

## IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW-100-2020

M/s. Despamont,  
Partnership Firm,  
Registered address at 6,  
Junta House, Panaji, Goa,  
Represented by its partner,  
Mr Viraj Paraz 56 years of age,  
Businessmen, Indian National,  
Resident of address at 6,  
Junta House, Panaji, Goa. ...Petitioner

V e r s u s

- 1) State of Goa  
Through Chief Secretary,  
Government of Goa.  
Porvorim, Goa.
- 2) The Collector, North Goa,  
Land Acquisition branch,  
Collectorate Building,  
Panaji Goa, 403001.
- 3) Dy. Collector of North Goa,  
Office of Collector,  
Panaji-Goa - ...Respondents

Adv. Iftikar Agha for the Petitioner.  
Mr Geetesh Shetye, Additional Government Advocate for the  
Respondents.

**CORAM: DAMA SESHADRI NAIDU, J.****DATE: 18 September 2020.****ORDER:****Introduction:**

A Firm loses its land in acquisition and gets compensated. It

does not question the Land Acquisition Officer's award. But some other property owners do. The Reference Court enhances the compensation. So the Firm invokes section 28A of the Land Acquisition Act, 1894. The LAO, redetermines the award and issues notice to the Firm under section 12 (2). That notice contains only minimum details about the award. The Firm applies before the LAO requiring him to refer the matter to Civil Court under section 18 (1) of the Act. But it files that application beyond six weeks, the period prescribed under proviso to section 18(2) of the Act.

2. To reckon the limitation of six weeks, should we treat the cryptic notice the Firm received under section 12 (2) as a proper notice to trigger the limitation?

**Facts:**

3. The Government acquired a certain extent of land. For that purpose, first, it notified in February 1982, under section 4 of the erstwhile Land Acquisition Act, 1894. Later, in February 1985, the Government declared the acquisition under section 6 of the Act. The Land Acquisition Officer ("LAO") passed the Award on 23 February 1987. Many affected persons, dissatisfied with the Award, sought its reference to the Civil Court.

4. Then, the Reference Court, in April 2006, enhanced the compensation from Rs.200/- to Rs.300/- per sq.mt. Aggrieved, the State came in appeal to this Court. But this Court, in October 2011, affirmed the Reference Court's enhancement.

5. In the meanwhile, based on the Reference Court's enhancement, the petitioner-Firm, in July 2006, invoked section 28-A of the Act and applied for redetermination. Eventually, the LAO passed an Award on 12 October 2018—12 years later. After passing the Award, the LAO notified the Firm about the Award. It was on 18 October 2019—one year later. This notice, which is not part of the

record, has only informed the Firm about the LAO's passing the award. It contained no other details.

6. Thereafter, the Firm, on 28 November 2019, applied for a certified copy of the award. In this context, the Firm's counsel asserts that the authority concerned has not provided the certified copy, despite the Firm's application. Of course, the learned Additional Government Advocate contends that the authorities received that application only on 17 January 2019.

7. If we proceed further with the facts, we may notice that on 3 February 2020, the authorities called the Firm's representative to the office and paid the enhanced award amount by cheque. In fact, the Firm received that amount under protest. It also, then, secured a copy of the award, too. Thus, the Firm came to know about the contents of the redetermined Award. So, on 13 March 2020—in 10 days—applied to the LAO to have the matter sent to the Reference Court. But the LAO, through the impugned order dated 30 June 2020, refused. It was on the premise that the Firm's request was barred by time under **section 18 (b)** of the Act. Assailing the LAO's refusal, the Firm has filed this writ petition.

**Submissions:**

**Petitioner:**

8. In sum and substance, Shri Iftikar Agha, the Firm's counsel, has contended that notice under section 12(2) does not mean mere intimation about the LAO's passing the Award. The notice must either come with a copy of the award itself or, at least, contain details of how the award was passed. Only then can the Firm appreciate the reasoning that weighed with authority and may challenge the Award if it chooses. To support his contentions, Shri Agha has relied on

*Vijay Mahadeorao Kubade v. State of Maharashtra*<sup>1</sup>, *Premji Nathu v. State of Gujarat*<sup>2</sup>, *Mangilal Jarwanmal v. Special Land Acquisition Officer*<sup>3</sup>, and *Super Construction Company v. The State Of Maharashtra*<sup>4</sup>.

**Respondents:**

9. On the other hand, Shri Geetesh Shetye, the learned Additional Government Advocate, has drawn my attention to the reply the respondents have filed. According to him, the petitioner's application has been hopelessly barred by time. To elaborate, he has contended that once a notice has been served, it is for the Firm to secure a certified copy and then, if necessary, take remedial steps. In this context, the learned AGA asserts that the Firm's application has been belated; it was received in the respondents' office only on 17 January 2019. For his propositions, the learned AGA relies on *Nikko v. State of Haryana*<sup>5</sup>.

10. Heard Shri Iftikar Agha, the learned counsel for the petitioner, and Shri Geetesh Shetye, the learned Additional Government Advocate for the respondents.

**Discussion:**

11. After the acquisition, the landowner, that is the Firm, did not challenge the award. But other landowners did. When the Reference Court enhanced the compensation, the Firm wanted to take advantage of that enhancement. So it invoked section 28A of the Act. Then, the LAO redetermined the award and notified the Firm under section 12(2) of the Act. The notice of award the Firm received contained only basic information about the award; it contained neither

<sup>1</sup>(2018) 8 SCC 266

<sup>2</sup>(2012) 5 SCC 250

<sup>3</sup>AIR 1978 Bom 325

<sup>4</sup>1995 (2) BomCR 436

<sup>5</sup>2013 (1) RCR (Civil) 90

the award copy nor the reasons that weighed with the LAO.

12. Dissatisfied with the redetermined award, the Firm wanted the LAO to place the matter before the Reference Court under section 18 of the Act. But the LAO rejected the Firm's application for reference on the grounds of delay, for the Firm applied beyond six weeks, the period prescribed under the proviso to section 18. The question is, Can the notice without details about the award be called sufficient notice?

13. Thus, this case turns on three statutory provisions of the Land Acquisition Act, 1894: Sections 12, 18, and 28A. As the facts are not in dispute, let us examine these provisions. We will begin with section 28A of the Act, which reads thus:

28A. Re-determination of the amount of compensation on the basis of the award of the Court. –

(1) where in an award under this part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the

applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, required that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18.

14. Under one notification, the Government may acquire the lands of many persons. After following the procedure, the LAO passes an award compensating the landowners. If the landowners feel that the compensation is inadequate, they may invoke remedial provisions in the Act and seek enhancement. On their application, the LAO refers the matter to a civil court: the Reference Court. It is under Section 18 of the Act.

15. In practice, of many landowners, some may get satisfied with the LAO's award, but some may feel it inadequate. Then, those dissatisfied landowners will ask, within a time-frame, the LAO to refer the award under section 18 of the Act to a civil court. On reference, the Civil Court may redetermine—that is, enhance—the compensation. Here comes into picture section 28A of the Act.

16. Section 28A enables the landowners who have not applied for enhancement to take advantage of the Reference Court's enhancement. They should do so "by written application to the [LAO] within three months" from the date of the Reference Court's award. Then, the LAO redetermines the applicants' compensation based on the enhancement awarded awarded by the Reference Court.

17. Once this redetermination takes places as provided for under sub-section (2) of section 28A, the LAO notifies the applicants about the redetermined award. Then, any landowner may still remain unsatisfied of the compensation. Put on notice, the applicant may "by written application" require the LAO to refer the matter to the

Reference Court, under section 18.

18. The question is about “notice” from the LAO to the applicant. That notice, under section 12 (2) of the Act, enables the applicant to appreciate the correctness of the redetermined award. Thus, well-informed, the applicant will also decide whether to accept the award or question it further. So, should this notice be a mere intimation about the award or should it spell out as many details as possible about the award to enable the applicant to make an informed decision about the award?

19. Granted, this redetermined award is also an award under section 12 of the Act. And section 12 (2) of the Act deals with the “notice” part: The LAO “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.” Once notice is given, the applicant may invoke section 18 of the Act. Let us examine section 18, which reads thus:

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 person to whom it is payable, or the apportionment of the 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 when he made his award, within six weeks from the Collector’s award;

(b) *in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector’s award, whichever period*

*shall first expire.*

(italics supplied)

20. Seen from the above provision, if the landowner, generically described as ‘person interested’, has not accepted the award, he should submit a “written application” to the LAO requiring him to refer the matter to the Civil Court. The objection may relate to “the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.” Most pertinently, the application “shall state the grounds on which objection to the award is taken”. This application under section 18 (1) shall be made in six weeks from the date of the Collector's award if the applicant was present or represented when the LAO passed the award. In other instances, it must be in six weeks after the applicant received the notice from the LAO under section 12 (2), or “within six months from the date of the Collector's award, whichever period shall first expire”.

21. In *Bhagwan Das v. State of UP*<sup>6</sup>, the Supreme Court, per R. V. Raveendran J, has dealt with almost an identical case—the delay in the applicant’s invoking Section 18 of the Act. Two of the issues *Bhagwan Das* considered were these: (a) Can the Collector condone the delay in the landowner’s applying for reference if sufficient cause is shown? (b) Should the period of six months under clause (b) of the proviso to section 18 of the Act be reckoned from the date of knowledge of the award of the Collector or from the date of the award itself? In a lucid disposition, *Bhagwan Das* has held:

(a) There is a difference between an ‘award of the Collector’ which is an offer of compensation by the collector as the

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6(2010) 3 SCC 545



Government agent, and 'an award of the court' which is a determination of the compensation by a civil court on a reference by the collector.

(b) The Land Acquisition Collector is not a Court; nor his award an of the Court.

(c) While the court's proceedings resulting in an award are judicial proceedings, the collector's proceedings neither under section 11 of the Act resulting in an award nor under section 18 resulting in reference to a civil court are judicial proceedings.

(d) Because of the special limitation provided under the proviso to section 18 of the Act, sections 4 to 24 of Limitation Act 1963 do not apply to applications under section 18(1) of the Act.

(e) As the collector is not a court when he discharges his functions as a statutory authority under section 18(1) of the Act, the applicant cannot invoke section 5 of the Limitation Act 1963.

(f) The collector cannot condone the delay in, or extend the time for, an applicant's request for reference.

(g) Clause (b) of the proviso to section 18 provides for two periods of limitation. If the person interested receives notice under section 12(2) of the Act about the award, he should seek reference in six weeks; if he has not received the notice, he should seek reference in six months from the date of the award.

(h) The reason for the different time-frames is obvious: When a notice under section 12(2) of the Act is received, the 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 requires further time to enquire and secure a copy so that he can ascertain the relevant particulars of the award.

(i) The expression "the date of the collector's award" cannot merely denote the physical act of the LAO's passing the award, or signing it, or even filing it in the collector's office; it must involve the communication of that award to the party concerned "either actually or constructively". For actual or constructive knowledge is an essential requirement of fair play and natural justice. It would be unreasonable for us to construe the words 'from the date of the Collector's award' used in the proviso to Section 18 "in a literal or mechanical way."

(j) "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.

(k) A person who fails to apply for reference within the time prescribed is not without remedy. He may take advantage of section 28A of the Act; it is based on an award of the court regarding the other lands covered by the same acquisition notification if there is an increase.

(summarized, not extracted)

22. Indeed, here, the Firm has had the notice under section 12(2) of the Act. Its only contention is that the notice contained no details of the award; it is a mere intimation. Then, can that notice be treated as sufficient notice to reckon the limitation—six

weeks—period under proviso (b) to section 18 of the Act?

23. *Bhagwan Das* has noticed the underlying purpose in the Legislature’s providing two distinct limitations periods in the proviso to section 18. The notice under section 12(2) of the Act ought to supply “all relevant particulars of the award” to the person interested, so he can decide “whether he should seek reference”. Besides, it has also held that “knowledge of the award” does not mean a mere knowledge that an award has been made. The knowledge must relate to the essential contents of the award. If the notice contained no details of the award, the landowner cannot “state the grounds on which objection to the award” is taken, as required under section 18(2) of the Act.

24. So we can safely conclude that notice under section 12(2) of the Act must reflect the essential contents of the award or, better still, may have a copy of the award attached. Nevertheless, we will also consider the other decisions the parties have cited at the bar.

25. In *Vijay Mahadeorao Kubade*, the question the Supreme Court, per N. V. Ramana J., has decided is this: Has the appellant had an effective notice of the award as per the mandate of Section 12(2) of the Land Acquisition Act, 1894? To answer this question, *Vijay Mahadeorao Kubade* has quoted with approval its earlier decision in *Premji Nathu*. On facts, it has found that the authorities have not sent a copy of the award along with the notice. And without a copy of the award, the appellant had no occasion to effectively apply for seeking reference. The Government, too, has failed to produce before the Reference Court any material to show that the copy of the award was sent to the appellant along with the notice.

26. In *Mangilal Jarwanmal*, a Division Bench of this Court

has observed that the notice served on the petitioners under section 12(2) of the Act “merely informed” them about the total area acquired, the total compensation payable, and the quantum of apportionment. Then, the petitioners went to the LAO’s office and collected the award amount under protest, as the Firm did here.

27. In the above context, *Mangilal Jarwanmal* has observed that the notice did not inform the petitioners the reasons or the basis on which their quantum of compensation had been determined or fixed, nor did it give any particulars as to how much had been awarded under various heads of compensation. Eventually, after referring to much case law, *Mangilal Jarwanmal* has held that the limitation of six weeks prescribed by the first part of proviso (b) to s. 18(2) would commence from the date when the effective notice—imparting knowledge of the essential contents of the award, including the reasons or the basis on which the quantum of compensation has been fixed—was served upon the petitioners. And that effective notice is deemed to have been served on them when they collected the copy of the award.

28. In *Super Construction Company*, too, this Court, per B. Saraf J, has held that the phrase “within six weeks of the receipt of the notice” occurring in the first part of proviso (b) to section 18(2) must be interpreted to mean “within six weeks from the receipt of effective notices”. That is, from the date when the applicant came to know the essential contents of the award, including the reasons or the basis on which the quantum of compensation has been fixed.

29. Of course, the learned Additional Government Advocate has relied on *Nikko*. In that case, the High Court of Punjab and Haryana has held that if the landowner or his representative is not present when the award was passed, it presents two contingencies.

The landowner can file objections in six weeks from the date he received the notice under section 12(2) of the Act. Or, if he has not received the notice, he must file his objections in six months from the date of the LAO's award. According to *Nikko*, the provision is mandatory and, so, the prescribed period cannot be extended. As to the knowledge about the LAO's award, it may be actual or constructive. *Nikko* has also stressed that the words "date of Collector's award" cannot be given literal meaning because without the knowledge about the award, "no one can possibly file objections". I reckon *Nikko* perfectly accords with *Bhagwan Das*.

30. So I may conclude that the time frame for the person interested to apply to the LAO requiring him to refer the matter to the Civil Court is as follows:

- (1) If the landowner or his representative was present when the LAO passed the award, the landowner must file his application before the LAO for a reference to the Civil Court in six weeks from the date of the LAO's award.
- (2) If the landowner or his representative was absent when the LAO passed the award, he must be served with a notice under section 12 (2) of the Act. Then, he may file his application under section 18 (1) of the Act in six weeks from the date he received the notice.
- (3) But, to trigger this time frame, the notice must inform the landowner, among other things, about the essential contents of the award, including the reasons based on which the quantum of compensation has been fixed.
- (4) If the landowner knows about the award without notice under section 12(2) of the Act, it is his constructive knowledge of the award.
- (5) Similarly, if the landowner has received a notice under

section 12 (2), but it contained no more information about the award than minimum details, it still amounts to constructive notice.

(6) In either contingency, the applicant must apply under section 18 for reference in six months from the date of the Collector's award.

(7) No limitation gets triggered if the landowner has no notice or knowledge, actual or constructive, about the award.

31. Here, on facts, even the respondent authorities do not dispute that the notice the Firm received contained no details about the award. So notice on 18 October 2019 imparted constructive knowledge only about the award—especially about its contents. It secured the award copy on 3 February 2020, when it also received the payment under protest. So the Firm must have filed its objections and requested the LAO to send the matter to the reference court in “six months” from 18 October 2019 or in “six weeks” from 3 February 2020, whichever is earlier. In fact, on 13 March 2020, the Firm requested the authorities to refer its claim to the Reference Court. So, the Firm's application is within limitation.

32. As a result, I set aside the impugned order, dated 30/6/2020, and direct the third respondent to refer the matter to the Reference Court in accordance with the law.

This Writ Petition stands disposed of.

**DAMA SESHADRI NAIDU, J.**

**AP/-**