

(2016) 04 PAT CK 0146

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 22313 of 2012

Ashok Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 19-04-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2017) 171 AIC 375 : (2016) 3 PLJR 962

Hon'ble Judges : Mr. Birendra Prasad Verma, J.

Bench : Single Bench

Advocate : Mr. Md. Anisur Rahman, Advocate, for the Petitioner; Mr. Krishna Chandra, AC to AG, for the Respondent

Final Decision : Allowed

Judgement

Mr. Birendra Prasad Verma, J.(Oral)—Heard the parties.

2. The petitioners are aggrieved by the order dated 04.06.2012 passed in Case No. 8 of 2012 by the respondent Additional Collector, Sheohar, whereby the petition filed on behalf of the petitioners under Section 18 of The Land Acquisition Act, 1894 (In short ?the Act, 1894?) for making reference of the matter to the civil court has been rejected on the ground of limitation.

3. The learned counsel appearing on behalf of the petitioners submits that for acquisition of the land in question belonging to the writ petitioners, fully detailed in paragraph-5 of the writ petition, a land acquisition proceeding was started and an award was prepared sometime in the year 2010. He further submits that the petitioners received 80% award amount under protest and thereafter they filed a petition on 17.01.2012 for reference of the matter to the civil court, which was originally allowed by order dated 18.05.2012 by the respondent Additional Collector, Sheohar, but subsequently on certain extraneous consideration, previous order was penned through and a fresh order was passed on 04.06.2012 and by the impugned order, prayer for reference has been rejected on the ground

of limitation.

4. The matter has been contested by the learned AC to AG appearing on behalf of the respondents by making reference to the averments made in the counter-affidavit filed on behalf of the respondent no. 2 and 3. However, in the aforesaid counter-affidavit actual date of preparation of award under Section 11 of the Act, 1894 has not been disclosed. It has also not been stated as to whether the petitioners have received 80% amount of compensation either under protest or without protest. Many relevant facts have not been disclosed either by the writ petitioners or by the respondents in their affidavit/counter-affidavit.

5. Under the scheme of the Act, 1894, a reference is required to be made under Section 18 of the Act, 1894 if the interested person is not satisfied with the quantum of the award determined by the Collector under Section 11 of the Act, 1894, but if there is some dispute about apportionment of the award amount, then in that case a reference is required to be made under Section 30 of the Act, 1894. However, once an award amount is received by the awardee without protest, then such awardee cannot make a prayer for reference under Section 18 of the Act, 1894, which is evident from the provisions of Section 31 of the Act, 1894. As a matter of fact, Sections 18 and 31 of the Act, 1894 are required to be read conjointly before passing appropriate order with respect to the petition filed for reference.

6. So far the present case is concerned, from plain perusal of the order sheet of Case No. 8 of 2012, as contained in Annexure-4, this Court finds that, in fact, the prayer for reference was allowed by order dated 18.05.2012, but that was subsequently penned through and ultimately by the impugned order dated 04.06.2012, the prayer for reference has been rejected. This creates grave doubt about bona fide of the respondent Additional Collector, who passed the aforesaid two orders. Otherwise also the impugned order dated 04.06.2012 appears to be cryptic and non-speaking one. In the aforesaid factual matrices, this Court is of the opinion that the matter requires reconsideration and fresh decision.

7. For the reasons recorded above, the impugned order dated 04.06.2012 passed in Case No. 8 of 2012 (Annexure-4) by the respondent Additional Collector, Sheohar is hereby set aside and quashed and the matter is remitted back to the respondent District Collector, Sheohar with a direction to decide the petition filed under Section 18 of the Act, 1894 afresh by a reasoned and speaking order.

8. In order to expedite the matter, the petitioners are hereby directed to appear before the respondent District Collector, Sheohar with a certified copy of the present order within a period of one month from today, where after the respondent District Collector, Sheohar shall proceed to decide the matter strictly in accordance with law, but before passing any final order, opportunity of hearing must be given to the petitioners, besides others, if any.

9. While passing such final order, he shall bear in mind the provisions contained in Section 18 read with Section 31 of the Act, 1894 and he shall make all

endeavours to dispose of that petition at an early date preferably within a period of three months from the date of appearance of the petitioners before him in the manner indicated above.

10. The writ petition stands allowed to the extent indicated above, but there shall be no order as to costs.