

(2010) 02 SC CK 0070

In the Supreme Court Of India

Case No : Civil Appeal No's. 2069-2070 of 2010 (Arising out of SLP (C) No's. 24191-92 of 2008)

Bhagwan Das and Others

APPELLANT

Vs

State of UP and Others

RESPONDENT

Date of Decision : 26-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110
Constitution of India, 1950 — Article 14, 300A
Land Acquisition Act, 1894 — Section 11, 12(2), 18, 18(1), 18(2)
Limitation Act, 1963 — Section 10, 11, 12, 1

Citation : AIR 2010 SC 1523 : (2010) 3 AWC 2600 Supp : (2010) 2 JT 483 : (2011) 3 KLJ 19 : (2010) MPLJ 251 : (2010) 2 PLJR 120 : (2010) 3 SCC 545 : (2010) 2 SCR 1145 : (2010) 1 UD 238

Hon'ble Judges : R. V. Raveendran, J;K. S. Panicker Radhakrishnan, J

Bench : Division Bench

Advocate : K.K. Rai, Anant K. Vatsya, Awanish Kumar and Garima Prashad, for the Appellant; Pramod Swarup and Shobha Dikshit, Vandana Mishra, C.P. Pandey, Daleep Kumar Dhyani and Pradeep Misra, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Raveendran, J.—Leave granted.

2. The lands of appellants within the municipal limits of Bisanda were acquired for establishing a Upmandi by Krishi Utpadan Mandi Samiti under preliminary notification dated 31.01.2004 and final notification dated 20.03.2006. An award was made by the Land Acquisition Collector on 14.03.2007. The appellants were served a notice on 25.10.2007 by the office of the Collector to appear and receive the compensation. The respondents made enquiries and on 16.11.2007 learnt that an award had been made on 14.3.2007. Immediately they made an application seeking a reference u/s 18 of the Land Acquisition Act, 1894 ('Act' for short) to the civil court for determination of compensation. The Collector, Banda vide his order dated 19.12.2007 rejected the application seeking

reference, on the ground that it was made beyond a period of six months from the date of the award, prescribed u/s 18(2) of the Act. The appellants filed a writ petition for quashing the said order dated 19.12.2007 and seeking a direction to the Land Acquisition Collector to refer their claim for increase in compensation to the civil court. The writ petition was dismissed on 17.01.2008 as not maintainable, on the ground that an alternative remedy, by way of an appeal u/s 54 of the Act, was available against the order dated 19.12.2007 passed by the Land Acquisition Officer. The appellants filed a review petition pointing out that Section 54 of the Act was inapplicable as it only provides for appeals against awards of courts. The review petition was dismissed by order dated 5.5.2008, on the ground that the appellants ought to have filed an application for condonation of delay along with the application for reference, before the Land Acquisition Collector. The appellants have challenged the said orders dated 17.01.2008 and 05.05.2008 in these appeals by special leave.

3. The following questions arise for consideration, on the contentions urged:

- (a) Whether an appeal would lie u/s 54 of the Act against the order of the Collector refusing to make a reference?
- (b) Whether the Collector can condone the delay in filing an application seeking reference, if sufficient cause is shown?
- (c) Whether the period of six months under Clause (b) of the proviso to Section 18 of the Act should be reckoned from the date of knowledge of the award of the Collector or from the date of award itself?
- (d) Whether the appellants were entitled to relief?

4. We may, to begin with, refer to the provisions of the Act which are relevant for considering these questions. Section 11 of the Act provides for an enquiry into objections and making of an award by the Collector. Sub-section (2) of Section 12 requires the Collector shall give immediate notice of his award to such of the persons interested as were not present personally or by their representatives when the award was made. Section 18 providing for Reference to Court is extracted below:

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

(emphasis supplied)

Section 54 of the Act providing for appeals. The said section reads:

54. Appeals in proceedings before court -

Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908 and in Order XLIV thereof.

Re : Question (a)

5. Section 54 of the Act provides for an appeal from the award of the court in any proceedings under the Act to the High Court, and from the decree of the High Court to the Supreme Court. Section 3(d) of the Act defines the expression "court" to mean a principal civil court of original jurisdiction, unless the appropriate Government has appointed a special officer within any specified local limits to perform functions of the court under the Act. On the other hand, the expression "Collector" is defined in Section 2(c) of the Act as the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector under the Act. The decision of the Collector made after an enquiry u/s 11 with the previous approval of the appropriate Government or its authorized officer is termed as the 'award of the Collector'. The determination by a court u/s 26 of the Act in a reference by the Collector is termed as an 'award of the court' which shall be deemed to be a decree. Thus there is a difference between an 'award of the Collector' which is an offer of compensation by the Collector as the agent of the Government, and 'an award of the court' which is a determination of the compensation by a civil court on a reference by the Collector. Further, the Collector can either make a reference or refuse to make a reference to the court u/s 18 of the Act or u/s 30 of the Act, and such orders of the Collector are merely acts of a Statutory Authority in exercise of statutory functions and are not adjudicatory in nature. Such orders are not awards. The Land Acquisition Collector is not a Court, nor his award or order, an award of the Court. While the proceedings of a court resulting in an award of the court are judicial proceedings,

neither the proceedings of the Collector u/s 11 of the Act resulting in an award of the Collector, nor the proceedings relating to an application seeking reference, are judicial proceedings. Section 54 does not provide for appeals against the awards or orders of Land Acquisition Collector. Hence the assumption of the High Court that an order of the Collector refusing to refer a claim for increase in compensation to the civil court u/s 18(1) of the Act, is an 'award of the court' appealable u/s 54 of the Act, is wholly erroneous.

Re : Question (b)

6. The proviso to Section 18 requires that an application by a person interested, to the Collector, seeking reference of his claim for higher compensation for determination by the Court, shall be made within six weeks from the date of the Collector's award, if such person was present or represented before the Collector, at the time when the award was made. If not, the application for reference shall have to be made within six weeks of the receipt of the notice of the Collector u/s 12(2) or within six months from the date of the Collector's award, whichever period shall first expire.

7. In *Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others*, , this Court held that in view of the special limitation provided under the proviso to Section 18 of the Act, Section 29(2) of the Limitation Act, cannot be applied to the proviso to Section 18 of the Act; and therefore, the benefit of Sections 4 to 24 of Limitation Act 1963, will not be available in regard to applications u/s 18(1) of the Act. It was also held that as the Collector is not a court when he discharges his functions as a statutory authority u/s 18(1) of the Act, Section 5 of the Limitation Act 1963 cannot be invoked for extension of the period of limitation prescribed under the proviso to Section 18(2) of the Act. As the Collector is not a civil court and as the provisions of Section 5 of the Limitation Act, 1963 have not been made applicable to proceedings before the Collector under the Act, and as there is no provision in the Act enabling the Land Acquisition Collector to extend the time for making an application for reference, the Collector cannot entertain any application for extension, nor extend the time for seeking reference, even if there are genuine and bonafide grounds for condoning delay. This view was reiterated in *Steel Authority of India Ltd. Vs. S.U.T.N.I Sangam and Others*, . Therefore, the observation of the High Court that an application for condonation of delay could have been made by the person interested, is incorrect.

We should however notice that there is an apparent inconsistency in two observations of this Court in *S.U.T.N.I. Sangam (supra)*. In the earlier part of the decision, this Court observed : "The proceedings under the Land Acquisition Collector is of an administrative nature and not of a judicial or quasi judicial character." However, in a latter part of the said decision (at para 75 of the report), this Court observed : "Land Acquisition Collector is a statutory authority. The proceeding before the Land Acquisition Collector is a quasi-judicial proceeding." As the said inconsistency has no bearing upon the issue on hand,

we do not propose to consider it in this case, but leave the clarification to be done in an appropriate decision.

Re : Question (c)

8. Clause (b) of the proviso to Section 18 requires a person interested who has not accepted the award, to make an application to the Collector requiring him to refer the matter for determination of the court, within six weeks of the receipt of the notice from the Collector u/s 12(2) or within six months from the date of the Collector's award whichever period first expires, if he or his representative was not present before the Collector at the time of making of the award.

9. The reason for providing six months from the date of the award for making an application seeking reference, where the applicant did not receive a notice u/s 12(2) of the Act, while providing only six weeks from the date of receipt of notice u/s 12(2) of the Act for making an application for reference where the applicant has received a notice u/s 12(2) of the Act is obvious. When a notice u/s 12(2) of the Act is received, the land owner or person interested is made aware of all relevant particulars of the award which enables him to decide whether he should seek reference or not. On the other hand, if he only comes to know that an award has been made, he would require further time to make enquiries or secure copies so that he can ascertain the relevant particulars of the award.

10. The term 'date of the Collector's award' occurring in Clause (b) of the proviso, has been interpreted by this Court in several cases. We may refer to a few of them.

10.1 In *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, , this Court held:

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.

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 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 Section 18 in a literal or mechanical way.

(emphasis supplied)

10.2 In *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, , this Court reiterated the principles stated in *Raja Harish Chandra Raj Singh* (supra) and further held as follows:

It seems clear to us that the ratio of the decision in *Harish Chandra's* case (supra) is that the party affected by the award must know it, actually or constructively, and the period of six months will run from the date of that knowledge. Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party u/s 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly when a party is present in court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award.

(emphasis supplied)

10.3 In *Parsottambhai Maganbhai Patel and Others Vs. State of Gujarat through Deputy Collector Modasa and Another*, and in *Steel Authority of India Ltd. Vs. S.U.T.N.I Sangam and Others*, , the aforesaid principles were followed and reiterated by this Court.

11. When a land is acquired and an award is made u/s 11 of the Act, the Collector becomes entitled to take possession of the acquired land. The award being only an offer on behalf of the Government, there is always a tendency on the part of the Collector to be conservative in making the award, which results in less than the market value being offered. Invariably the land loser is required to make an application u/s 18 of the Act to get the market value as compensation. The land loser does not get a right to seek reference to the civil court unless the award is made. This means that he can make an application seeking reference only when he knows that an award has been made. If the words six months from the 'date of the Collector's award' should be literally interpreted as referring to the date of the award and not the date of knowledge of the award, it will lead to unjust and absurd results. For example, the Collector may choose to make an award but not to issue any notice u/s 12(2) of the Act, either due to negligence or oversight or due to any ulterior reasons. Or he may send a notice but may not bother to ensure that it is served on the land owner as required u/s 45 of the Act. If the words 'date of the Collector's award' are literally interpreted, the effect would be that on the expiry of six months from the date of award, even though the claimant had no notice of the award, he would lose the right to seek a reference. That will lead to arbitrary and unreasonable discrimination between those who are notified of the award and those who are not notified of the award. Unless the procedure under the Act is fair, reasonable and non-discriminatory, it will run the risk of being branded as being violative of Article 14 as also Article 300A of the Constitution of India. To avoid such consequences, the words 'date of the collector's award' occurring in proviso (b) to Section 18 requires to be read as referring to the date of knowledge of the essential contents of the award, and not the actual date of the Collector's award.

12. The following position therefore emerges from the interpretation of the proviso to Section 18 of the Act:

(i) If the award is made in the presence of the person interested (or his authorised representative), he has to make the application within six weeks from the date of the Collector's award itself.

(ii) If the award is not made in the presence of the person interested (or his authorised representative), he has to make the application seeking reference within six weeks of the receipt of the notice from the Collector u/s 12(2).

(iii) If the person interested (or his representative) was not present when the award is made, and if he does not receive the notice u/s 12(2) from the Collector, he has to make the application within six months of the date on which he actually or constructively came to know about the contents of the award.

(iv) If a person interested receives a notice u/s 12(2) of the Act, after the expiry of six weeks from the date of receipt of such notice, he cannot claim the benefit of the provision for six months for making the application on the ground that the date of receipt of notice u/s 12(2) of the Act was the date of knowledge of the

contents of the award.

A person who fails to make an application for reference within the time prescribed is not without remedy. It is open to him to make an application u/s 28A of the Act, on the basis of an award of the court in respect of the other lands covered by the same acquisition notification, if there is an increase. Be that as it may.

13. When a person interested makes an application for reference seeking the benefit of six months period from the date of knowledge, the initial onus is on him to prove that he (or his representative) was not present when the award was made, that he did not receive any notice u/s 12(2) of the Act, and that he did not have the knowledge of the contents of the award during a period of six months prior to the filing the application for reference. This onus is discharged by asserting these facts on oath. He is not expected to prove the negative. Once the initial onus is discharged by the claimant/person interested, it is for the Land Acquisition Collector to establish that the person interested was present either in person or through his representative when the award was made, or that he had received a notice u/s 12(2) of the Act, or that he had knowledge of the contents of the award. Actual or constructive knowledge of the contents of the award can be established by the Collector by proving that the person interested had received or drawn the compensation amount for the acquired land, or had attested the Mahazar/ Panchnama/proceedings delivering possession of the acquired land in pursuance of the acquisition, or had filed a case challenging the award or had acknowledged the making of the award in any document or in statement on oath or evidence. The person interested, not being in possession of the acquired land and the name of the state or its transferee being entered in the revenue municipal records coupled with delay, can also lead to an inference of constructive knowledge. In the absence of any such evidence by the Collector, the claim of the person interested that he did not have knowledge earlier will be accepted, unless there are compelling circumstances to not to do so.

Re : Question (d)

14. In this case, it is not in dispute that the award was not made in the presence of the claimant-land owner. The claimant has asserted that the award was not made in the presence of either himself or his representative, and no notice of the award u/s 12(2) of the Act was tendered to him. He has also asserted that he became aware of the award only when he received the notice dated 25.10.2007 calling upon him to receive the payment of the award. The respondents contend that a notice dated 30.3.2007 was issued u/s 12(2) of the Act, to all the interested land-owners including the appellants. But it is admitted that the said notice was not sent by post nor served on the land-owners. There is also no evidence that the said notice was tendered personally to them or that they refused to accept it. The respondent has produced a copy of a notice dated 30.3.2007 with an endorsement of the person who was sent to serve the notice which reads as under : "As per your order I went to village Bishanda and

informed the farmers but they refused to put their signatures. Report is submitted." A vague endorsement that the person who had to serve the notice went to village and informed the farmers, is not the same as notice being specifically tendered to the person concerned. The endorsement-cum-report does not mention or identify the farmers to whom he spoke or which of them refused to put their signatures. In the absence of any evidence placed by the Collector to show knowledge on the part of the appellants, the claim of the appellants that they became aware that an award was made only when the notice dated 25.10.2007 was tendered to them and they became aware of the contents of the award only on 16.11.2007 has to be accepted. In the circumstances, the date of the award should be taken as 16.11.2007. The application filed on 16.11.2007 was therefore in time. The Land Acquisition Collector ought to have entertained the application seeking reference. The High Court, instead of directing the Collector to make a reference, wrongly rejected the writ petition on the ground that an appeal is maintainable u/s 54 of the Act and also wrongly rejected the review petition on the ground that they could have made an application for condonation of delay before the Land Acquisition Collector.

15. In view of the above, the appeals are allowed, the orders of the High Court dated 17.1.2008 and 5.5.2008 are set aside, the writ petition is allowed and the Collector is directed to make a reference to the civil court u/s 18 of the Act, without any delay, not later than two months.