (2) of Section 12 of the Act; award was drawn by the Land Acquisition Officer on 6-5-98 and sent for approval of the Commissioner as per order dated 2-9-98. Thus, the notice in the submission of the petitioner's Counsel cannot be said to be a notice to petitioners under Sub-section (2) of Section 12 of the Act.

Shri B.N. Mishra, learned Govt. Advocate for respondents submits that notices were issued u/s 12(2); notice is Annexure R-1 issued on 14-5-98. Thus, no interference is called for in the writ petition.

Question for consideration is that whether petitioners were given notice under Sub-section (2) of Section 12 of the Act. Award was drawn by the Land Acquisition Officer on 6-5-98; notice (Annexure R-1) has been addressed not to the petitioners but to one Shri Puranlal Patel, Patwari of village; there is an application filed by petitioners on 20th March, 98 that they were ready to accept the compensation under protest but the award itself has been drawn on 6-5-98 and was sent much later for approval; petitioners were not given any notice as required under Sub-section (2) of Section 12 of the Act. There is nothing on record to indicate that they were present on the date on which the award was passed. Section 12 of the Act reads as under :--

"12. Award of Collector when to be final.-- (1) Such award shall be filed in the Collector's Office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall 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."

Notice (Annexure R-1) has been issued to the Patwari; that cannot be said to be a notice issued to the petitioners.

Thus, in the circumstances Land Acquisition Officer Collector, Sagar is directed to issue notices as required under Sub-section (2) of Section 12 of the Land Acquisition Act within three weeks from today. Petitioners thereafter may take steps in accordance with law if so advised.

Writ petition is allowed. In the facts and circumstances of the case costs on parties.

C.C. as per rules.