

(1974) 11 GUJ CK 0002
In the Gujarat High Court

Rasulkhanji Sardar Mahomad Khanji

APPELLANT

Vs

H.P. Rathod, 3rd Spl. Land Acquisition Officer and Another

RESPONDENT

Date of Decision : 01-11-1974

Acts Referred:

Land Acquisition Act, 1894 — Section 18(2), 18(2), 18(2)(b)
Limitation Act, 1963 — Section 12(2)

Citation : (1975) 16 GLR 911

Hon'ble Judges : P.D. Desai, J;J.B. Mehta, J

Bench : Division Bench

Judgement

J.B. Mehta, J.—The petitioner in this petition challenges the orders of respondent No. 1 Special Land Acquisition Officer, dated June 16, 1971, by which he refused to make this reference u/s 18(2) of the Land Acquisition Act, 1894, hereinafter referred to as "the Act", on the ground that the application of the petitioner claimant was time-barred and he also refused to condone the delay.

2. The award was, in the present case, made on January 5, 1971, and it was not pronounced in the presence of the parties and no date of its pronouncement had been fixed. The alleged notice u/s 12(2) was served on January 13, 1971, merely stating the true area and the total compensation amount of Rs. 1865.73 P., without any grounds for making that award. The petitioner, therefore, made an application for a certified copy of that award on January 22, 1971, which was supplied only on March 26, 1971. The application for reference was made on April 16, 1971. The petitioner's case is that the award having been communicated actually on March 26, 1971, which for the first time fastened him with the requisite notice u/s 12(2), the reference application made on April 16, 1971, was clearly within time of six weeks. In any event, the petitioner claimed condonation of this relevant period for getting actual notice of the award made against him.

3. Section 18(2) requires that the Reference application shall be made to the Collector:

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

Admittedly, the first Clause was not applicable in this case. Therefore, u/s 18(2) (b) for determining the period of limitation for this application, we would have to consider whether it was made within six weeks of the receipt of the notice of the Collector u/s 12(2) or within six months from the date of the Collector's award, whichever period expires first.

4. Mr. Jani vehemently argued that the notice u/s 12(2) was served on January 13, 1971 and, therefore, this reference application was clearly not within time, as it was beyond the period of 42 days from the date of the receipt of that notice. The legal position in this connection is completely well settled. In *Harish Chandra v. Dy. Land Acquisition Officer* AIR 1961 S.C. 1503, their Lordships pointed out that this requirement of the award being brought to the notice of the party was not only a requirement of Law of Contract, the award being merely an offer binding to the State, but also an essential requirement of principles of fair play and natural justice. The knowledge of the party affected by the award, either actual or constructive, being thus an essential requirement of the principles of fair play and natural justice, it was held that the expression, "date of the award" used in the proviso must mean "the date when the award was either communicated to the party or was known by him either actually or constructively". Therefore, mechanical construction of the words "from the date of the Collector's award" used in the proviso in Section 18 was not adopted because of this essential requirement of fair play and justice. Their Lordships further considered that even the scheme of Section 12(2), that the notice was obligatory on the Collector to the persons interested who were not present personally or by their representative when the award was made, which itself postulates the necessity of the communication of the award to the party concerned. The legislature recognised that the making of the award u/s 11, followed by its filing u/s 12(1), would not meet the requirements of justice before bringing the award into force. The legislature thought that the communication of the award to the party concerned was also necessary, and so by the use of the mandatory words an obligation was placed on the Collector to communicate the award immediately to the person concerned by giving such notice u/s 12(2) immediately after making the award. Therefore, their Lordships held that because the communication of the order was regarded by the legislature as necessary that Section 12(2) had imposed an obligation on the Collector and if the relevant clause of the proviso was read in the light of this statutory requirement of Section 12(2), it was clear that the literal and mechanical construction of the said clause would be wholly inappropriate. It was

pointed out that a curious result would follow merely because of the failure of the Collector to discharge his obligation in law u/s 12(2) which would have immediately tended to make ineffective the right of the party to make an application u/s 18, and that result could never have been intended by the legislature. Series of decisions were considered where it was held that where the rights of a person were affected by any order and limitation was prescribed for enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. In *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, , the aforesaid ratio was reiterated by their Lordships and it was further held at page 1607 that the knowledge of the award did not mean mere knowledge of the fact that the award had been made. The knowledge must relate to the essential contents of the award which must be made known either actually or constructively. If the award was communicated to a party u/s 12(2) of the Act, the party must be obviously fixed with the knowledge of the contents of the award whether he read it or not. Similarly, when a party was present in Court either personally or through his representative when the award was made by the Collector, it must be presumed that he knew the contents of the award. Therefore, it was in terms held that looking to the scheme of the Act, knowledge of the award must mean knowledge of the essential contents of the award.

5, In view of this settled legal position, there can be no valid notice u/s 12(2) until the essential contents of the award are brought home to the party affected by actually communicating the award. The order was communicated by giving the certified copy, which in the present case was for the first time supplied on March 26, 1971.

6. Mr. Jani vehemently argued that the prescribed form was sufficiently compiled with by such cryptic notice stating merely the correct area and the total compensation amount. The requirement of this statutory notice u/s 12(2) has to be understood in view of the aforesaid settled legal position because such a notice really meets with the essential requirement of principles of fair play and natural justice. That is why this requirement was explained by their Lordships as communication of the essential contents of the award. In *Harish Chandra's* case their Lordships had pointed out that the award made by the Collector was in law not more than an offer made on behalf of the Government to the owner of the property. Even as a normal requirement under the contract law, such an offer must be communicated to the party concerned. In order that such a communication to the award may be meaningful so that the party can exercise a right of making an application for reference u/s 18(1), it is obvious that it must give all the grounds and not the final offer itself. It is only after communicating the grounds or the essential conclusions of facts on the basis of which this offer has been made that the claimant could make an application for reference u/s 18(1). u/s 18(2) it is a legal requirement for making an application for reference that the the claimant must state the grounds on which the objection to the award

was taken. Therefore, unless the claimant knows all the grounds on which the offer has been made i.e. the award has been made, this right of making a reference would be meaningless. Even the form of the award as specified in Section 26(1) requires the Land Acquisition officer not merely to specify the amount awarded as the market value u/s 23(1) but to specify the amounts awarded under each of the various clauses of that sub-section together with the grounds of awarding each of these amounts. That is why Section 26(2) in terms deems every such an award a decree and the statement of the grounds of every such award a judgment. Therefore, the meaningful supply of grounds as required u/s 12(2) or, the statutory notice could mean that the claimant must have this judgment in the form of a statement of grounds as a result of which the final award or offer is made to the petitioner, so that he can effectively exercise his right of making an application u/s 18(2) by stating all his grounds on which he objects to the award.

7. Therefore, there is no substance in the contention of Mr. Jani that merely stating the area and the compensation amount in such a notice would amount to communication of the award. The notice was clearly incomplete at that stage and it actually was completed only when this copy of the judgment in the form of the statement of all grounds for making this award had been supplied to the claimant on March 26, 1971. Therefore, the limitation could not run even on the basis of Section 18(2)(b), earlier part, from the date of the service of the notice, from any time prior to March 26, 1971. In that view of the matter, the reference application was clearly within time.

8. Jani vehemently argued that it was stated in the affidavit that an inspection of the award was given to the petitioner. In fact, the petitioner's contention is that the award was not ready when the petitioner went for inspection. Any way this is a disputed question of fact which need not be resolved as the authority had never relied on this ground. Besides, the affidavit has been deliberately kept vague as to the date on which such inspection was offered. Similarly, it is equally irrelevant whether the same Advocate Mr. Oza had filed the application for reference for other claimants within time because in each case the limitation would depend on the date when the award was actually or constructively brought to the notice of the claimant concerned.

9. Mr. Jani, however, vehemently relied on the decision of the Division Bench of the Maharashtra High Court in *Khasba Daji v. M.V. Hinge* ILR 1965 Bom. 831, which dealt with a totally different aspect as to whether the petitioner was entitled to get time for getting certified copies excluded u/s 12(2) of the Limitation Act. We are not concerned with that contingency because in our view the application was clearly within the time from the date of the communication of the award or the notice u/s 12(2) on March 26, 1971. Therefore, it is not necessary to go into the other question as to whether the petitioner was entitled to any exclusion of time or for getting the delay condoned. In that view of the matter this petition must be allowed by quashing the impugned order of

respondent No. 1 of June 16, 1971 holding that the reference application was time-barred and respondent No. 1 is directed to discharge his duty of making statutory reference u/s 18 in accordance with law as expeditiously as possible as sufficient time has now elapsed. Rule is accordingly made absolute with costs.