

(1988) 01 DEL CK 0035

In the Delhi High Court

Case No : Civil Revision Appeal No. 667 of 1978

Bharat Chand Dilwali

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-01-1988

Acts Referred:

Citation : (1988) 14 DRJ 221 : (1988) RLR 224

Hon'ble Judges : D.P Wadhwa, J

Bench : Single Bench

Advocate : V.P. Singh, Rajender Dutt and S.K. Gulati, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) The petitioner seeks revision of the order dated 5-7-1978 of the Addl. District Judge, Delhi, whereby he held that reference u/s 18 of the Land Acquisition Act, 1894 (for short "the Act") was barred by limitation, and thus refusing to proceed with reference.

(2) The petitioner is stated to be the owner of 24 Bighas 10 bids was of agricultural land in village Kolokari, Delhi A notification u/s 4 of the Act in respect of the land of the petitioner and other lands was issued on 13-11-1959, and a notification u/s 6 of the Act was issued on 26/27-7-1961. A award was given on 16-2-1962. It has been the contention of the petitioner that no notices under Ss. 9 and 10 of the Act were issued to him and he was also not informed of the making of the award and no notice under Sub-section (2) of Section 12 of the Act was ever served upon him.

(3) It appears after making the award, the learned Collector made a reference u/s 30 of the Act. This section provides that when the amount of compensation has been settled u/s 11, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the court. This reference was decided on 8-7-1974 and in favor of the petitioner. The petitioner

says that he became aware of the award on 14-7-1976 and on 4-11-1976 he filed an application u/s 18 of the Act before the Collector requiring that reference be made to the court for determinant of the amount of compensation payable to the petitioner. The reference was accordingly made. When the matter came up before the learned Addl. District Judge, respondents Nos. 2 and 3 raised an objection that it was made beyond the period of limitation as prescribed u/s 18 of the Act. The respondent Union of India had not raised any such objection. However, getting a cue from the objection of respondents Nos. 2 and 3, the Uoi also raised an objection to the validity of the reference being barred by limitation. This objection of the respondents prevailed and by the impugned order the learned Addl. District Judge refused to proceed with the reference.

(4) It appears that the petitioner did file a claim in respect of his land before the Collector slating that he had purchased the land in question from the father of respondents Nos. 2 and 3. The petitioner was not the recorded owner of the land in the revenue records. It was this claim of the petitioner that resulted in reference u/s 30 of the Act, and, as noted above, was ultimately decided on 8-7-1974. The learned Addl. District Judge also noted that the petitioner did appear in the proceedings u/s 30 of the Act before the Addl. District Judge and was represented by his counsel. It was, Therefore, held that the petitioner was well aware of the making of the award.

(5) When this petition was admitted, two principal questions were raised : (1) that once reference had been made u/s 18 of the Act the court had no jurisdiction to go into the question if the petitioner had moved the Collector within the period prescribed u/s 18 of the Act, and (2) assuming that to be so, the exercise of power by the court in the instant case was not proper because there was no material before the court for it to arrive at the finding that the reference was beyond time.

(6) The first question stands settled in view of the decision of the Supreme Court in Mohammed Hasnuddin Vs. State of Maharashtra, . The court held that the Collector while acting u/s 18 of the Act was nothing but a statutory authority exercising his own powers under the section and that the court functioning under the Act being a tribunal of special jurisdiction was duty-bound to see that the reference made to it by the Collector under S. 18 complied with the conditions laid down therein so as to give the court jurisdiction to hear the reference.

(7) Proviso to Sub-s(2) of Section 18 of the Act provides that an 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 ; and (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. In Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, , the Supreme Court was examining proviso (b) above-mentioned and held that limitation would commence from the actual or constructive knowledge of the

making of the award. This court in *Gian Chand Dhawan and Another Vs. Union of India and Others*, , following the aforesaid decision of the Supreme Court, further observed that mere knowledge of pendency of acquisition proceedings or of notifications under Sees. 4 and 6 or any public notice with regard to acquisition would not constitute either actual or constructive notice of the making of the award. A Division Bench of the Gujarat High Court in *Rasulkhanji v. H.P.Rathod* (16 (1975) Gujarat Law Reporter 911) was of the view that requirement of notice under S. 12(2) of the Act was an essential requirement of the principles of fairplay and natural justice. The court observed that the expression "date of the award" must mean the date when the award was either communicated to the party or was known by him either actually or constructively. It further observed that the knowledge of the award did not mean mere knowledge of the fact that the award had been made and that the knowledge must relate to the essential contents of the award. The High Court was, Therefore, of the view that unless the claimant knew all the grounds on which award had been made, his right of making reference would be meaningless. Similar was the view taken by the Orissa High Court in *Ramahari Moharana and Others Vs. Land Acquisition Officer and Another*, where-in the court observed that knowledge of award did not mean a mere knowledge of fact that the award had been made, it must relate to the essential contents of the award.

(8) The question thus is not that the award has been given but what award has been given. Notice under Sub-s. (2) of S. 12 of the Act is not an idle formality. The claimant must have notice as to the grounds on which award has been based for him to take objections to the same and to seek reference under S. 18 of the Act. There is ample authority for the proposition that when date of knowledge of making the award is imputed to the claimant it must be the date when he became aware of the contents of the award for him to file objections seeking reference to the court under S. 18 of the Act. It may be that in the instant case, the petitioner was aware of the award particularly in view of the proceedings under (S. 30 of the Act. There is, however, nothing on record to suggest that he was even aware of the contents of the award which fact was not in issue in the proceedings under S. 30 of the Act. The petitioner did contend and, in fact, it was so held by the order in proceedings under S. 30 of the Act that though in earlier stages of those proceedings the petitioner was represented by his counsel but thereafter he did not participate in the proceedings.] Mr. V.P. Singh, learned counsel for the petitioner, submitted that the State should not raise a plea of limitation when this point was thoroughly thrashed at the time of reference by the Collector. He said persons similarly situated as the petitioner had been paid enhanced compensation and the petitioner should not be deprived of that by the respondents by taking shelter of the technical plea of limitation. In this connection, he referred to two decisions, one of the Supreme Court and the other a Bench decision of the Calcutta High Court. In *Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s*, , the Supreme Court was concerned with the provisions of S. 110 of the Madras Port Trust Act

(II of 1905). Under this section, the Madras Port Trust had taken the plea that the claim was barred by limitation. The court observed as under:-

"THE plea of limitation based on this section is one which the court always looks upon with disfavor and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable."

The other decision is *Kumar Veda Kantha Sinha Roy v. State* AIR 1982 Sc 307 the petitioner had complained of non-payment of compensation under the Requisitioning and Acquisition of Immovable Property Act, 1952. A single judge of the Calcutta High Court had dismissed the plea on the ground of delay. Reversing that order, Sabyasachi Mukharji, J. (as his Lordship then was), observed that on the facts of that case the petition should not have been dismissed on the ground of delay as otherwise the petitioner was entitled to compensation.

(9) Mr. Dutt, learned counsel for the Union of India, on the other hand, submitted that the view taken by the learned Addl. District Judge that the reference was barred by limitation was correct. He, however, submitted that u/s 28A of the Act, which was inserted by Act 68 of 1984, the petitioner could nevertheless again approach the Collector for determination of the compensation payable to him on the basis of the amount of compensation awarded by the court. In fact, Mr. Dutt said that the petitioner had approached the Collector in view of the Amending Act. That may be so, but I am of the view that in the circumstances of the case, the learned Addl. District Judge should not have brushed aside the plea of the petitioner that he was not aware of the contents of the award till 14-7-1976 as there was nothing on record to controvert that plea. It was not disputed by Mr. Dutt that persons owning land in the same village whose land had also been acquired under the same award, had been paid compensation at enhanced rate. I do not think that plea of limitation should come in the way of the petitioner in getting his just compensation, particularly in view of the amendment to the Act by inserting Section 28A by the Amendment Act of 1984.

(10) I would, Therefore, set aside the impugned order and remand the case to the court of the Addl. District Judge for decision in accordance with law.