

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.
Ch. Muhammad Ibrahim Zia, J.
Raja Saeed Akram Khan, J.

1. Civil Appeal No. 382 of 2015
(PLA filed on 16.7.2015)

1. Azad Govt. of the State of Jammu & Kashmir, through its Chief Secretary, Muzaffarabad.
 2. Director Sports, Youth and Culture, Azad Jammu & Kashmir, Muzaffarabad.
- APPELLANTS

VERSUS

1. Waheed Ahmed Khan,
2. Aftab Ahmed Khan,
3. Ghayour Ahmed Khan,
4. Taimoor Ahmed Khan, (sons),
5. Rashida Begum, widow,
6. Safia Begum,
7. Nusrat Begum,
8. Nighat Begum, daughters of Abdul Latif Khan, caste Sudhan, r/o Pallandri, Tehsil and District Sudhnuti/Pallandri, Azad Kashmir.

..... RESPONDENTS

9. Commissioner Poonch Division, Rawalakot.
10. Collector Sudhnuti/Pallandri.
11. Collector Land Acquistion, Pallandri/Sudhnuti, Azad Kashmir.

..... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 22.5.2015 in Civil Appeal No. 187 & 205 of 2012)

FOR THE APPELLANTS: Sardar Javed Naz,
Additional Advocate
General.

FOR THE RESPONDENTS: Sardar Muhammad Rauf
Khan, Advocate.

2. Civil Appeal No. 164 of 2016
(PLA filed on 22.7.2016)

1. Waheed Ahmed Khan,
2. Aftab Ahmed Khan,
3. Ghayour Ahmed Khan,
4. Taimoor Ahmed Khan (sons),
5. Rasheeda Begum (widow),
6. Nusrat Begum,
7. Safia Begum,
8. Niget Begum, daughters of Abdul Lateef Khan, caste Sudhan r/o Pallandri, District Sudhnuit, Azad Kashmir.

.... APPELLANTS

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir, through its Chief Secretary, Muzaffarabad.
2. Director Sports, Youth and Culture, Azad Jammu & Kashmir, Muzaffarabad.
3. Commissioner, Rawalakot.
4. Collector, District Sudhnuti Pallandri.
5. Collector Land Acquisition, Pallandri/Sudhnuti, Azad Kashmir.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated 22.5.2015 in Civil Appeal No. 187 & 205 of 2012)

FOR THE APPELLANTS: Sardar Muhammad Rauf
Kahn, Advocate.

FOR THE RESPONDENTS: Sardar Javed Naz,
Additional Advocate
General.

Date of hearing: 19.1.2017.

JUDGMENT:

Mohammad Azam Khan, C.J— The titled appeals by leave of the Court arise out of the consolidated judgment of the High Court dated 22nd May, 2015, whereby the appeals filed from the judgment of the Reference Judge Sudhnuti dated 29th August, 2012, have been dismissed. Since both the appeals arise out of the same judgment and identical question of law and the facts is involved, therefore, these are being disposed of through the consolidated judgment.

2. In a reference application filed before the Collector Land Acquisition Sudhnuti/Pallandri, on 23rd July, 2008, the

father of the appellants, Waheed Ahmed Khan and others, alleged that his land comprising survey No. 503 measuring 9, *kanal* 18 *marla*, and survey No. 326 measuring 3 *kanal*, 7 *marla*, has been acquired/awarded for construction of the sports stadium vide award No. 15/07 drawn on 16th April, 2007. In the reference application it was alleged that the Collector Land Acquisiotn has determined the compensation at the rate of Rs.10,663/- per marla. The price of the land in the open market is Rs.100,000/- per marla. He also alleged that the award has been issued without notice to him. He acquired the knowledge of the award when the Contractor brought machinery at the spot for carrying construction of the stadium, therefore, from the date of knowledge, the reference application is within time. The application was entrusted to the District Judge/Reference Judge, Sudhnuti. An objection was raised by the respondents therein, that the reference has been filed beyond the period of limitation. The Reference Judge,

through judgment and decree dated 29th August, 2012, accepted the reference application and fixed the compensation at the rate of Rs.27,666/- per marla with 15% compulsory acquisition charges. Dissatisfied, both the parties filed appeals in the Azad Jammu & Kashmir High Court. A learned single Judge in the High Court through the impugned judgment dated 22nd May, 2015, dismissed the appeals, hence, these appeals by leave of the Court.

3. Sardar Abdul Rauf Khan, Advocate, the learned counsel for Waheed Ahemd Khan and others, submitted that the judgment of the High Court is against law and the record. The Collector Land Acquisition assessed the compensation on the basis of sale-deeds pertaining to year 2002-2003. The notification under section 4 of the Land Acquisition Act, 1894 was issued in the year 2004, whereas, the award was drawn in the year 2007. The relevant sale-deeds to be considered may be for the year 2006-07. The prices of the land between the

period commencing from 2003 to 2007 have raised manifold in the vicinity due to construction of the by-pass road. He argued that the Reference Judge fixed the compensation at the rate prevalent in the year 2002 on the basis of which the affected land owners were paid compensation for the land which was acquired for construction of by-pass road. The said compensation cannot be made basis for determining the compensation in the year 2007. He submitted that the petitioner-appellants have proved their case from cogent and reliable evidence. He requested for payment of compensation at the rate of Rs.100,000/- per marla along with 15% compulsory acquisition charges. He also requested for dismissal of appeal filed by the Azad Government and another.

4. Sardar Javed Naz, Additional Advocate General, submitted that an objection was raised before the Reference Judge that the reference application has been filed beyond the period of

limitation, which merits dismissal but despite raising the objection the Reference Judge failed to frame an issue and resolve the question of limitation. He further argued that the learned single Judge in the High Court has incorrectly observed that non-resolving of issue of limitation means that the reference application has been declared to be filed within time. He submitted that the judgment of the High Court and that of the Reference Judge may be set aside and the case be remanded to the Reference Judge for framing an issue on the point of limitation and after providing an opportunity to the parties for leading evidence, the case may be decided. On merit, the learned Additional Advocate General submitted that the Collector Land Acquisition has determined and fixed the correct amount of compensation. The Reference Judge has illegally enhanced the compensation.

5. Sardar Muhammad Rauf Khan, Advocate, the learned counsel for Waheed Ahmed Khan and others, in response to the

arguments advanced by Sardar Javed Naz, Additional Advocate General submitted that factually it is correct that the objection regarding the limitation was raised and the Reference Judge has not framed an issue, but the remand of the case would not be in the interest of justice as the parties will suffer to bear unnecessary expenses. He requested the Court to decide the case itself.

6. We have heard the learned counsel for the parties and also perused the record. The land of Abdul Lateef, the father of the appellants Waheed Ahemd Khan and others, was acquired along with other land through award No. 15/07 drawn on 16th April, 2007, for construction of the sports stadium at Pallandri. The father of the appellants, Abdul Latif filed an application before the Collector Land Acquisition for referring the matter to the Reference Judge on 23rd July, 2007, after a period of one year, 4 months and 7 days. The limitation for filing reference application against an award is

governed under section 18 of the Land Acquisition Act, 1894. For better appreciation, we deem it necessary to reproduce here section 18 of the Land Acquisition Act, which reads 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 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.”

The proviso to sub-section 2 of section 18 provides three eventualities for determining the

limitation for filing the reference application; i.e (i) if the interested person/land owner was present before the Collector land Acquisition when the award was made, then limitation for filing reference application will be six weeks from the date of Collector's award; (ii) if the interested person/land owner was not present before the Collector then a notice shall be issued to the interested person under section 12(2) of the Land Acquisiotn Act, 1894 and limitation for filing application shall be six weeks from the date of receipt of notice; and (iii) if the interested person/land owner was not present when the award was drawn and the notice of the award under section 12(2) was not issued to such person then limitation shall be 6 months from the date of award. Clause (b) of sub-section (2) of section 18 provides further that period whichever first expires will be the limitation for fling the application.

7. Under section 12(1) of the Land Acquisition Act, the Collector shall issue award

in respect of true area and value of the land and apportionment of the compensation among the person interested irrespective of the fact whether the interested persons have appeared before the Collector or not. In this background section 12(2) of the Land Acquisition Act, comes into operation, which makes it mandatory upon the Collector to give immediate notice to such of the persons interested as are not present personally or by their representatives when the award is issued. The wisdom behind notice is that a person whose land has been acquired, shall be intimated that his land has been acquired and the compensation has been determined in the terms stated in the award. The matter of interpretation of clause (b) of subsection 2 of section 18 of the Land Acquisition Act, 1894 came under consideration of this Court in a number of cases. In the case referred as *Muhammad Jan and 4 others vs. Azad Government & 7 others* (1996 SCR 257) an award of land was issued by the Collector on 5th June, 1991, in absence of

the land owners/persons interested. The land owners filed a reference application and claimed that they acquired knowledge on 12th December, 1991. Thereafter, they obtained the copy of the award and filed reference application. They moved reference application on 25th December, 1991. The Collector Land Acquisition dismissed the application. A writ petition was filed from the order of the Collector, which was dismissed by the High Court. On appeal, this Court observed that limitation will start running from the date of knowledge. It was observed at page 259 of the report as under:-

“It was a legal requirement to serve a notice on the appellants under section 12 of the Land Acquisition Act. It is now well settled that no adverse action can be taken against a person by keeping him in dark and in such situation in which a person is kept in dark about the proceedings or order limitation has to run from the date of knowledge. It has been held by the Supreme Court of Pakistan in Allahdino vs. Fakir Muhammad [PLD 1969 S.C. 582] that in a case where a litigant is kept in dark about the fate of his case it is wrong to say that for a remedial action against it, as provided by law, time would start to run against him from the date of the order and not

from the date when he comes to know about it. When this principle is kept in view there should be no hesitation in reaching the conclusion that the view taken by the Supreme Court of India in Raja Harish Chandra Raj Sing's case, mentioned above, is the correct view. The facts of that case were identical to the facts of the present case. The appellant before the Indian Supreme Court filed his claim to compensation for the land acquired in accordance with section 9 (2), and proceedings were held by the Deputy Land Acquisition Officer for determining the amount of compensation. In these proceedings an award was made, signed and filed in his office on March 25, 1951. No notice of this award was, however, given to the appellant as required by section 12(2) and it was only on or about January 13, 1953 that he received information about the making of the said award. The appellant, then filed an application on February, 24, 1953, under section 18 requiring that the matter be referred for the determination of the Court as according to the appellant, the compensation amount determined in the proceedings was quite inadequate. In these proceedings as also in the appeal in the High Court it was held that the application filed by the appellant under section 18 of the Act was barred by time. On appeal to the Supreme Court the learned Judges examined some judgments of Indian High Courts and reached the following conclusion:-

‘...These decisions show that the rights of a person are affected

by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. Therefore, we are satisfied that the High Court of Allahabad was in error in coming to the conclusion that the application made by the appellant in the present proceedings was barred under the proviso to S. 18 of the Act.”

Again the matter came under consideration of this Court in the case referred as *Government of Pakistan and another vs. Syed Ghulam Haider Shah and 5 others* (2007 SCR 175), wherein while interpreting the provisions of clause (b) of sub-section (2) of section 18 and section 12(2) of the Land Acquisition Act, 1894, this Court observed that limitation of six months has to be counted from the date of Collector’s award irrespective of the fact whether the appellants were informed of it or not. It was observed as under:-

“....Section 12 sub-section (2) provides that the Collector 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. As has already been said that the appellants were not present on the date when the award was issued, we are of the considered opinion that the limitation for filing the reference in the present case was six weeks from the date of receipt of the notice from the Collector under section 12 sub-section (2) of the Land Acquisition Act. The application for condonation of delay does not reveal the exact date on which the appellants came to know that the Collector has issued award, however it has been mentioned in the application for condonation of delay that an attested copy of the award was procured on 9.6.2003. If this date is considered to be the date of information of the award the appellants were bound to file their reference within six weeks from 9.6.2003 which comes to 22.7.2003, therefore, they could file the reference on 22.7.2003 or at the most before 25.7.2003, whereas the reference was filed on 12.12.2003 after about more than four months. Unfortunately the contents of the application for condonation of delay reveal that certain vital points of fact have been concealed to keep the Court in darkness. It was enjoined upon the appellants to mention the exact date on which they came to know of the issuance of award. It is correct that the disputed facts and controversies must be decided on merits but it is equally correct that parties must come with clean hands before the Court. As the reference was issued on 20.5.2003

with a direction that a copy of the same be sent to appellant No.2 we cannot, in the absence of any contention or evidence, hold that it did not reach the appellant No.2 or that appellant No. 2 was not informed of the award before 9.6.2003. Presumption of law is that once summon or notice has been sent to the party on his address it reaches him unless otherwise proved, therefore, it is held that the reference against Award No. 10/2003 was not filed within six weeks from the date of receipt of the notice from the Collector under section 12 sub-section (2) of the Land Acquisition Act. As far the period of six months' limitation from the date of Collector's award is concerned, it has no application in the present case. Even otherwise the limitation provided by clause (b) of section 18, is to be read together. If the period of six weeks from the receipt of the notice from the Collector expires first the period of six months shall not be considered. If the period of limitation of six months is considered for the sake of arguments, the appellants still stand non-suited on the ground that the award was issued on 20.5.2003, whereas the reference was filed on 12.12.2003 which period comes to 6 months and 20 days. The limitation of six months has to be counted from the date of the Collector's award irrespective of the fact whether the appellants were informed of it or not, as the reference was not filed within six months from the date of Collector's award, the same was rightly declared to be time barred by the Collector."

It is worth mentioning that the case referred as *Muhammad Jan and 4 others vs. Azad Government & 7 others* (1996 SCR 257) was not brought in the notice of the Court at the time of rendering the judgment in Govt. of Pakistan's case (supra) and the ratio of this case was not considered by the Court. In the case reported as *Azad Govt. of the State of Jammu & Kashmir and 2 others vs. Muhammad Rafique Khan and 9 others* (2009 SCR 320), while relying upon the judgment delivered in Muhammad Jan's case (supra) this Court declared that when an award is issued in absence of a party and notice under section 12(2) of Land Acquisition Act is not issued to the party then the time shall start running against such person from the date of knowledge. It was observed in para 10 and 11 as under:-

“10. Now comes to the question of limitation, the Collector Land Acquisition Muzaffarabad announced the award in respect of disputed land situated in Pothi Makwalan Rawalakot on 21.9.1989. The respondents who are owners of the land are also resident of Rawalakot. No notice under

section 12 of the Land Acquisition Act is shown to have been issued to the petitioners, therein. The petitioners specifically averred in the reference application that they acquired the knowledge of the award on 22.11.1989 and the reference application was filed on 27.11.1989 just five days after, when they came in knowledge of the award. The original record of the Reference Court was burnt in fire incident, however, a copy of the reference is on record on the basis of which the record was reconstructed in compliance of the District Court's order, above fact is clearly proved from the copy of the reference application. The petitioners specifically alleged in the reference application that they acquired the knowledge of the award on 22.11.1989. An affidavit was filed before the Referee Judge to the effect that they have filed the application for condonation of delay along with the reference application and they also filed an affidavit in support of that application. This affidavit has not been controverted by the appellants or their counsel, therein. Section 12 of the Land Acquisition Act provides that if a person is not present at the time of announcing the award a notice shall be issued to him. If no notice is issued to affected person then, how the limitation shall start from the date of award, the time shall start running against him from the date of knowledge.

11. The matter relating to limitation, where notice under section 12 of the Land Acquisition Act has not been served upon or the party was not before the Collector at the time of announcing the award, came before

this Court in a reported case titled *Muhammad Jan and 4 others vs. Azad Government and 7 others* [1996 SCR 257], wherein it was held in the following manner:-

‘It was a legal requirement to serve a notice to the appellants under section 12 of the Land Acquisition Act. It is now well settled that no adverse action can be taken against a person by keeping him in dark and in such situation in which a person is kept in dark about the proceedings or order limitation has to run from the date of knowledge. It has been held by the Supreme Court of Pakistan in *Allahdino vs. Fakir Muhammad* [PLD 1969 SC 5821] that in a case where a litigant is kept in dark about the fate of his case it is wrong to say that for a remedial action against it, as provided by law, time would start to run against him from the date of the order and not from the date when he come to know about it.’

The argument has no substance. The reference was filed within time.”

Again in the case reported as *WAPDA through Chief Engineer Mangla and another vs. Sardar Asif Ayub Khan and another* (2013 SCR 673), this Court observed that when an award is drawn in absence of a land owner/interested person and the notice under section 12(2) of the Land Acquisition Act, is not issued to such

person, then limitation shall start running from the date of knowledge and not from the date of award. It was observed in para 8 of the report as under:-

“8. For determining the question that on which date Sardar Asif Ayub Khan, appellant, acquired knowledge of the award, we have perused the record with utmost care. In para 6 of the reference application he has not alleged the specific date as to when he acquired knowledge of award. He has only averred that he came back from abroad only a few days ago. Along with the reference application, he appended a certified copy of award obtained by him. A perusal of the same shows that he applied for obtaining copy of award on 18th October, 2006. The copy was issued to him on the same day. The award was issued on 12th August, 2006. Assuming for the sake of arguments that he moved application on the same day for obtaining the copy, which was issued to him on the same day and 18th October, 2006 is presumed to be the date of his knowledge, then too he was entitled to file reference within six months under section 18 of the Land Acquisition Act, 1894. The reference has been filed within the period of limitation.”

In another case reported as *Muhammad Meharban and 4 others vs. Collector Land Acquisition and 3 others* (2015 SCR 1034), this Court again followed the view that if an award is

issued in the absence of a party and no notice under section 12(2) of the Land Acquisition Act is issued, then limitation shall start running from the date of knowledge.

8. We have already discussed hereinabove the three eventualities for determining the limitation under section 18 of the Land Acquisition Act. Right No. 14 of section 4(4) of the Azad Jammu & Kashmir Interim Constitution Act, 1974 provides that no person shall be deprived of his property save in accordance with law. The property of a person can be acquired for public purpose under the authority of law. When property of a person is acquired and award is issued under section 12(1) of the land Acquisition Act in the absence of the land owner, then it is mandatory for the Collector to issue notice to such person and if the Collector fails to issue notice to the land owner in whose absence the order has been passed for acquisition of his property and the person remained in dark about the issuance of

the award then limitation shall not start running against such person without acquiring the knowledge. The case reported as *Raja Harish Chandra Raj Singh vs. The Deputy Land Acquisition Officer and another* (A.I.R. 1961 S.C. 1500) is a direct authority on the point. While relying upon the said case, this Court delivered the judgment in Muhammad Jan's case (1996 SCR 257). The view expressed in Muhammad Jan's case (1996 SCR 257) is correct view that when an award is drawn under section 12 of the Land Acquisition Act in absence of a land owner and notice under section 12(2) is not issued to such person then limitation shall start running against such person from the date of knowledge and not from the date of award. After reaching the conclusion that the limitation shall start running from the date of knowledge then what will be the limitation, six weeks or six month, as laid down under clause (b) of proviso to sub-section (2) of section 18 of the Land Acquisition Act. Clause (b) of sub-section 2 provides two

eventualities that when a notice is issued under section 12(2) then the limitation shall be six weeks from the date of receipt of notice and if notice is not issued then limitation shall be six months from the date of award. The last words of clause (b) of sub-section (2), i.e. "Whichever period shall first expire" are most important. The period of six weeks is a lesser period as compared to six months and it expires first then why the words "whichever period shall first expire" have been used. The wisdom behind the words appears that although under section 12(2) of the Land Acquisition Act, it is laid down that the Collector shall give immediate notice of award but in a situation where the Collector fails to give immediate notice, notice is issued to the land owner/interested person after a passage of five months of award and the interested person receives the same before the expiry of six months, then the period of six months in normal course will be lesser as compared to six weeks from the date of receipt of notice. In another

situation where notice under section 12(2) of the Land Acquisition Act is not issued to the interested person and he acquires knowledge after a period of five and half months whether period of limitation, in that case, will be six weeks or six months from the date of knowledge. The lesser period is six weeks and limitation will be six weeks from the date of knowledge and not six months from the date of knowledge. Thus, we draw the conclusion that when an award is issued under section 12(1) of the Land Acquisition Act and no notice is issued to the land owner/interested person, limitation in such case will be six weeks from the date of knowledge.

9. It is admitted position between the parties that the award was issued in the absence of the land owner-petitioner before the Reference Judge on 16th April, 2007 and no notice under section 12(2) of the Land Acquisition Act was issued to him. He filed reference application on 23rd July, 2008, after a period of one year, three months and 7 days of the award. In ground "H"

of the reference application, the petitioner alleged as under:-

" (H) یہ کہ بائی پاس سڑک والی قیمت کا تعین صریحاً غیر قانونی عمل ہے اور انصاف سے مغایر عمل ہے۔ ایوارڈ زیر ریفرنس ہذا سائل بالکل ہی غلط اور بے بنیاد ہے۔ سائل کو اس وقت علم ہوا جب بعد از ٹھیکہ ٹینڈیم ٹھیکیدار اراضی میں مشینری لے کر گیا۔ بناء بریں بدوں نوٹس کے بدوں عذرات کے من مانی کارروائی ایوارڈ تا بعد سائل انتہائی ظلم و ستم کی تعریف میں آتی ہے۔ بناء بریں بھی سائل کے ساتھ نا انصافی ہوئی ہے۔ بیان حلفی نسبت علمیت بائف ہے۔ تاہم وصولی رقم ایوارڈ سے ریفرنس ہذا اندر معیا د ہے۔"

A preliminary objection (ج) was raised by the respondents that the reference application has been filed beyond the period of limitation, which reads as under:

"(ج) یہ کہ ریفرنس سائل صریحاً زائد المیعاد ہے بدیں ہیجہ بھی ریفرنس سائل قابل اخراج ہے۔"

The Reference Judge failed to frame issue on the question of limitation and also not decided the same. From the perusal of ground "H", it appears that the question of knowledge regarding limitation cannot be determined without recording the evidence of the parties. It may be observed that the question of limitation is a mixed question of the fact and law which cannot be resolved without recording of evidence. When a question of limitation can be

decided from the record made available without recording the evidence then situation is quite different but when a question of limitation is raised which requires recording of evidence then without framing issue and recording of evidence, the question cannot be decided.

10. It has been the consistent practice of this Court that the question which can easily be determined by this Court on the basis of available record without recording of evidence, the Court decides such question itself instead of remanding the case. Reference may be made to a case reported as *Tariq Javaid vs. Azad Govt. & 5 others* (2015 SCR 653) as under:

“It is the practice of the Court that when from the record, it is possible to resolve the controversy, instead of remanding the case, we ourselves decide the case but the difficulty in the case is that under the AJ&K High Court (Procedure) Rule, 1984, the writ petition has to be admitted for regular hearing and thereafter, after providing the opportunity to file written statements to the other party, the writ petition has to be decided. The High Court has dismissed the writ petition in limine, therefore, the decision of case by this Court will be a violation of the High

Court (Procedure) Rules, therefore, we are constrained to accept appeal No. 152 of 2012, and set aside the judgment of the High Court dated 6th July, 2012.”

Similarly, in another case reported as *Sardar Tariq Mehmood Khan and 21 others vs. Barkat Ali & 26 others* (2016 SCR 902) it was observed in para 8 as under:-

“8. According to the statutory provisions, the Service Tribunal is vested with the powers to provide opportunity to the parties for producing the evidence regarding the factual proposition. Thus, although this Court is vested with the powers to decide the case without remanding the same if there is sufficient material available for determination of such proposition. But in this case, due to lack of availability of sufficient material, in our considered view the matter cannot be conclusively resolved by this Court.”

In the circumstances of the case in hand when in the reference application the petitioners took the plea of knowledge without specifying any exact date alleging therein that he was not in the knowledge of the award and he acquired knowledge when the Contractor brought the machinery on the spot for construction. Such question cannot be determined without framing of issue and recording of evidence.

Thus, we are constrained to remand the case to the trial Court. The following additional issue is framed:-

"کیا ریفرنس اندر معیاد ہے؟ بڈمہ سائل"

The result of the above discussion is that the judgment of the High Court as well as the Reference Judge is set aside. The case is remanded to the Reference Judge, Sudhnuti/Pallandri with a direction that after providing an opportunity of leading evidence to the parties, the case shall be decided within a period of three months. There will be no order as to costs.

CHIEF JUSTICE
Mirpur.
__2.2017.

JUDGE

JUDGE

Ch. Muhammad Ibrahim Zia, J. I have had the privilege of going through the judgment drafted by Hon'ble Chief Justice. While agreeing with the same, I also deem it appropriate to add a note in support of the enunciated principle.

2. The main statutory provision requiring interpretation in these appeals is section 18 of the Land Acquisition Act, 1894 which reads as follows:-

"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 this 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 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.

(3) The Collector shall forward a reference to the Court within a period of 30 days from receipt of the application under sub-Section (1) unless the Collector rejects the application within aforesaid period on any of the grounds provided by Act."

For proper appreciation of the spirit of law and intention of the Legislature the opening phrase of subsection (1) i.e., "any person interested who has not accepted the award", is of vital importance. The precondition for acceptance or non-acceptance of a thing is awareness and knowledge of such thing or an offer from the other side. According to common sense an award can only be accepted or rejected when the interested person has knowledge of the award and its contents. Therefore, for computation of limitation under section 18, the knowledge of the award and its contents by its actual or constructive communication is the basic requirement to enable the interested person to accept or reject the award. The scheme and spirit of law has been comprehensively appreciated in the case titled *Raja Harish Chandra Raj Singh vs. The Deputy Land Acquisition Officer and another* [AIR 1961 SC 1500] wherein in paragraph 5 it has been observed as follows:-

"(5) In dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector under S.12. In a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, inter alia, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer S. 18 gives him the statutory right of having the question determined by Court, and it is the

amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance. In *Ezra v. Secretary of State*, ILR 30 Cal 36 at p. 86, it has been held that:

'the meaning to be attached to the word "award" under S. 11 and its nature and effect must be arrived at not from the mere use of the same expression in both instances but from the examination of the provisions of the law relating to the Collector's proceedings culminating in the award. The consideration to which we have referred satisfy us that the Collector acts in the matter of the enquiry and the valuation of the land only as an agent of the Government and not as a judicial officer; and that consequently, although the Government is bound by his proceedings, the persons interested are not concluded by his finding regarding the value of the land or the compensation to be awarded'."

The scheme of law has been further elaborated by the Court in paragraphs 6 and 7 as follows:-

"(6) There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected

by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being 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 our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to S. 18 in a literal or mechanical way.

(7) In this connection it is material to recall the fact that under S. 12(2) it is obligatory on the Collector to give immediate notice of the award to the persons interested as are not present personally or by their representatives when the award is made. This requirement itself postulates the necessity of the communication of the award to the party concerned. The Legislature recognised that the making of the award under S. 11 followed by its filing under S. 12(1) would not meet the requirements of justice before bringing the award into force. It thought that the communication of the award to the party concerned was also necessary, and so by the use of the

mandatory words an obligation is placed on the Collector to communicate the award immediately to the person concerned. It is significant that the section requires the Collector to give notice of the award immediately after making it. This provision lends support of the view which we have taken about the construction of the expression "from the date of the Collector's award" in the proviso to S. 18. It is because communication of the order is regarded by the Legislature as necessary that S. 12(2) has imposed an obligation on the Collector and if the relevant clause in the proviso is read in the light of this statutory requirement it tends to show that the literal and mechanical construction of the said clause would be wholly inappropriate. It would indeed be a very curious result that the failure of the Collector to discharge his obligation under S. 12(2) should directly tend to make ineffective the right of the party to make an application under S. 18, and this result could not possibly have been intended by the Legislature."

The principle enunciated in the above referred judgment has also been followed in the case reported as *State of Punjab vs. Mst. Qaiser Jehan Begum and another* [AIR 1963 SC 1604].

3. The service of notice as required under section 9 and 12 of the Land Acquisition Act, 1894, according to the scheme of law is mandatory requirement which cannot be dispensed with. In some cases, due to non-compliance of this mandatory requirement even the Courts have declared the proceeding of award as without lawful authority and of no legal effect. In this regard reference may be made to the cases reported as *Col. Bashir Hussain and others vs. Land Acquisition Collector and others* [PLD

1970 Lah. 321] and *Mst. Sardar Begum vs. Lahore Improvement Trust and others* [PLD 1972 Lah 458].

Mirpur,
___.02.2016

JUDGE

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