

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL  
CIVIL REVISION No. 218 of 2024**

***TAKHAT SINGH AND OTHERS***

*Versus*

***EXECUTIVE ENGINEER AND OTHERS***

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***Shri Rohtash Babu Patel - Advocate for the petitioners.***

***Shri Ramji Pandey - Government Advocate for respondents/State.***

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*Reserved on* : 05.03.2025

*Pronounced on* : 25.03.2025

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**ORDER**

This civil revision has been preferred by the petitioners/claimants/land owners challenging the order dated 15.12.2023 passed by Additional Judge to the Court of First District Judge, Begamganj, District Raisen in MJC No.51/2023 whereby reference made by the Collector/Land Acquisition Officer, Raisen has been dismissed by the District Judge under Order VII Rule 11 CPC holding it to be barred by limitation.

2. Learned counsel for the petitioners submits that award was passed by Land Acquisition Officer (in short 'LAO') on 31.12.2013 and after passing of the award by LAO, no notice as required under Section 12(2) of the Land Acquisition Act, 1894 (in short 'the Act') was served on the petitioners, therefore, they were not aware of the contents of the award and when the cheques were delivered to the petitioners on 21/25.08.2014, then only they became aware of the award passed by LAO, thereafter they applied for certified copy of the award passed by LAO and made application to the Collector on

28.01.2015 within a period of six months, which was rightly referred by the Collector to the District Judge vide order dated 09.09.2019, with the request to the District Judge to decide the reference.

3. Learned counsel submits that after making reference by the Collector, the Court was bound to decide the reference on merits and not on the question of limitation under Order VII Rule 11(d) CPC, which even otherwise is a mixed question of law and facts, that is beyond the scope of order VII Rule 11 CPC. He submits that District Judge has committed illegality in dismissing the reference as barred by limitation, which was clearly within limitation. With these submissions he prays for allowing the civil revision and for setting aside the impugned order with the further direction to the District Judge to decide the reference application on merits.

4. Learned counsel appearing for respondents/State supports the impugned order and prays for dismissal of the civil revision.

5. Heard learned counsel for the parties and perused the record.

6. From the record it is clear that the Collector made reference vide order dated 09.09.2019, thereafter District Judge proceeded to decide the reference by fixing the case for reply and lastly on 28.06.2023 directed the respondents to file reply, but instead of filing reply, the respondents/State on 19.07.2023 filed an application under Order VII Rule 11 CPC read with Section 18(2) of the Act with the prayer of dismissing the reference application as barred by limitation, which was opposed by the petitioners by filing reply to the application. Thereafter, District Judge summoned the original record of LAO and after hearing arguments of the parties, allowed the application under Order VII Rule 11 CPC read with Section 18(2) of the Act by the impugned order dtd.15.12.2023 and dismissed the reference application holding it to be barred by limitation.

7. Relevant provisions regarding making of reference by Collector to the Court and passing of award by the Court, are 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 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 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 section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

**19. Collector's statement to the Court.**

(1) In making the reference, the Collector shall state, for the information of the Court, in writing under his hand,—

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11;

(cc) the amount paid or deposited under sub-section (3A) of section 17; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement, shall be attached a Schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested, respectively.

**20. Service of notice.**

The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:—

(a) the applicant;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

## **21. Restriction on scope of proceedings.**

The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

## **22. Proceedings to be in open court.**

Every such proceeding shall take place in open court, and all persons entitled to practice in any Civil Court in the State shall be entitled to appear, plead and act (as the case may be) in such proceeding.

## **23. Matters to be considered in determining compensation.**

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

first, the market value of the land at the date of the publication of the [notification under section 4, sub-section (1)];

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bonafide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.—In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of [thirty per centum] on such market-value, in consideration of the compulsory nature of the acquisition.

## **24. Matters to be neglected in determining compensation.**

But the Court shall not take into consideration

first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

seventhly, any outlay or improvements on, or disposal of the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the [notification under section 4, sub-section (1); or

eighthly, any increase to the value of the land on account of its being put to any use which is forbidden by law or opposed to public policy.

**25. Amount of compensation awarded by Court not to be lower than the amount awarded by the Collector.**

The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under section 11.

**26. Form of awards.**

(1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908 (5 of 1908)."

8. Close scrutiny of the aforesaid sections depicts that after passing of the award by LAO, the aggrieved party/parties can make application/objection to the award in accordance with Section 18 of the Act and then the Collector has to refer the application/objection to the Court in accordance with Section 19 of the Act. Meaning thereby, after referring the matter by Collector to the Court, it is for the Court to decide question/issue of limitation, only if it is raised by the respondent/State in the reply, that too on the basis of evidence, if any, adduced by the parties to the reference.

9. Section 26 of the Act provides passing of the award by the Court, which means that the Court has to decide the reference application after following the

procedure prescribed under Section 20 to 25 of the Act, like a suit. It is well settled that a question of limitation is a mixed question of law and facts and such a mixed question of law and facts is not open to be decided by the Court on the application under Order VII Rule 11(d) of the CPC.

**10.** If provisions of Order VII Rule 11 of CPC are applied to the reference proceedings provided under Section 18 of the Act, then without any doubt it is clear that sub rules (a) to (c) and (e) & (f) to Rule 11 of Order VII are not applicable to the Reference proceedings. Only confusion may be about sub-rule (d) to Rule 11, which speaks about rejection of plaint 'where the suit appears from the statement in the plaint to be barred by any law'. In the land acquisition cases, the plea of limitation is/can be taken by the respondent/State alleging knowledge of the award of LAO on the basis of certain notices issued and served by the respondent/State on the claimants/land owners, which cannot be considered while deciding the application under Order VII Rule 11 CPC in presence of settled legal position to the effect that while deciding application under Order VII Rule 11 CPC, only plaint allegations are required to be considered and the documents produced on behalf of defendants/respondents cannot be considered. If this be the position, the Court should/can not entertain the application under Order VII Rule 11 CPC in the reference proceedings.

**11.** In the present case, it is clear that upon filing the application under Order VII Rule 11 CPC, the Court below firstly summoned the original record of LAO and thereafter proceeded to decide the application under Order VII Rule 11 CPC and taking into consideration the documents of respondents/State, found the reference to be barred by time, which in my considered opinion is illegal, being contrary to settled position of the law. Instead, the Court ought to have first directed the respondents to file written statement/reply to the reference application and after framing of the necessary issues including the issue of

limitation, ought to have decided all the issues together, including the issue of limitation, as provided under Order XIV Rule 2 CPC.

**12.** In the case of Abdul Karim vs. State of M.P., **AIR 1964 MP 171**, a Division Bench of this Court has held as under :

“6. The decision, therefore, of the question whether Order 22 can be applied to proceedings under Section 18 of the Act must depend on the construction and proper understanding of the proceedings under Section 18 and of the scope of the proceedings. In this connection, the first material provision to notice is Section 12 which says of an award made by the Land Acquisition Officer that

"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....."

The finality of the award is destroyed when a reference under Section 18 is made. Once there is a proper reference under Section 18 before the Court, the final order made by the Court on the reference is the award, no matter whether by the decision of the Court the claimant has been given an additional amount of compensation or given no additional amount or whether the Acquisition Officer's award is upheld or not upheld for some other reason. As has been said in Assistant Development Officer v. Tayaballi, AIR 1933 Bom 361 at pp. 363-364, the acquiring officer's award is strictly speaking not an award at all but an offer. If his award is not accepted and the matter is taken to Court by way of a reference under Section 18, then the final award is the one made by the Court. Once a reference is made, the Court is required under Section 20 of the Act to give notice of the hearing of the objections to the award made by the Land Acquisition Officer, inter alia, to the person at whose instance the reference has been made and to all persons interested in the objection, except to those who have consented to receive the payment of compensation awarded without any protest. Sections 21, 22 and 23 deal with the scope of the enquiry before the Court and the determination of the amount of compensation. Section 24 enumerates the matters which the Court shall not take into consideration in determining the compensation. The next Section contains rules as to amount of compensation.

Finally, Section 26 requires the presiding Judge to make an award specifying the amount awarded under clause first of Section 23(1) and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts. It is thus clear that once a reference is made under Section 18, the Court has to render an award under Section 26. The reference proceedings cannot be dismissed for any reason. So to do would be to refuse to award compensation for land compulsorily acquired under the Act and for which, the Act requires that compensation has got to be awarded. It is no doubt true that in proceedings under Section 18 the burden of proving that the award made by the Land Acquisition Officer is inadequate or erroneous is on the party objecting to the award and at whose instance the reference has been made. If he succeeds in showing prima facie that the award is inadequate, then the Government must support the award by producing evidence. If, on the other hand, he fails to appear in the Court or to produce any evidence, the award made by the Land Acquisition Officer will stand. But the Court then has to make the award made by the Land Acquisition Officer as its own award under Section 26. If, then, as we think, once a reference under S. 18 is made, the Court has to make an award, no matter whether the person at whose instance the reference has been made appears or fails to appear before the Court or fails to produce evidence in support of his

objection, it is clear that there cannot be any dismissal or abatement of a reference proceeding. It follows, therefore, that the application of Order 22 of the Code of Civil Procedure is altogether inconsistent with the very nature and scope of the proceedings under S. 18.”

**13.** The case of Abdul Karim (**supra**) is also relied by Hon'ble Supreme Court in the case of Khazan Singh vs. Union of India, **(2002) 2 SCC 242** and has held as under :

**“7. The provisions above subsumed would thus make it clear that the civil court has to pass an award in answer to the reference made by the Collector under Section 18 of the Act. If any party to whom notice has been served by the civil court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the party concerned. But non-participation of any party would not confer jurisdiction on the civil court to dismiss the reference for default.”**

**14.** In view of the aforesaid decisions in the case of Abdul Karim (**supra**) and Khazan Singh (**supra**), it is clear that upon making reference by the Collector, the Court/District Judge was required to decide the reference application after filing reply/written statement by the respondents/State that too after framing of necessary issues including the issue of limitation and the issue of limitation ought to have been decided along with other issues and not before that.

**15.** As such in my considered opinion, the Court/District Judge has committed illegality in dismissing the reference application on the ground of limitation by allowing the application under Order VII Rule 11 CPC that too by placing reliance on the decision in the case of Kashibai vs. State of M.P., **2012 (II) MPWN 108**, which is neither on the scope of Order VII Rule 11 CPC nor in this case, the reference application was dismissed, rather in this decision, order dismissing the reference application was set aside by High Court.

**16.** Resultantly, this civil revision succeeds and is allowed and matter is remanded to the Court/District Judge to decide the reference application on merits after restoring the reference application to its original number. If the question/objection of limitation is raised in the reply/written statement, the same



shall be decided only after framing issue of limitation, that too along with other issues, on the basis of evidence, if any, adduced by the parties.

**17. With the aforesaid observations, this civil revision is allowed and disposed off.**

**18. Misc. application(s), pending if any, shall stand closed.**

**(DWARKA DHISH BANSAL)**  
**JUDGE**

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