

Smt. Krishna Devi Gautam Vs. State of U.P. and Another

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Court : Allahabad

Decided On : May-11-2000

Reported in : 2000(3)AWC2404

Judge : D. K. Seth, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 2 and 115; [Land Acquisition Act, 1894](#) - Sections 11, 12 (2), 18, 18(1), (2), 19, 19(2) 23, 23(1), 26, 26(1) (2), 30, 49, 54 and 56;

Appeal No. : Civil Revision No. 545 of 1993

Appellant : Smt. Krishna Devi Gautam

Respondent : State of U.P. and Another

Advocate for Def. : P. K. Singh, Adv.

Advocate for Pet/Ap. : Manish Goyal and ;R. P. Goyal, Adv.

Judgement :

ORDER

D. K. Seth, J.

1. In a land acquisition proceeding, an award was made by the Collector on 11th February, 1987, under Section 11 of the Land Acquisition Act. 1894. A reference

was sought for under Section 18 by the petitioner-claimant on 3rd June, 1989, giving rise to a reference being L.A.R. No. 141 of 1990. The learned District Judge, Moradabad, by a judgment and order dated 7th September, 1993 dismissed the reference on the ground of its being barred by limitation. Against this order, the present revision has been filed under Section 115 of the Code of Civil Procedure.

2. Mr. P. K. Singh, learned counsel for the opposite parties had raised a preliminary objection as to the maintainability of the revision. According to him, the order passed by the Learned District Judge was an award within the meaning of Section 54 of the Land Acquisition Act which prescribes a remedy by way of appeal to the High Court. Therefore, the revision could not be maintained and the petitioner was eligible to file an appeal upon payment of the requisite court-fees. As such, the revision is incompetent.

3. Mr. Manish Goyal, learned counsel for the claimant-petitioner on the other hand contends that since the learned District Judge had dismissed the reference as barred by limitation, it had not entered into the reference. According to him, the Court had decided the competence of the Collector to make the reference. As soon it decides that the reference was incompetent, it does not enter into the reference. When a reference is made by the Collector under Section 18, the Court has power to examine as to whether such reference is competent or not. Therefore, when the Court does not enter into the reference, there is no question of conferring any character of award on the order by which he has refused to exercise, his jurisdiction. His second contention was that since the award has not been defined in the Land Acquisition Act itself for construing the meaning of the award, one has to fall back on the scheme of the award and take intrinsic aid from the Act itself namely. Section 26 of the said Act. According to him. Section 26 having prescribed the form of the award unless the order satisfied the test laid down in Section 26, the same cannot be termed as an award. He also refers to the dictionary meaning of the word 'award' as well as the Law Lexicon where an award has since been defined. He had also relied on various decisions in support of his contention to which reference would be made at a later stage.

4. Before proceeding to deal with the merit of the case with regard to which both the counsel had addressed the Court in my view, first we have to decide the preliminary objection raised by Mr. P. K. Singh, learned counsel for the opposite parties.

5. Section 54 of the Act prescribes that '..... an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court

6. The above expression used in Section 54 indicates that an appeal shall lie only to the High Court from the award or any part thereof. The award referred to under Section 54 is also clarified by the expression 'of the Court'. Thus, it confines to the award that might be made by the Court excluding the award made by the Collector under Section 11. Admittedly, the award made under Part-III of the Act is an award of the Court on a reference under Section 18 and as such is appealable under Section 54 of the said Act.

7. Now, award having not been defined. It can be said that it is final adjudication of the rights of the parties. In Law Lexicon, 'award' has been defined to mean 'To adjudge to be due ; assign, or bestow as of right, or give by judicial determination or deliberate judgment, especially upon arbitration or umpirage ; as to award'. It has also included the term 'award' referred to in Section 54 relying on the decision in the case of *Balaram Bhramaratar Ray v. Sham Sundar Narendra*, ILR 23 Cal 526, in the following manner :

'The term award in Section 54 of Act I of 1894 includes not only a decision under Section 26 of the Act, but also an order for apportionment under Section 30 of the Act. The application of the term is not to be limited to cases where a final order is made by the Collector but applies also to the same order when made by a civil court.'

8. Though award includes the award of the Collector made under Section 11 but the same is not included in Section 54. Though the award made by the Collector, may be in a form other than Section 26 since Section 26 prescribes the award as is to be given by a Court under Part-III. Therefore, the award under Section 26

cannot include the award that might be given under Section 11. Be that as it may not be concerned with the same so far the question is involved in the present case.

9. In the Oxford dictionary 'award' means To examine a matter and adjudicate upon its merits ; to decide, determine, after consideration or deliberation'. The 'award' has been defined in words and phrases in Permanent Edition where it has been said to mean 'Arbitrator's determination of preliminary question of fraud held not an award within arbitration law, and was not subject to motion either to confirm or vacate as was held in re News Projection Corporation, 270 N.Y.S. 29. 30. 241 App. Div, 718. An award must embrace all the matters specifically included in the submission. Tudor v. Scovell, 20 NH 171, 173. An award must be according to the submission, and must comprehend all matters therein contained. Rechards v. Drinker, 6 NJL (1 Halst.) 307, 319. An award is a judgment as formed and pronounced. Hoff v. Taylor, 5 NJL (2 South) 829. 833.

10. However, this does not help us much and would not lead us to the contention involved in this question. Since in view of the fact in this case, a reference was made by the Collector which was entertained by the Court and had framed three issues, one of which is with regard to the limitation and other two on merit and the Court had dealt with all the issues. Since the Court had come to 'a conclusion on the basis of the second issue that reference was barred by limitation, therefore, while dealing with the other two issues. Court had held that since it was barred by limitation, therefore, the other issues need not to be gone into. Thus, it was a final adjudication of the rights of the parties in the form of a judgment which definitely satisfies the test of an award if we go by the definition of the award that has been referred to by Mr. Goyal.

11. In order to interpreting the meaning of a particular expression used in the Act, it is necessary to obtain intrinsic aid before referring to extrinsic aid. If there is nothing in the Act itself and if no intrinsic aid is available in that event, the Court can fall back on extrinsic aid. Therefore, we may not much rely on the extrinsic aid on which Mr. Goyal sought to rely upon.

12. We may now examine the scheme of the Act. In Section 26 of the Act, the form of the award has been provided for. Since the award has not been defined and the award has been referred to in the Act. therefore, the intention of the expression 'award' used in the Act has to be gathered from the scheme of the Act having regard to the form of the award given in Section 26. More so when, a form is prescribed, then the award has to be given in the form so prescribed. If any order passed on a reference made under Part-III, the ingredients provided in Section 26 are not fulfilled and those cannot be included in the award, since the form would be lacking. In that event, it has to be seen whether the order is an order within the meaning of Section 54 of the said Act.

13. Sub-section (1) of Section 26 prescribes that every award under Part-III shall be in writing signed by the Judge, and shall specify the amount awarded under first clause of sub-section (1) of Section 23, andalso 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 seems that the form prescribed under Section 26 has been coined and couched in a mandatory form by the expression used therein particularly, the expression shall specify. Thus, a particular form having been prescribed for the award if the order that has been passed, does not satisfy the ingredients of the form in that event, it is to be seen whether it could be said to be an award for the purpose of Section 54 of the Act. Subsection (2) of Section 26 prescribes that an 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. If both these two sub-sections are read together, it might create a little confusion since if the award is to be a deemed decree and the grounds for the award is judgment then even when the reference is rejected on any ground whatsoever, the same would very much be an award. But that question has to be looked into having regard or with reference to other provisions of the Act. Since Section 26 is not unambiguous and does not clearly lay down as to what would be an award for the purpose of Section 54 of the Act and Section 54 having used an expression award only, it is not possible to decide the question having regard to Section 54 and Section 26 alone.

14. For this purpose, it is necessary to look into the scheme of the Act particularly. Part-III with which we are now concerned. Part-III begins with Section 18 by which a reference is permitted. Sub-section (1) prescribes that any person interested in an award if he has not accepted the same, he may require the Collector by a written application to refer the matter for the determination of the Court in respect of any kind of objection mentioned therein. Thus, a person aggrieved by an award made by the Collector under Section 11, has a right to seek a reference by the Collector for the determination of the Court through a written application. If such application is made. Section 19 prescribes the manner in which the Collector will make the reference. The Collector is required to state all the information to the Court in writing with regard to the materials prescribed in clauses (a) to (d) of Section 19 and also to attach the schedule giving particulars of notices served upon and the statement in writing made or delivered by the parties interested by reason of subsection (2) of Section 19.

15. Now Section 18 in sub-section (2) prescribes that an application for making a reference by the Collector can be made by an aggrieved person under clause (a) of the proviso of subsection (2) at the time when the award is made by the Collector if the claimant or his representative was present before the Collector or within six weeks from the date of Collector's award. Whereas in clause (b) the cases which do not come under clause (a) namely, in other cases the reference can be sought within six weeks from the date of receipt of notice under Section 12(2) or within six months from the date of the Collector's award whichever expires first.

16. Thus, a limitation to the making of reference has been provided for. There is no provision empowering the Collector to extend the period limited by the proviso to sub-section (2) of Section 18. In the absence of any such authority conferred on the Collector, if the application is not made within the period prescribed under clauses (a) and (b) of the proviso in that event, Collector has no jurisdiction to make a reference. The reference can be made by the Collector only when an application is made in terms of subsection (2) which provides about the limitation as to when such application could be made. The right conferred under sub-section (1) of Section 18 is subject to the procedural limitations provided in sub-section

(2). An aggrieved person has a right to seek a reference by an application to be made within the period limited by the proviso to subsection (2). Since sub-section (1) provides that such an application shall be a written application made to the Collector and that too, in the form prescribed in sub-section (2) and within the time limit provided in the proviso thereto, to the reference could be made by the Collector only when the application fulfils the conditions provided In Section 18.

17. Thus, a reference is competent by the Collector only when it is made in writing according to the form provided in sub-section (2) within the period provided in the proviso. Unless these conditions are satisfied the Collector cannot make reference and a reference made by him is incompetent and as such cannot be gone into by the Court or in other words, there is no reference before the Court. If the reference does not conform to Section 18 as discussed above in that event, there is no scope for the Court to enter into the reference at all. Though when a reference is made, even if it does not conform to Section 18, still then the Court has every right to examine the same and find out whether there is a valid reference in order to enable the Court to exercise its jurisdiction to enter into the reference.

18. Thus, while examining the validity of the reference of the competence of the Collector to make the reference or the competence of the reference if the Court comes to a finding that it is an incompetent and rejects it, then it has to be taken that it has not entered into the reference and has not exercised its jurisdiction. And as such, it is not required to follow and consider the procedure for adjudicating upon the reference as has been provided in Section 23 onwards which have been made mandatory by reason of Section 26 to the extent that each of the items are to be dealt with separately supported by grounds in respect of each of the Items or clauses provided In Section 23.

19. Thus, Section 26 read with Section 18 and Section 23. If harmoniously constituted supportsthe view that an award is to be denned as has been meant while prescribing the form in Section 26 and it cannot be otherwise. All decisions, which does not conform to Section 26 as discussed above, shall not be an award within the meaning of Section 54 of the Act. In other words, the expression 'award' used in Section 54 has to be construed taking aid of Section 26 read with Section

18 and Section 23 of the Act to mean that an award which conforms as prescribed in Section 26 deciding the question within the meaning of Section 23. Unless Section 23 is gone into and incorporated in the award and on account of any reason, namely, being not in conformity with Section 18, the same would not be an award. Since the Court had not entered into the reference on account of its being not in conformity with Section 18, to be precise, that there was no reference before the Court until it is determined by the Court that the reference is competent and then the Court enters into the reference to adjudicate upon the rights of the parties in terms of Section 23. On account of its being incompetent by reason of non-compliance of Section 18 or particularly being barred by the limitations prescribed in the proviso to sub-section (2), if it is rejected, the Court does not enter into the reference. Thus, such order of rejection can never be an award within the meaning of Section 54 of the Act. Therefore, no appeal will lie against such an order under Section 54 of the Act.

20. Similar question arose in *Dembeswar Sarma v. Collector of Sibsagar*, 1917 (39) IC 637, wherein an order rejecting a reference on account of being barred by limitation was held that the same was not an award and as such, no appeal lies thereto and ultimately, the memorandum of appeal was converted into an application for revision. The same view was taken by the Lahore High Court in *Nafis-ud-Din and others v. Secretary of State and another*, AIR 1927 Lah 858 (2), that an order rejecting a reference on account of being time barred is not an award within the meaning of Section 54 of the said Act. In the case of *Mahesh Missir and others v. Province of Bengal* : AIR 1939 Cal 733 , it had also taken the same view namely, that a decision on or determination by the Tribunal of any matter which has no reference to compensation in some form or other, does not come under the definition of an 'award'. In the case of *Makhan Lal and others v. Secretary of State* : AIR 1934 All 260 , this Court in a Full Bench had held that the Court had declined to exercise jurisdiction being of the opinion that he is precluded from hearing the case. The Land Acquisition Act provides a complete machinery for decision of all questions and, therefore, the question of title could very well be gone into. But the Court did not go into the said question and as such, it was held that the Court did not exercise its function or jurisdiction and as such, such an order would be revisable. This decision Indirectly supports the contention that an

order which is an order rejecting a reference on the ground of limitation amount to refusal to exercise of jurisdiction or in other words, that the Court did not exercise its jurisdiction and as such, the order passed by it, was not an award.

21. The Rajasthan High Court in *Lakshmi Narayan v. State of Rajasthan*, AIR 1966 Raj 118, had also taken the same view that when a reference is rejected as invalid being made on a time barred application, is not an award and, therefore, no appeal lies to the High Court under Section 54. The Rajasthan High Court had supported its decision relying on the Calcutta decision as well as the decision in the case of *Ghulam Mahyuddin v. Secretary of State*. AIR 1914 Lah 394, as well as the decision in the case of *Nafis-ud-Din* (supra).

22. The Bombay High Court in the case of *Mangilal Jawanmal and Others v. Spl. Land Acquisition Officer* : AIR1978 Bom325 , had also taken the same view to the extent that what constitutes an award of the civil court has been provided for in Section 26 of the Act and thus, it is clear under Section 54 read with Section 26 that it is only an award as contemplated in Section 26, is appealable under Section 54. Unless an award as contemplated in Section 26 has come into existence, Section 54 would not come into operation. This decision had followed the decision in *Nafis-ud-Din* (supra), as well as *Hasum Molla y. Tasiruddin*, 1912 ILR 39 (Cat). In *Sunderlal v. Paramsukhdas and Others* : [1968]1SCR362 , the Apex Court had taken the view that unless the rights of the parties are determined, the decision of the Court in a proceeding under Section 18 is not an award appealable under Section 54 of the Act. However, this decision was based on the facts where an application for substitution seeking to implead to some parties was the basis on which the order was passed, which order deciding such application was held not to be an award. It seems that this decision does not help us directly though it gives some amount of line of thought that has been discussed here-in-before.

23. Subsequently, in the case of *Mohammed Hasnuddin v. State of Maharashtra* : [1979]2SCR265 , the Apex Court had taken the view that when a Court functions under the Act being a Tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector under Section 18 complies with the conditions laid down therein so as to give the Court jurisdiction to hear the

reference. However, in view of this proposition, the Supreme Court were reluctant to accept the law laid down in *State of U. P. v. Abdul Karim* : AIR1963 All556 . On the other hand, it has held that it is the duty of the Court to see that the statutory conditions laid down in Section 18 have been complied with and it is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It is only a valid reference which gives jurisdiction to the Court. Therefore, the Court has to ask itself the question whether it has jurisdiction to entertain a reference. In deciding the question of jurisdiction in a case of reference under Section 18 by the Collector, the Court is certainly not acting as a Court on reference. It is only discharging the elementary duty of satisfying itself that a reference which it is called upon to decide, is a valid and proper reference according to the proviso to Section 18 of the Act under which it is made, for ascertaining whether it can enter into the reference and exercise its jurisdiction as a Court of reference. It is the basic and preliminary duty which no Tribunal can possibly avoid. The Court has no jurisdiction to decide a reference made beyond the period prescribed by the proviso to subsection (2) of Section 18 of the Act and if it finds that that it is so made, it declines to answer the reference, or in other words it declines to exercise its jurisdiction.

24. This decision clearly indicates that as soon the Court finds it is beyond the limitation prescribed in sub-section (2) of Section 18 and rejects a reference, the Court declines to answer the reference or in other words, it has not entered into the reference. As such the decision without entering into the reference, rejecting an award on the ground of limitation cannot be treated to be an award when it does not conform to Section 26 of the Act.

25. Thus, it appears that the view which I had taken as discussed above, is fully supported by the view taken by the decisions cited by Mr. Goyal at the Bar as discussed above.

26. A contrary view was taken by the Madras High Court in the case of *K.T. Muthurveerappa Pillai v. Revenue Divisional Officer* : AIR1931 Mad26 . The Madras High Court had sought to distinguish the decision in *Dembeswar Sarma* (supra), by the Calcutta High Court on the ground that in the said case, no

reference ought to have made and as such, the District Judge refused to make an award and therefore, no appeal lay. The second case Mahesh Mistr (supra), was distinguished on the ground that the order was an order refusing to restore a case dismissed on default. The third case in Sarat Chandra Chose v. Secretary of State, 50 IC 732, was distinguished under Section 49 of the Act. Thus, the Madras High Court had taken a different view with the view taken by the Calcutta High Court seeking to distinguish it as referred to above.

27. The Punjab and Haryana High Court in the case of Pokhar Singh v. State of Haryana AIR 1980 P&H; 329, had also taken different view, similarly, distinguishing the decision in the case Nafis-ud-Din (supra). Hasum Molla (supra), and Ghulam Muhyuddin (supra) on the ground that none of these decisions are supported by reason. On the other hand, it had pointed out that a reference under Section 18 is to be treated as a decree within the meaning of the Act and would be appealable and as such irrespective of the fact that it was dismissed on the point of limitation. According to Punjab and Haryana High Court, the dismissal of an appeal on the point of limitation is also a decision on merit, and an appeal would certainly lie rejecting a reference as time-barred as the same would amount to a judgment and decree within the meaning of Section 26 and appealable under Section 54.

28. With humility and respect, I am unable to persuade myself to agree with the said reasoning. In as much as rejection of a reference as barred by limitation is not a decision on merit of the award. On the other hand, it is prevented at the threshold from entering into the award on the ground that the reference was incompetent on being barred by limitation, which prevents the Court from entering into the reference.

29. Be that as it may, in view of the discussion here-in-before and I am being supported by the decisions of the Calcutta, Lahore. Bombay and Rajasthan High Courts as well as those of the Supreme Court. I am unable to appreciate the persuasive Value of the decision, of the Punjab and Haryana High Court in Pokhar Singh (supra). Similarly, I am also unable to persuade myself to agree with the decision of the Madras High Court above.

30. The Himachal Pradesh High Court had also taken a similar(contrary) view in the case of Ram Dhan v. Collector Land Acquisition and others, 1991 LACC 436. This decision was rendered relying upon Full Bench decision of the Kerala High Court in Thombi v. Mathew and another : AIR1988 Ker48 . However, this decision has not taken into account any of the decisions either by the Calcutta High Court or Lahore High Court or the Supreme Court as referred to here-in-before. Therefore, this decision also falls to persuade me to appreciate its persuasive value in view of the reasoning as I have discussed here-in-before supported by the decisions cited by Mr. Goyal at the Bar. Therefore, I am unable to agree with the contention of Mr. P. K. Singh so far as the preliminary objection is concerned. Since the impugned order is not appealable under Section 54 of the Act, it is revlsable and the revision is maintainable.

31. Now on the merit of the case Mr. Goyal contends that the Court had come to a finding that neither the petitioner nor her representative was present when the award was made by the Collector. It was also found that no notice under Section 12(2) was served upon the petitioner. It had also found that the petitioner came to learn about the award on 17th May. 1989. But the reference having been sought for on 3rd June, 1989. The same was beyond six weeks as provided in clause (b) of the proviso to sub-section (2) of Section 18 and as such, it was time-barred. According to Mr. Goyal, this is wholly an erroneous view taken by the learned reference court and on this view it had refused to exercise jurisdiction or in other words, it had failed to exercise its jurisdiction and such decision is a case decided within the meaning of Section 115 of the Code of Civil Procedure and as such is very much revisable and on merit the application for reference having not been barred by limitation, the order rejecting the reference on the point of limitation cannot be sustained.

32. Mr. P. K. Singh, learned counsel for the opposite parties, onthe other hand, contends that two plots of the petitioner, namely, plot Nos. 33 and 16 were acquired by the same notification and compensation was awarded under the one or the same award. If on facts as is apparent from paragraph 6 of the said judgment as observed by the learned Court below, the petitioner had knowledge about the compensation allowed in respect of plot No. 33 in that event, it cannot

be denied that he had also knowledge in respect of the compensation awarded in respect of plot No. 16. Therefore, the assertion that she had acquired knowledge on 17th April, 1989, cannot be sustained. Mr. Singh further contends that it would be apparent that the petitioner has sought to amend her application by seeking to replace the date 17th April, 1989 as 17th May, 1989 and 22nd April, 1989 as 22nd May, 1989. However, the Court had found that the petitioner went to collect her compensation on 17th April, 1989 and received the certified copy of the award on 22nd April, 1989 and had rejected the said amendment. Thus, the petitioner is not a truthful person and has come with wrong statement and as such, she cannot be believed and therefore, he contended that, he has every right to assail the finding of the reference court to the extent that the petitioner had knowledge only from 17th April, 1989. According to him, if she had knowledge about the award in respect of plot No. 33 and she having not disclosed the date since when she had knowledge of the award in respect of plot No. 33, the mischief of the proviso to sub-section (2) of Section 18 is clearly attracted. The award having been given on 11th February, 1987, six months having expired thereafter or even if the petitioner had knowledge after the award, the six months having expired after the knowledge of the award, the petitioner cannot claim any benefit. He further contends that the period of six months has to be calculated according to the proviso as provided in sub-section (2) of Section 18 which prescribes a certain period of time of six months after the award unless a notice under Section 12(2) is served and it would be six weeks from the date of such notice irrespective of the fact whether six months have lapsed after the award was passed. According to him, assuming no notice was served then the limitation would be six months from the date of the award. There being no provision for extending the period, there was no scope for extension of the period. Therefore, on merit, the petitioner has no case.

33. Mr. Goyal opposed the contention and contended that the Act has not prescribed the specific limit in clause (b) of the proviso to sub-section (2) and it was held by several decisions of the Supreme Court and different High Courts that the period of limitation would be six months from the date of knowledge and such knowledge should be with regard to the contents of the award not only with regard to the award alone.

34. A plain reading of the proviso to sub-section (2) of Section 18 shows that if the claimant or his representative was present before the Collector at the time of making the award, then the relief would be for six weeks from the date of the award. This provision is not attracted in the present case since in the order, it has been pointed out that neither the claimant nor her representative was present when the Collector had made the award. The opposite party had not made out such a case in their objection before the learned reference court. Therefore, it is a case other than a case falling within clause (a). Therefore, this squarely comes within clause (b), Clause (b) has two parts. One part says that if a notice under Section 12, sub-section (2) is served, then the period is limited upto six weeks from the date of receipt of the notice if the claimant or his representative was not present before the Collector making of the award. The second part says within six months from the date of the Collector's award whichever shall first expire. Thus, six weeks from the date of receipt of the notice is again circumscribed to six months from the date of award, since out of the two period of six weeks and six months the period which will first expire, would determine the limitation. If the notice is served within six months and six weeks expires before six months, then the limitation would be upto to the point of six weeks from, the date of notice. In case the notice is served within six months from the date of award but it expires after six months from the date of award in that event, the limitation will come upto the point of six months from the date of award. But the proviso has not provided for a case where a notice is served after the expiry of six months from the date of award. In such case, six months having expired, provision as to whichever period shall expire first is to be attracted. Thus, the construction of clause (b) does not permit to decide a case which does not fall within expressed provision contained in clause (b), namely, where the notice is served after six months of the award. Even if we take it in that event, since six months had already expired, it would be six weeks from the date of the notice, which would govern the limitation. Then the question still remains open as to what will happen in case where no notice has been served and in the meantime, six months from the date of award has expired. Thus, for this purpose in the absence of any specific provision in the Act, we are to fall back on the judicial decisions.

35. Taking cue from six months limitation from the date of the award in that event, it can be said that this six months will be applicable from the date of knowledge of the award as it can be taken six weeks from the date of receipt of the notice if it is served after six months of the award on similar analogy and reasoning.

36. In order to construe this provision, there is no alternative but to take aid of the expression used in the section itself which had indicated a part of its intention that it would be six weeks from the date of receipt of the notice or six months from the date of the award in other cases. While providing for other cases in clause (b), it has Incorporated only one condition where notice has been served. It has not taken into consideration other contingencies that might arise in such cases. Therefore, having regard to the provision already incorporated in clause (b), the Court can interpret the intention of the Legislature which is otherwise absent only to the extent that it would be six weeks from the date of receipt of the notice if notice is served after six months from the award and six months from the date of knowledge if there was no notice of the award. So far as the claimant is concerned unless there is any knowledge of the award, the limitation cannot run. The limitation starts running only when a person has notice or knowledge of the award. A notice may be a notice within the meaning of the Act or it may be a notice of having knowledge. Thus, the knowledge is a predominant question when no notice is served on the basis whereof it has to be calculated. Since the knowledge is different from notice, therefore, six weeks cannot be treated for the purpose of attributing limitation to knowledge. Therefore, we have no alternative but to fall back on six months limitation for the purpose of knowledge from the date on which it is dawned. Since clause (b) includes in other cases therefore, it is supposed to include all other contingencies, which are not covered by clause (a). The omission to Incorporate other contingencies does not indicate that the Legislature had altogether excluded contingencies to the extent that unless it falls within clauses (a) and (b), a claimant has no right to seek a reference. Such a situation cannot be conceived of.

37. Similar question had cropped up in *Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer and another* : [1962]1SCR676 . In that case, it was held the knowledge of the party affected by the award either actual or

constructive is an essential requirement of fair play and natural justice. The expression 'the date of the award' used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In the opinion of the Apex Court, it would be unreasonable 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.

38. Mr. P. K. Singh, however, contended that the Apex Court had not laid down that it would be actual , knowledge from which the limitation is to run. According to him, it had also included the constructive knowledge. Relying on paragraph 6 of the impugned order, he had pointed out that the petitioner had constructive knowledge with regard to the award on account of his being aware of the award in respect of plot No. 33 in the same proceeding. Therefore, the finding of the reference court that the petitioner's knowledge was to be counted from 17th April, 1989, cannot be sustained in view of the facts and circumstances of the case particularly, in view of the observation made by the Court in the order itself in paragraph 6. According to him, the conclusion arrived at in paragraph 7 does not conform to the reasoning given in paragraph 6 and as such, according to him, the said finding cannot be said to be a finding of fact free from perversity. Therefore, this Court sitting in revision had every jurisdiction to decline to accept the finding of fact of the lower (reference) court that the knowledge had started from 17th April, 1989, on account of this perversity, in view of the finding here-in-before, as well as the decision of the Apex Court in Raja Harish Chandra Raj Singh (supra), on account of the constructive knowledge of the award of the petitioner as is evident on her admission to the extent that she was aware of the award in respect of plot No. 33.

39. Before we embark upon to assess the contention of Mr. Singh, we may refer to the decision in the case of State of Punjab v. Mst. Qaisar Jehan Begum and another : [1964]1SCR971 , cited by Mr. Goyal, in this case, the decision in the case of Raja Harish Chandra Raj Singh (supra) was further clarified in the following words :

'It seems clear to us that the ratio of the decision in Harish Chandra's case. : [1962]1SCR676 , : [1962]1SCR676 (supra) is that the party affected by the award must know it, actually or constructively, and the period of six months will run from the date of that knowledge. 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 Section 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. Looked at from that point of view, we do not think that it can be inferred from the petition dated December 24, 1954. that the respondents had knowledge of the award.'

40. Thus, it is absolutely clear that the constructive knowledge does not mean 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 a notice is served under Section 12(2), then it may be said that the party had knowledge of the contents of the award. Similarly. If he is present then also he has knowledge of the contents of the award. Otherwise, it is very difficult to accept that the person had the knowledge of the award.

41. Coming back to the present case, it is an admitted position that the petitioner had obtained a certified copy of the award on 22nd April, 1989. Therefore, so far as the contents of the award is concerned, it can be said it would be from 22nd April, 1989. But then she had also contended that she came to learn about the award on 17th April. 1989, when she went to collect the award in respect of plot No. 33 which may also be taken to be a constructive knowledge of the award even with regard to the contents of the award. But then in the absence of any specific averments on the part of the opposite party or in the objection before the reference court or before this Court or in the absence of specific finding of the reference court to the extent that the petitioner had constructive knowledge of the

contents of the award, this Court is not supposed to infer contrary to a concluded question of fact for arriving at a finding of fact on the basis of the observations made in paragraph 6 of the order. In as much as, the revisional court does not sit on appeal over the order impugned before it. It has to examine only as to whether the order suffers from any perversity or it suffers from any illegal exercise of jurisdiction or failure to exercise jurisdiction or any irregularity in the exercise of jurisdiction. Even if it is of a different opinion on the basis of the materials before it, it cannot interfere unless it comes to a finding that it suffers from perversity. Though there might be some reasoning in paragraph 6 but it is the conclusion on the basis of such reasoning, which is to be taken into account. The reasoning given in paragraph 6 is not such as to describe the conclusion arrived at in paragraph 6 as perverse. Having gone through the entire extent and text of the order and considering the totality of the same, I do not feel that there is any perversity to the extent. Mr. P. K. Singh had endeavoured to make out a case so as to interfere with the finding of the learned reference court with regard to the knowledge of the petitioner as on 17th April, 1989. Even on the basis of such reasoning, this Court may be of different, opinion still then it cannot be interfered with the finding of fact arrived at by the learned Court below. Therefore, I do find any reason to interfere with the finding of the learned Court below with regard to the conclusion that the petitioner had knowledge of the award dated 17th April, 1989. Thus, the period of limitation has to be calculated from the date of knowledge of the petitioner, i.e., 17th April. 1989, and the limitation would start running from that date and continue till six months from the said date. The reference was sought for on 3rd June, 1989 which was hardly a little more than six weeks and well within six months. As such even on merits, it cannot be said that the reference was barred by limitations.

42. In the result, this revisional application is allowed. The impugned order dated 7th September. 1993, passed by the District Judge. Moradabad in L.A.R. No. 141 of 1990 is hereby set aside.

43. The learned District Judge shall decide the reference in accordance with law and on merit as early as possible preferably within a period of one year from the date a certified copy of this order is produced before the Courts below.

44. However, there will be no order as to costs.

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