IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 2864 of 2019
With
R/FIRST APPEAL NO. 2871 of 2019
With
R/FIRST APPEAL NO. 2865 of 2019
With
R/FIRST APPEAL NO. 2866 of 2019
With
R/FIRST APPEAL NO. 2867 of 2019
With
R/FIRST APPEAL NO. 5368 of 2019
With
R/FIRST APPEAL NO. 5369 of 2019
With
R/FIRST APPEAL NO. 2868 of 2019
With
R/FIRST APPEAL NO. 2870 of 2019
With
R/FIRST APPEAL NO. 2869 of 2019
With
R/FIRST APPEAL NO. 2872 of 2019
With
R/FIRST APPEAL NO. 4949 of 2019
With
R/FIRST APPEAL NO. 4950 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

and
HONOURABLE MR.JUSTICE MOOL CHAND TYAGI

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Approved for Reporting	Yes	No

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HEIRS OF DECEASED AHER NARAN MAIYA BHUPAT NARANBHAI
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR NITIN M AMIN(126) for the Appellant(s) No. 1

MS FORAM TRIVEDI, LEARNED AGP for the Defendant(s) No. 1,2
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CORAM:**HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**
and
HONOURABLE MR.JUSTICE MOOL CHAND TYAGI

Date : 27/06/2025
ORAL JUDGMENT
(PER : HONOURABLE MS. JUSTICE SANGEETA K. VISHEN)

1. Since the captioned group of appeals, is arising out of the common judgment dated 03.11.2018 (hereinafter referred to as the 'impugned judgment'), with the consent of the learned advocates appearing for the respective parties, they are heard together and are being decided by this common oral judgment. For the sake of convenience, parties are referred to as per their status in the reference proceedings.

2. Captioned group of appeals, is arising out of the impugned judgment passed by the learned Principal Senior Civil Judge in LAR Nos.1/2014 to 7/2014; LAR No.10/2014; LAR Nos.11/2014, 13/2014 to 17/2014, LAR Nos.19/2014 and 20/2014 whereby the reference has been rejected on the ground of the reference cases being barred by limitation.

3. Mr. Nitin M. Amin, learned advocate for the appellant, submitted that the award was declared on 23.01.1995 followed by notice under sub-section (2) of Section 12 of Land Acquisition Act, 1894 (hereinafter referred to as the 'Act of 1894') on 25.08.1995, however, the notice did not accompany the award. In absence of receipt of the copy of the award, on 05.09.1995, the claimants applied for certified copy which was ready on 09.09.1996 and was made available on 18.09.1996. It is further submitted that immediately, within limitation, on 26.09.1996, application was filed

before the Collector, to make the reference before the Court below. Surprisingly, the reference was forwarded to the Court by the office of the Collector almost after a period close to 17 years. It is submitted that the excuse provided is that inadvertently, the reference remained with the office and could not be sent to the Court.

3.1 It is further submitted that the learned Judge, has proceeded on erroneous footing observing that the claimant has admitted that the award was passed in his presence. In fact, a bare perusal of the award passed by the Land Acquisition Officer, suggest that the hearing was conducted on 18.11.1993 whereas the award was declared on 23.01.1995. Moreover, there is not a whisper as to whether any notice was issued to the claimants asking them to remain present on the date when award was declared. It is further submitted that assuming without admitting that the claimants were present, at the most, it could be restricted, only in the case of one claimant; however, in cases of other claimants, it cannot be said that in their presence, the award was passed.

3.2 It is submitted that the reference Court, has failed to appreciate and consider the principles laid down in the judgment of the Apex Court in the case of *Premji Nathu vs. State of Gujarat,* reported in 2012 (5) SCC 250. It has been held that the provisions of Section 12(2) emphasizes that along with the notice issued, the land owner who is not present or is not represented before the Collector at the time of making of award should be supplied with a copy thereof so that he may effectively exercise his right under sub-section (1) of Section 18 of the Act of 1894. Reliance is also placed on the judgment in the case of *Rajat Hirabhai Motibhai & Ors. vs. Deputy Collector Land Acquisition & Rehabilitation, Panam Project, Godhra & Ors.,* reported in 1985 (1) GLR 275, The scope of sub-

section (2) of Section 12 has been discussed. The issue, was whether under sub-section (2) of Section 12 of the Act of 1894 is there an obligation upon the Collector merely to intimate about the passing of the award or he is obliged to convey the matters contained in the award by sending either a copy of the award or the essential part of it. While considering the judgment of the Apex Court so also this Court, it has been held and observed that there is an obligation on the part of the Collector not merely to intimate about the passing of the award but he has to communicate the essential contents of the award, if not a copy of the award.

3.3 It is, therefore, submitted that in the case on hand, undoubtedly, the claimants were not provided with the copy of the award by the Collector immediately upon the award was pronounced. When there is non-compliance of the requirement as contained in sub-section (2) of Section 12, the learned Judge, ought not to have rejected the reference on the ground of it being barred by limitation. It is therefore submitted that when the land owners were deprived of their land, the office of the Land Acquisition Officer, ought to have taken prompt steps and should have provided the copy of the award to the claimants and thereafter, forwarded the reference application which was filed immediately. Having not done so, the Land Acquisition Officer, has failed in its duty which aspect, was not properly considered by the reference Court and has wrongly rejected the reference.

4. Ms. Foram Trivedi, learned Assistant Government Pleader, on the other hand, has submitted that it is not that the claimants were unaware about the acquisition proceedings. In fact, they were having sufficient knowledge which is clear from the proceedings initiated. The claimants, were aware about the issuance of Section 4 notification; Section 6 notification and the passing of the award.

Besides, at the stage of Section 9, the claimants, were heard and therefore, to suggest that the claimants were not provided the copy of the award, is misconceived. It is submitted that one of the claimants was examined and in his cross-examination, he has admitted that the Land Acquisition Officer has passed the award in his presence. The said aspect has been duly considered by the reference Court. Accepting the admission, the learned Judge has rightly come to the conclusion that the reference, was barred by limitation. It is further submitted that the claimants, have accepted the amount and having accepted, the claimants, cannot now be permitted to turn around and make grievance about the determination by the Land Acquisition Officer. It is further submitted that no error is committed by the Court in rejecting the reference on the ground of limitation. The appeal, therefore, does not deserve to be entertained and be dismissed accordingly.

5. In brief rejoinder, Mr. Nitin M. Amin, learned advocate, submitted that there lies a fallacy in the submission that since the amount has been accepted, the claimants cannot file the reference. The claimants, have accepted the amount under protest. Reliance is placed on the judgment in the case of *Chandra Bhan (Dead) Through Legal Representatives And Ors. vs. Ghaziabad Development Authority & Ors.,* reported in 2015 (15) SCC 343. The judgment in the case of *Ajit Singh & Ors. vs. State of Punjab,* reported in 1994 (4) SCC 67 has been referred to, wherein it is held and observed that filing of the application under Section 18 of the Act of 1894, manifests the intention. Consequently, the protest against the award of the Collector was implied notwithstanding the acceptance of compensation. It is, therefore, submitted that the amount of compensation was accepted under protest and assuming that it is not, filing of the reference under Section 18 itself suggest the fact that the acceptance was under protest. Therefore, the said

contention, does not merit acceptance.

6. Heard the learned counsel appearing for the respective parties. Perused and considered the paper book made available so also the record and proceedings.

7. Pertinently, the land has been acquired for the public purpose of construction of Bandhara Project. Section 4 notification was issued on 05.06.1993 followed by Section 6 notification on 18.09.1993. From the record it appears that the claimants were issued Section 9 notice and were heard on determination of the compensation followed, was Section 11 award on 23.01.1995.

8. The award of the Collector, makes a reference of the hearing offered to the claimants on 18.11.1993. It also records the request of claimants to determine the compensation as per the policies of the State Government. The Land Acquisition Officer, thereafter, has declared the award on 23.01.1995. It is curious to note that hearing was scheduled on 18.11.1993 whereas the award has been passed on 23.01.1995 that is almost after a period little more than one year. There is nothing on record to suggest that the award dated 23.01.1995 was passed in the presence of the claimants. Emphasis is laid on the oral evidence of the claimant no.4 of Land Acquisition Reference No.14/2014, stating that the award was passed in his presence. In the opinion of this Court, the statement is in the context of hearing and not when the award was declared on 23.01.1995 inasmuch as, there is nothing on record to suggest that any advanced intimation was given to the claimants. In absence thereof, it is difficult to accept that the claimants, would remain present when the award is declared by the Land Acquisition Officer and thus, it is difficult to accept that the award was passed in the presence of all the claimants.

9. Besides, it is also required to be appreciated that sub-section (2) of section 12 notice was issued to the claimants on 25.08.1995 but it did not accompany the award. The claimants, applied for certified copy on 05.09.1995 and copy, was delivered on 18.09.1996. Reference application was filed immediately on 26.09.1996 with the office of the Special Land Acquisition Officer. Application, para 2, clearly makes a reference of passing of the ex-parte award dated 23.01.1995. It also accepts that the notice under sub-section (2) of Section 12 has been issued and received with a categorically stand taken that since the amount of compensation was not sufficient it is accepted under protest. With this, it was urged that the reference, is within limitation and hence, the same be registered.

10. Though, the learned Judge, has accepted the admission, however, has failed to consider the circumstances under which the statement was made so also the stand taken in para 2 of the reference application filed by the claimants. At the cost of repetition, it is required to be noted that the award, was declared on 23.01.1995 and the notice under sub-section (2) of Section 12, was issued on 25.08.1995. As stated hereinabove, immediately on 05.09.1995, the certified copy was applied and was made available on 18.09.1996 and on 26.09.1996, the reference application has been filed under Section 18 of the Act of 1894. The aforesaid chronology of events, suggest promptness exhibited by the claimants and rightly so inasmuch as, the claimants have lost their valuable lands. The claimants would not be benefited by not taking any steps and more particularly, when the lands is the source of their livelihood and are deprived of their property. Much has been said about the inaction, but the conduct of the office of the Land Acquisition Officer is needed to be taken into account for, the

hearing took place on 18.11.1993 and the award, was declared on 23.01.1995 without any intimation to the claimants. Another glaring and surprising aspect is that, the application under Section 18, remained with the office of the Land Acquisition Officer for almost a period close to 17 years and was sent only in the year 2013, officers being insensitive to the predicament of the farmers, who have lost their lands and were without any compensation. It was the bounden duty of the office of the Land Acquisition Officer, to have immediately forwarded the reference to the Court below. Not sending the application was not in the right earnest.

11. Consequences of non-receipt of the award, the issue, is no more res integra. In the case of Premji Nathu vs. State of Gujarat (supra), the Apex Court, has held and observed that sub-section (2) of Section 18 lays down that an application for reference shall be made within 6 weeks from the date of the Collector's award, if at the time of making of the award, the person seeking reference was present or was represented before the Collector. If the person is not present or is not represented before the Collector then the application for reference has to be made within 6 weeks of the receipt of the notice under sub-section (2) of Section 12 or within 6 months from the date of the Collector's award whichever period shall first expire. Paragraphs 10 and 11, read thus:-

> "10. An analysis of the above reproduced provisions shows that by virtue of Section 12(1), an award made by the Collector is treated final and conclusive evidence of the true area and value of the land and apportionment of the compensation among the persons interested. In terms of Section 12(2), the Collector is required to give notice of his award to the interested persons who are not present either personally or through their representatives at the time of making of award. Section 18(1) provides for making of reference by the Collector to the Court for the determination of the amount of compensation etc. Section 18(2) lays down that an application for reference shall be made within six weeks from the date of the Collector's award, if at the time of making of award the person seeking reference was present or was represented before the Collector, then the application for reference has to be

made within six weeks of the receipt of notice under Section 12(2) or within six months from the date of the Collector's award, whichever period shall first expire.

11. The reason for providing six months from the date of the award for making an application seeking reference, where the applicant did not receive a notice under Section 12(2) of the Act, while providing only six weeks from the date of receipt of notice under Section 12(2) of the Act for making an application for reference where the applicant has received a notice under Section 12(2) of the Act is obvious. When a notice under Section 12(2) of the Act is received, the landowner or person interested is made aware of all relevant particulars of the award which enables him to decide whether he should seek reference or not. On the other hand, if he only comes to know that an award has been made, he would require further time to make enquiries or secure copies so that he can ascertain the relevant particulars of the award. What needs to be emphasised is that along with the notice issued under Section 12(2) of the Act, the land owner who is not present or is not represented before the Collector at the time of making of award should be supplied with a copy thereof so that he may effectively exercise his right under Section 18(1) to seek reference to the Court."

12. In the case of Rajat Hirabhai Motibhai & Ors. vs. Deputy Collector(supra), the Division Bench of this Court, has held that reading the language of sub-section (2) of Section 12 it suggests that there is an obligation on the part of the Collector not merely to intimate about the passing of the award but has to communicate the essential contents of the award, if not a copy of the award. Paragraph 3 of the Judgment, reads thus:-

"3. The question, therefore, is whether under sec. 12(2)of the Land Acquisition Act, there is an obligation upon the Collector merely to intimate about the passing of the award or he is obliged to convey the matters contained in the award by serving either a copy of the award or the essential part of it. In State of Punjab v. Mst. Qaisar Jehan Begum, AIR 1963 SC 1604, the Supreme Court had occasion to consider the purpose of the notice under Sec. 12(2) in the context of a plea as to whether mere knowledge of the passing of the award would be sufficient as a starting point reckoned for the purpose of filing a reference application. It is in dealing with this that the Supreme Court observed:

"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 Sec.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."
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> This Court has expressed the same view referring to the above said decision in Rasulkhanjiv. H. P. Rathod, (1975) 16 Guj LR 911. In this view, it is clear that there is -an obligation on the part of the Collector not merely to intimate about the passing of the award but he has to communicate the essential contents of the award, if not a copy of the award. That has not been fulfilled in this case and we direct that this shall be done within a month."

13. Therefore, sub-section (2) of Section 12 makes it obligatory for the Collector to provide the copy of the award to the claimants and having not done so, it cannot be said that the limitation would start from the date of the award i.e. 23.01.1995. In the considered opinion of this Court, the learned Judge, committed an error by not properly considering the evidence of the claimants. The observation, is nothing but tainted with perversity and illegality. The learned Judge, while discussing the issue of limitation, has laid lot of emphasis on the hearing which took place on 18.11.1993 in connection with Section 4 notification. The power of attorney Exhs.28, 29 and 31 to 34 and Exh.30 by which, the possession was handed over on 25.08.1995. The learned Judge, has also taken note of Exh.35 that is the notice under sub-section (2) of Section 12; Exh.36 by which, the remaining claimants have given the possession. What essentially weighed with the learned Judge, was the admission of the claimants but what has been not considered is the contents of the award and observation by the Land Acquisition Officer. Had the learned Judge considered the contents of the award of the Land Acquisition Officer so also the reference application, the learned Judge, would not have rejected the application on the ground of limitation. The learned Judge, therefore, was not right in

deciding the issue as to whether the application is in time in negative.

14. Ms. Foram Trivedi, learned Assistant Government Pleader, has also raised a contention that since the claimants, have accepted the amount it would be impermissible for the claimants to turn around and challenge the same. The said contention, deserves to be rejected at the threshold considering the fact that the reference application under Section 18 clearly states that the amount was accepted under protest as the claimants are not satisfied. The issue is also no longer res integra. In the case of *Chandra Bhan (Dead) Through Legal Representatives And Ors. vs. Ghaziabad Development Authority & Ors.,* reported in (2015) 15 SCC 343, the Apex Court, has referred to the judgment in the case of *Ajit Singh & Ors. vs. State of Punjab* reported in 1994 (4) SCC 67 wherein, it is held that filing of the reference application under Section 18, it manifested the intention of the claimants. Furthermore, the protest against the award of the Collector was implied notwithstanding the acceptance of compensation. Even if the amount of compensation is accepted that by itself would not disentitle the claim. More particularly, when application under Section 18 seeking reference is filed. Therefore, the said contention of the learned Assistant Government Pleader, is rejected.

15. In light of the above discussion, the impugned judgment, deserves to be quashed and set aside and is hereby, quashed and set aside.

16. The appeal, succeeds and is allowed accordingly. The land acquisition references, are restored to its original file and are directed to be decided in accordance with law and on its own merits. The acquisition, is of the year 1993, award is of the year 1996 and

the claimants, are deprived of their lands for almost close to 30 years and therefore, it would be in the interest of justice that the reference Court, is requested to expedite the hearing of the reference. It is directed to hear and decide the reference within 6 months from the date of receipt of the order. Needless to clarify that the parties to the reference proceedings, shall cooperate with the hearing.

17. Record and proceedings to be sent back immediately to the Court below. No order as to costs.

(SANGEETA K. VISHEN,J)

(MOOL CHAND TYAGI, J)

Harshit

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: HARSHIT SANCHETI(HCD0070), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 11/07/2025 16:21:53