
(1945) 09 MAD CK 0027
In the Madras High Court

A.K. Subramania Chettiar

APPELLANT

Vs

The Collector of Coimbatore

RESPONDENT

Date of Decision : 21-09-1945

Acts Referred:

Citation : AIR 1946 Mad 184 : (1945) 2 MLJ 559

Hon'ble Judges : Koman, J

Bench : Division Bench

Judgement

Koman, J.—The appellant was the owner of a premises in Ward No. 7 of the Goimbatore Municipality. The premises consisted of a house in the occupation of tenants. This property was acquired by Government under the Land Acquisition Act (Act No. I of 1894). At the appellant's request, a reference was made u/s 18 of the Act by the Collector to the Court of the Subordinate Judge of Coimbatore. The learned Subordinate Judge held that the application for a reference made by the appellant u/s 18 of the Act was not made within the time prescribed in the proviso to that section and that therefore the reference was barred by limitation. The learned Judge also held that on the basis of the materials placed before him the appellant had been awarded by the Land Acquisition Officer a fair and equitable price.

2. It is argued on behalf of the appellant that the finding by the learned Subordinate Judge on the question of limitation is not correct and that the Sub-Judge had no power to go into the question of limitation. In this case, the award was passed on 12th March, 1941, and notice of the award u/s 12(2) was served on the claimant on 29th March, 1941, by affixture. The appellant alleged that thereafter he filed on 10th September, 1941, an application asking for a reference u/s 18 of the Act. This was disbelieved by the Collector as well as by the learned Subordinate Judge and there is no reason for us to differ from the conclusion of facts. But the appellant certainly filed an application for reference on 25th September, 1941, which was received by the Collector on 26th September, 1941. This application is beyond six months from the date of the

Collector's award dated 12th March, 1941. u/s 18 the proviso prescribing limitation is as follows:

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 u/s 12, Sub-section 2, or within six months from the date of the Collector's award, whichever period shall first expire.

3. If the Collector had given effect to this proviso and refused to make a reference on that ground, no Court could have interfered with that order of refusal. In *Abdul Satar Sahib v. Special Deputy Collector, Vizagapatam Harbour Acquisition* (1923) 46 M.L.J. 209 : ILR 47 Mad. 357 , a Full Bench of the Madras High Court has held that the High Court has no power to revise the order of a Collector, acting under the provisions of the Land Acquisition Act, refusing to make a reference to the Court u/s 18 in a matter upon which he had passed an award.

4. But in this case the Collector has made a reference to the Court of the Subordinate Judge, and in the letter accompanying the reference statement which is expressly made part of the reference, the Collector has pointed out that the application u/s 18 by the petitioner is out of time, having been made more than six months from the date of the award. The question that arises for determination in this case is whether in these circumstances the learned Subordinate Judge to whom the reference was made had jurisdiction to consider the question of limitation. According to the learned Counsel for the appellant, once the Collector makes a reference, the Court to which the reference is made is precluded from going into the question whether the application is barred by limitation. The learned Counsel contends that the scope of the enquiry by the Court to which the reference is made is limited by Section 21 to a consideration of the interests of the persons affected by the objection, and he further argues that this does not include a consideration of this question of limitation. It is also pointed out that u/s 19 which states what is to be contained in the reference statement by the Collector, there is nothing to indicate that the question of limitation is to be referred to the Court. In support of this argument, the learned Counsel for the appellant has cited *Secretary of State for India in Council v. Bhagwan Prasad I.L.R.(1929) All.96. 209 : ILR 47 Mad. 357* . That decision lays down that when a reference has been made u/s 18 of the Land Acquisition Act, the Court has no jurisdiction to consider whether the application in pursuance of which it was made was made within the period of limitation or not. Mukerji, J., in that case states:

If we remember the scheme of the Act as declared by their Lordships of the Privy Council in *Ezra's case* already quoted, the Collector is the agent or mouthpiece of the Government.

5. It appears to us with all respect that the learned Judge came to the above conclusion on a misreading of (1905) ILR 32 605 (Privy Council) . What their Lordships of the Privy Council appear to have stated in that case is that an officer who holds an enquiry into the necessity for an acquisition is acting on behalf of the Government. In Abdul Satar Sahib v. Special Deputy Collector, Vizagapatam Harbour Acquisition (1923) 46 M.L.J. 209; ILR 47 Mad, a Full Bench of this High Court, after considering Ezra v. Secretary of State for India (1905) L.R. 3a L.A. 93 : ILR 3a Cal. 605 , stated as follows:

In (1905) ILR 32 605 (Privy Council) , the Privy Council has decided that the Collector, exercising functions under the Land Acquisition Act down to the point when he gives what is called his award, is acting only in an advisory capacity and is not exercising any judicial function at all; but in these later cases, which I have referred to, it is pointed out, and I think correctly pointed out, that when he acts under Part III of which Section 18 forms part, he is acting in a different capacity, because he has there to decide certain things; he has to send the case to the District Court if certain provisions in that section have been complied with, one of which is the question of time, that is to say, he has to decide whether the application is barred or not and in doing so, in my judgment, he acts judicially.

6. It is clear from the above that when the Land Acquisition Officer purports to act under Part III of the Act he acts as a judicial officer and not merely as an agent or mouthpiece of the Government. In Sri Venkateswaraswami Varu of Bezwada and Another Vs. The Sub-Collector and Another, , Kuppuswami Aiyar, J., in considering the question whether a Court when dealing with a belated application referred to it u/s 18 of the Act by the Collector can go into the question of limitation, held the view that the Court could not go into that question. The learned Judge refers to Abdul Satar Sahib v. Special Deputy Collector, Vizagapatam Harbour Acquisition (1923) 46 M.L.J. 209; ILR 47 Mad, and then observes as follows:

From these observations it is clear that it is the duty of the Collector before he makes the reference to decide on the materials before him whether he should make the reference or not, and if he decides to make and does make a reference, it is not open to the Land Acquisition Court to go behind it. If it is not open to the High Court or any other authority to interfere when the Land Acquisition Officer refuses to make a reference, his decision must be equally final when he decides to make and does make a reference.

7. The case of Secretary of State for India in Council v. Bhagwan Prasad (1929) ILR 52 : ILR All. 96 Sri Venkateswaraswami Varu of Bezwada and Another Vs. The Sub-Collector and Another, , are not quite on all fours with the facts in the present case. In Secretary of State for India in Council v. Bhagwan Prasad I.L.R. (1929) All. 96 the Collector who made the reference did not leave open the question of limitation for decision by the Court. In Sri Venkateswaraswami Varu of Bezwada and Another Vs. The Sub-Collector and Another, , the learned Judge states that the question of limitation was raised by the Collector in a separate

letter dated 7th December, 1937, after making a reference by order dated 24th November, 1937. It was possible, therefore, that the learned Judge did not consider the letter to form part of the reference made earlier. In *Mahadeo Krishna v. Mamiatdar of Alibag* ILR (1944) Bom. 90, a Bench of the Bombay High Court held that the Court is not debarred from satisfying itself that the reference, which it is called upon to hear (a reference made to it u/s 18 of the Land Acquisition Act), is a valid reference, and could therefore, go into the question whether the reference is barred by limitation. We agree with the opinion expressed by Beaumont, G.J., who delivered the judgment in that case. The reasoning adopted by the learned Judges in that case is as follows:

The basis of the appellant's argument is that the Collector acting u/s 18 is not a Court, or at any rate not a Court subordinate to the District Court or to this Court, and that the Court cannot interfere with his decision either in appeal or in revision. That, no doubt, is true, but that is not really the position. The Collector has power to make a reference on certain specified conditions. The first condition is that there shall be a written application by a person interested who has not accepted the award, the second condition is as to the nature of the objections which may be taken, and the third condition is as to the time within which the application shall be made. It seems to me that the court is bound to satisfy (itself) that the reference made by the Collector complies with the specified conditions, so as to give the court jurisdiction to hear the reference. It is not a question of the Court sitting in appeal or revision on the decision of the Collector; it is a question of the Court satisfying itself that the reference made under the Act is one which it is required to hear. If the reference does not comply with the terms of the Act, then the Court cannot entertain it. I have myself some difficulty in seeing on what principle the Court is to be debarred from satisfying itself that the reference, which it is called upon to hear, is a valid reference. I am in entire agreement with the view expressed by Mr. Justice Chandavarkar that it is the duty of the Court to see that the statutory conditions have been complied with. In my opinion, therefore, the learned Assistant Judge was right in dismissing the reference on the ground that it was out of time.

8. We would like to add that u/s 21 it is competent for a Court to consider the interests of persons affected by the objection, and if such interests are likely to be affected adversely or otherwise by limitation, it follows that the Court has necessarily to take that into account in considering the interests of persons when the decision of the question of limitation necessarily affects the question of the correct amount of compensation. We may add that when a question of limitation arises in an objection to the amount of compensation it is eminently desirable that the Collector who cannot be completely disinterested in such a case should refer the question of limitation to the Court. We are, therefore, of opinion that the Court has power, when a reference is made u/s 18 of the Land Acquisition Act, to go into the question of limitation, all the more so in a case like the present, where the Collector himself has included the question of limitation as part of the reference in his letter accompanying the reference and has not

decided the question himself. We agree with the learned Subordinate Judge that the application in the present case was barred by limitation and that the reference was rightly rejected on that account.

9. As regards the valuation in this case, very little material is placed before the Court for arriving at a proper decision. The property concerned, a house with its site, was purchased by the appellant in a Court auction in 1938 as decree-holder for a sum of Rs. 10,001 which is the amount that is awarded subsequently by the Land Acquisition Officer as compensation together with the statutory 15 per cent. It is stated that the notification u/s 4(1) in this case was in the year 1940. It is the appropriate price of the property on that date that matters. The only evidence let in on the appellant's side is the oral evidence of his clerk and also certain sale deeds Exs. P-1 to P-4 stated to be of neighbouring properties. The oral evidence is not very helpful, as this witness admits that he does not know what rent was fetched by the property acquired. It is quite possible that this information as regards the rent fetched by the property has been kept back because it would be unfavourable to the appellant. This witness, however, states that the municipal assessment on the property is about Rs. 3 to Rs. 4 per half year. This information by itself cannot give any correct idea of the rent. As regards the sale deeds, Exs. P-2 and P-3 are the nearest in date to the date of the notification under Section 4(1). But these documents are not very helpful. In taking these documents into consideration as evidence of the value of the acquired property, one has also to know the value of the building situated on each of those properties covered by those sale deeds, in comparison with the value of the building on the acquired property. Without some information as to the condition and construction of the buildings, it is not possible to infer from the mere extents given in Exs. P-1 to P-4 what would, be a proper value of the acquired property. It is argued that the price fetched at the Court auction must be deemed to be a low price and not a proper price. But that would depend upon whether the appellant as decree-holder was forced to purchase that property or not. As to this, there is no evidence also. It is, therefore, to be assumed that the property fetched its market value at the Court auction sale.

10. For these reasons the finding given by the learned Subordinate Judge that the value awarded by the Land Acquisition Officer is a fair and equitable one has to be upheld. In the result, the appeal is dismissed with costs.