
(2003) 01 MP CK 0165

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1147 of 2002

Bhagwati Bai and others

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 30-01-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 31

Citation : (2004) 3 MPLJ 200

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Shobha Menon, for the Appellant; Sanjay K. Agrawal, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

The petitioners, in this instant writ petition, are challenging the order (P-X) dated 11-12-2001 passed by 12th Additional District Judge, Bhopal in M.J.C. No. 7-2001. The learned Additional District Judge has held that the petitioners have not accepted the compensation under protest and as words under protest has not been mentioned on the receipt, hence the petitioners are not entitled to maintain the application u/s 18 read with section 31 of the Land Acquisition Act, 1894.

The land admeasuring 76.738 hectares was acquired in various villages of Tah. Huzur, Distt. Bhopal for setting up Railway Coach Repairing Factory. The ex parte Award (P/3) was passed on 10th May, 1986 by the Land Acquisition Officer. The petitioners submitted an application (P/4) for making the reference on 2nd June, 1986. It was clearly mentioned by the petitioners in the application that claimants could not get adequate compensation and were receiving the awarded compensation under protest. The petitioners submit that matter was referred by the Collector, Bhopal on 22/27 June, 1988 as per communication P/7 to the

reference Court.

The petitioners, in the petition, makes averments in para 5.5. that compensation awarded to the petitioners was paid in two instalments. Some of the petitioners were paid in the month of January, 1987 while few in the month of March, 1987, while the balance amount was paid in the month of June, 1989. The petitioners had already recorded their objection before receipt of the final amount awarded. Reference is made to the deposit refund order and voucher dated 31-1-1987, March, 1987 and June 1989.

The petitioners submit that they had filed the application for making the reference earlier in point of time before receiving the amount of compensation. In the application it was also mentioned that they were receiving the Award under protest, thus, it could not be held by the learned Additional District Judge that they have not mentioned on the receipt when compensation was received word under protest. Protest was already lodged in writing earlier in the point of time. It is submitted that filing the application for seeking reference itself manifest the intention of the petitioners that they had protested. It is submitted that no such objection as to maintainability and lack of protest was taken by the State Government that Award was received without protest still the Court has dismissed the reference on the ground of maintainability holding that the petitioners received the compensation without protest u/s 18.

Smt. Shobha Menon, learned counsel for the petitioners, has urged that the impugned order is bad in law. The petitioners had protested before receiving the compensation. The compensation was disbursed after filing the objection in writing against quantum determined. The conduct of the petitioners show that they had protested. She further submitted that its not a requirement of law that on receipt only words received under protest be written. Protest can be raised in writing and the act of petitioners filing the application seeking reference in which they had mentioned that they were obtaining the amount of compensation under protest is sufficient to infer protest of petitioner as required u/s 18 of the Land Acquisition Act.

Shri Sanjay K. Agrawal, learned Panel Advocate for respondents, submits that it is not necessary to raise such an objection as to maintainability of the reference and it is open to the reference Court to decide whether the reference is in accordance with law and is maintainable and on facts it has been lightly found that on receipt it was not mentioned by the petitioners that they had received the amount of compensation under protest as such the impugned order passed is proper and no interference is called for.

Section 18 of the Land Acquisition Act makes it clear that in order to maintain the reference, it is necessary that person seeking reference must not have accepted the Award, necessary condition to maintain the application for reference is that there is non-acceptance of the Award by the person seeking reference u/s 18. Written application is required to be filed for seeking reference

and the Collector, in case a person has not accepted the Award and has filed application for seeking reference within time, has no jurisdiction to refuse to make the reference. Reference u/s 18 is a right of a person in case he has not accepted the Award. The question is no more res-integra in Mohd. Hasnuddin v. State of Maharashtra, (1972) 2 SCC 572, the Apex Court has held that reference Court can enquire into competency or otherwise of the reference made by the Collector. Question of limitation can be looked into; Collector while making the reference act as a statutory authority. In Ashwani Kumar Dhingra Vs. State of Punjab, , the Apex Court has held that in order to show that person concerned had not accepted the Award, the claimants must have accepted the compensation under protest. If a person accepts the compensation without protest, person concerned may lose his right to maintain a reference for various matters mentioned u/s 18 of the Land Acquisition Act.

In Ajit Singh and Others Vs. State of Punjab and Others, , question arose as to the maintainability of the reference at the behest of the claimants. The Apex Court has held that claimants have filed an application for making reference that will manifest their intention. Therefore, the protest against the Award of the Collector is implied notwithstanding the acceptance of compensation. Inasmuch as the appellants have filed an application for making reference u/s 18 of the Act that will manifest their intention. Therefore, the protest against the Award of the Collector is implied notwithstanding the acceptance of compensation. The District Judge and High Court, therefore, fell into patent error in denying the enhanced compensation to the appellants.

In Wardington Lyngdoh and others Vs. The Collector, Mawkyrwat, , the Apex Court has reiterated that no person who has not received the amount of compensation under protest should be entitled to receive compensation u/s 18 of the Land Acquisition Act.

In Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah, , the learned Single Judge opined that recording of the protest in the application filed for making reference u/s 18 is not enough. The "objection must be recorded on the receipt granted" showing that the disputed amount of compensation money was accepted under protest. This observation of the learned Single Judge has been held to be obiter by a Division Bench in Md. Golam Ali Mina and Another Vs. Land Acquisition Collector and Another, , the opinion expressed that protest should actually appear in the body of receipt is incorrect statement of law and is not acceptable. It appears that later decision of the Calcutta High Court was not brought to the notice of the learned Additional District Judge. Hence the learned Additional District Judge has heavily relied upon the observation made by the learned Single Judge in Suresh Chandra Roy (supra) which stood overruled by the Division Bench of the Calcutta High Court.

There is no prescribed mode u/s 18 in which method protest should be lodged as held by the Apex Court in Ajit Singh's (supra). Intention has to be gathered from the conduct even if the application has been filed for seeking reference is enough

to show the protest. Thus, in my opinion, protest can be raised by the claimants in several modes and the mode adopted in the instant matter is by mentioning the fact that claimants were dissatisfied with award and were receiving amount awarded under protest u/s 18 is enough to infer that compensation received under protest. The averment made in the petition is that compensation was disbursed in January, 1987, March, 1987 and June, 1989. The learned Courts below has totally ignored the fact that Award was passed on 10-5-1986 the application seeking reference was filed in June 1986 was earlier in point of time to the actual date of disbursement of compensation. Compensation was disbursed subsequently has not been controverted by the respondents. Thus, in my opinion, the learned Additional Judge has gravely erred in law in dismissing the reference on the ground of maintainability. The impugned order is liable to be quashed.

Resultantly, writ petition is allowed. The impugned order (P.X) is quashed. The reference is maintainable. The Additional District Judge is directed to proceed further with reference and pass the Award within six months from today on merit determining compensation in accordance with law. No order as to costs.