

## **Parsottambhai Maganbhai Patel And Ors vs State Of Gujarat Through Deputy ... on 6 September, 2005**

**Equivalent citations:** AIR 2005 SUPREME COURT 3464, 2005 (7) SCC 431, 2005 AIR SCW 4609, (2005) 4 ALLMR 965 (SC), (2005) 2 CLR 547 (SC), 2005 (8) SRJ 545, 2005 (6) SLT 573, 2005 (4) ALL MR 965, 2005 (2) UJ (SC) 1351, 2005 (2) CLR 547, 2005 (7) SCALE 143, (2005) 8 JT 146 (SC), (2006) 2 JCR 178 (SC), (2006) 1 GUJ LR 142, (2006) 1 LANDLR 715, (2006) 2 MAD LJ 174, (2005) 4 MAH LJ 1171, (2006) 1 ICC 250, (2005) 7 SCALE 143, (2005) 6 SCJ 668, (2005) 6 SUPREME 166, (2005) 4 RECCIVR 207, (2005) 6 ANDH LT 67, (2006) 1 CAL LJ 139, (2006) 1 CIVLJ 861, (2005) 3 GUJ LH 377, (2005) 2 LACC 467, (2005) 3 GCD 2438 (SC), (2005) 4 ALL WC 3457

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**Bench: B. P. Singh, S. B. Sinha**

CASE NO.:

Appeal (civil) 8818-8830 of 2003

PETITIONER:

Parsottambhai Maganbhai Patel and Ors.

RESPONDENT:

State of Gujarat through Deputy Collector Modasa and Anr.

DATE OF JUDGMENT: 06/09/2005

BENCH:

B. P. SINGH & S. B. SINHA

JUDGMENT:

**J U D G M E N T** B.P. SINGH, J.

These appeals by special leave are directed against the common judgment and order of the High Court of Gujarat at Ahmedabad dated November 7, 2000 in First Appeals Nos.7957 to 7969 of 1999 whereby the High Court held that the application for making a reference under Section 18 of the Land Acquisition Act was barred by limitation.

The facts of the case are few and undisputed. Pursuant to acquisition proceeding taken under the Land Acquisition Act, an award was declared under Section 11 of the Act on January 17, 1982. The respondents filed an application for making a reference under Section 18 of the Act on September 22, 1988. The High Court held that since the application for making a reference under Section 18 of

the Act was filed beyond the period of six months from the date of declaration of the award, the same was barred by limitation. Hence, the High Court allowed the appeals preferred by the State of Gujarat and quashed the judgment and awards passed by the Reference Court in Land References Cases referred to it for adjudication.

The High Court considered the case in the light of the provisions of Section 18 of the Land Acquisition Act. It, firstly, held that the claimants were not present when the award was made and, therefore, Section 18 (2) (a) was not attracted. It, then, held that the State had not been able to establish that a notice under Section 12 (2) of the Act was issued and served upon the claimant. Thus, the first part of Section 18(2)(b) was also not attracted. It, therefore, held that the limitation prescribed under the latter part of Section 18 (2) (b) applied in the case and held that the application under Section 18 ought to have been filed within six months from the date of the declaration of the award. Since the application for reference was made beyond the period of six months from the date of declaration of the award, the same was barred by time.

Counsel for the claimants-appellants urged that the High Court clearly erred in law in holding the reference application to be barred by time inasmuch as the appellants were not present when the award was made nor were they served with notices under Section 12(2) of the Act. In fact the appellants had no knowledge of the date of declaration of the award till July, 1988 when compensation was paid to them. It was only then that they came to know that the award had been declared on January 17, 1982.

The learned Assistant Judge, Sabarkantha District at Himmatnagar by his judgment and order of April 21, 1999 recorded a finding that the application under Section 18 of the Act made on September 22, 1988 was not barred by limitation. This finding is based on the fact that the claimants had been paid compensation in July, 1988 and the application under Section 18 was made on September 22, 1988. There was no evidence to prove that notice under Section 12(2) was even served on the appellants. In these circumstances, he held that the application under Section 18 of the Act was within time. In sum and substance, the Assistant Judge computed the period of limitation from the date of knowledge of the award in July, 1988.

Learned counsel for the appellant rightly placed reliance upon the judgment of this Court in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and another : AIR 1961 SC 1500 and submitted that since the appellants were not present when the award was made, and no notice was given to them under Section 12(2) of the Act, the application for making a reference under Section 18 of the Act must be held to be within time if it is filed within six months of the date of knowledge of the declaration of the award. In our view, the submission is sound and must be accepted. This Court in Raja Harish Chandra Raj Singh (supra) was dealing with a case in which an award was declared under the Act on March 25, 1951. No notice under Section 12(2) of the Act was given to the claimants. It was only on January 12, 1953 that the claimants came to know about the declaration of the award whereafter they filed an application claiming a reference under Section 18 of the Act on February 24, 1953. The High Court of Allahabad held that the case fell under the latter part of Clause (b) of the proviso to Section 18 and since the application made by the appellant before the Land Acquisition Officer for claiming a reference under Section 18 was made beyond six months

from the date of the award in question, it was beyond time. This view of the High Court was overruled by this Court and in doing so the Court made the following pertinent observations:-

"Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office: it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words "the date of the award" occurring in the relevant section would not be appropriate.

(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 affects 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 literal or mechanical way".

This Court, therefore, held that the limitation under the latter part of section 18(2)(b) of the Act has to be computed having regard to the date on which the claimants got knowledge of the declaration of the award either actual or constructive. This principle, however, will apply only to cases where the applicant was not present or represented when the award was made, or where no notice under

Section 12(2) was served upon him. It will also apply to a case where the date for the pronouncement of the award is communicated to the parties and it is accordingly pronounced on the date previously announced by the Court, even if, the parties are not actually present on the date of its pronouncement. Coming to the facts of the instant case the High Court has not rejected the plea of the appellants that they came to know of the award only when compensation was being paid to them in July, 1988. They had admittedly no notice under Section 12(2) of the Act. They had therefore filed the application under Section 18 of the Act on September 22, 1988 well within the period of limitation. The Reference Court recorded a finding in favour of the appellants but the High Court has reversed that finding without applying the principle laid down in *Raja Harish Chandra* (supra). Moreover, we find from the grounds of appeal filed before the High Court that the assertion of the claimants that they came to know of the declaration of the award only when compensation was being paid to them in July, 1988, has not even been challenged.

We are, therefore, of the view that these appeals must be allowed. We, accordingly, allow these appeals and set aside the finding of the High Court that the application for reference under Section 18 of the Act was barred by limitation. However, since the appeals have not been disposed of on merit, we remit the matter to the High Court for disposal of the appeals on merit in accordance with law.