

(2017) 06 BOM CK 0213
In the Bombay High Court
Case No : 804 of 2006

Ashok & Anr.

APPELLANT

Vs

State of Maharashtra & Ors.

RESPONDENT

Date of Decision : 14-06-2017

Acts Referred:

Land Acquisition Act, 1894, Section 18(1), Section 12(2) - Reference to Court - Award of Collector when to be final

Citation : (2017) 06 BOM CK 0213

Hon'ble Judges : Shalini Phansalkarjoshi

Bench : SINGLE BENCH

Advocate : A. R. Patil, M.A. Kadu, V. G. Wankhede

Judgement

1.] Reference petition filed by the appellant under Section 18 of the Land Acquisition Act, being not satisfied with the Award dated 13.12.1996 passed by the Collector, came to be dismissed by the Court of 3rd Adhoc Additional District Judge, Nagpur vide its judgment dated 11.8.2006 in L.A.C. No. 147 of 1997. Hence, he has preferred this appeal.

2.] The only ground on which the Reference Court has dismissed the petition is that it was barred by limitation. It was held by the Reference Court that the appellantclaimant has received the notice dated 17.12.1996 issued by Land Acquisition Officer under Section 12(2) of the Land Acquisition Act. Appellant received the compensation amount under protest on 2.1.1997. The Award was passed on 13.12.1996 and the Reference was filed on 20.2.1997. Hence, it held that Reference was filed on 63th day after receipt of notice and on 49th day after receipt of compensation. Hence, as the reference was filed after six weeks from the date of notice under Section 12(2) of the Land Acquisition Act and also after receipt of compensation, it was barred by limitation. In arriving at this conclusion, the Reference Court placed reliance on the judgment of the Hon''ble Apex Court Mahadeo Bajirao Patil Vs. State of Maharashtra and others, 2006(1)

Mh.L.J. 28 and held that as the period of limitation for filing application under Section 18 of the Land Acquisition Act would be six weeks from the date of receipt of notice and six months from the date of knowledge of Award, whichever is earlier and as in this case the Reference was not filed within six weeks from the receipt of notice, it was barred by limitation.

3.] However, as rightly submitted by learned counsel for appellant, now legal position has undergone substantial change. As enunciated by the Hon"ble Apex Court in the case of Premji Nathu Vs. State of Gujarat and Anr., AIR 2012 Supreme Court 1624, "unless it is proved that notice issued by the Collector under Section 12(2) was accompanied with copy of Award, the claimant would not be in a position to effectively exercise the right vested in him to seek reference under Section 18(1) of the Land Acquisition Act. Therefore, what is essential for the respondents is to show that the notice issued under Section 12(2) of the Act was accompanied with the copy of Award.

4.] However, in this case on behalf of the respondent, absolutely no evidence is produced on record to that effect to controvert the statement on oath made by the appellant, with positive assertion that notice issued to him under Section 12(2) was not accompanied with the copy of the Award. Hence, he has to apply for certified copy of the Award. On the receipt of notice, he has applied for certified copy on 8.1.1997. It was received by him on 20.1.1997 and immediately thereafter on 22.2.1997 he has filed reference. There is no denial about these facts on record.

5.] In such situation, it necessary follows that reference filed before the Court was within the period of limitation. Though the appellant was served with notice, as he could not effectively make the reference without the copy of the Award and only on the receipt of the certified copy of the Award, he could assert his right of reference, it has to be held that Reference filed before the trial Court reference was not barred by limitation. The impugned judgment and order of the Reference Court therefore of dismissing the Reference on the sole ground that it is barred by limitation cannot be sustained. Hence, it is quashed and set aside. The appeal is allowed accordingly. The matter is remanded to the Reference Court for fresh hearing. Both the parties are directed to appear before the trial Court on 30.6.2017. The trial Court to decide the Reference as expeditiously as possible and preferably within a period of six months.