

(1959) 06 CAL CK 0014
In the Calcutta High Court
Case No : C.R. No. 2695 of 1956.

Bharat Nath Mitra

APPELLANT

Vs

Special Land Acquisition Collector, Howrah and Others

RESPONDENT

Date of Decision : 10-06-1959

Acts Referred:

Land Acquisition Act, 1894 — Section 12, 12(2), 18, 18(2)(a), 18(2)(b)
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 5(3), 8, 8(1)

Citation : 64 CWN 44

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Bijan Behari Das Gupta and Amal Chandra Chatterjee, for the Appellant; J. Majumdar (Addl. Govt. Pleader) and, P.K. Banerjee, for the Respondent

Judgement

Sinha, J.—The facts in this case are shortly as follows:--The petitioner is the owner of a moiety of Touzi no. 745 of the Howrah Collectorate By two notices dated the 22nd July, 1955 issued u/s 5(3) of the West Bengal Land (Requisition and Acquisition) Act 1948 the petitioner was asked to state the nature of his interest in c.s. plot nos. 103, 588 and 583 (in part) in mouza Banupur in the district of Howrah and in c.s. plots nos. 1836 (in part) and 2361 in Mouza Mashila. The petitioner was asked to state the amount and particulars of his claim to compensation. It appears that the plots under acquisition constitute a section of the river Saraswati. Thereupon, the petitioner submitted petitions stating the nature of their claim and the amount of compensation payable for acquisition of interests of the petitioner and certain deities. By the award dated the 18th May, 1956 the Land Acquisition Collector determined the valuation of the khas lands under acquisition and passed a joint award. It is stated that thereafter notices u/s 12(2) of the Land Acquisition Act were served on the petitioner, on the 22nd May, 1956. It appears to have been served upon an employee. The petitioner states that no such service was made, or in any event they were unaware of the service of any such notice and they have applied for a

certified copy of the award on the 8th June, 1956 which copy was served by the Record Keeper on the 2nd July, 1956 and an application was filed on the 6th July, 1956 u/s 8(1) of the West Bengal Land (Requisition and Acquisition) Act, 1948, asking the Collector to refer the matter to the decision of the court. The Collector has held by his order dated the 21st July, 1956 that the application was barred by limitation. A copy of the order is annexture "F" to the petition at page 35. It is stated by the learned Collector that the notice u/s 12(2) of the Land Acquisition Act was served on the 22nd May, 1956 and therefore it was barred under the provisions of section 18(2) (b) of the Land Acquisition Act. It is against this order that this application is directed. Section 8 of the West Bengal Land (Requisition and Acquisition) Act, 1948 lays down that in every case where a person interested, being aggrieved by an award made by him under the Act as, stated therein, makes an application requiring the matter to be referred to Court or where there is any disagreement with regard to the compensation payable between the Collector and any person interested, then he shall refer the matter to the decision of the court. Then comes sub-section (2) which is set out below.

The provisions of sub-section (2) of section 18 and of sections 19 and 22 and of sections 25 to 28 of the Land Acquisition Act, 1894 and the principles set out in sub-section (2) and in clause (a) of sub-section (2) of section 7 of this Act, shall, so far as they may be applicable, apply in respect of any reference made to the Court under sub-section (1).

2. It will be observed that section 8 by itself does not lay down any bar of limitation. The bar of limitation will only be attracted if we have to read into it the provisions of section 18(2) (a) or (b) of the Land Acquisition Act. It is not disputed before me that section 18(2) (a) did not apply to the facts of this case. The question is whether section 18(2) (b) applies. The first argument made before me is that no part of the provisions of section 18 of the Land Acquisition Act applies, because what are attracted are the provisions of sub-section (2) of section 18 in so far as they may be applicable in respect of "any reference made to Court". In other words, it is argued that the operation of section 18 only starts, after a reference has been made to court, and not before it. If this is correct, then the bar of limitation will not be attracted in the case of an application to the Collector to refer, which in point of fact must necessarily precede an order of reference. In my opinion this argument is not of substance. Sub-section (2) of section 18 deals with nothing but the bar of limitation for the making of an application under sub-section (1) of section 18. Since that is made applicable under sub-section (2) of section 8 of the West Bengal Land (Requisition and Acquisition) Act, it follows that the words "any reference made to Court" have been used loosely or in other words the bar of limitation does not apply only at a stage after the order of reference has been made, but also to the steps leading to it. I hold therefore that the provisions of section 18(2) (b) are applicable in the present case.

3. Coming now to the provisions of section 18(2) (b), I must set out the

provision in order to understand the exact point that has arisen in this case.

(2) The application shall state the grounds on which objection to the award is taken;

Provided that every such application shall be made;

(a)....

(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.

4. It will be seen that there are two parts in this provision. The first part deals with the period when notice is served under sub-section (2) of section 12 of the Land Acquisition Act, and the second part when no such notice has been served or is necessary. In this case it is stated that notice has been served under sub-section (2) of section 12 of the Land Acquisition Act. There is a great deal of controversy as to whether this notice was served at all or in time. In my opinion, however, this dispute is of no importance in this case, because the provisions of subsection (2) of section 12 of the Land Acquisition Act is not at all applicable to proceedings under West Bengal Land (Requisition and Acquisition) Act, 1948. Therefore, only the second part of clause (b) of sub-section (2) of section 18 can apply. This point was expressly dealt with in a Division Bench Judgment of this Court, to which I was a party, Birendra Nath Ray Sarkar and Another Vs. Union of India (UOI) and Another, . It was held by us that the receipt of a notice from the Collector u/s 12(2) cannot be fitted into the scheme of the West Bengal Land (Requisition and Acquisition) Act, 1948. The Act does not provide for any notice to be given in respect of an award given under the Act, namely, the West Bengal Land (Requisition and Acquisition) Act. Therefore, in the nature of things, no notice was necessary to be given under sub-section (2) of section 12 of the Land Acquisition Act, and it is the six months' limitation from the date of the Collector's award which applied to the facts of this case. That being so, the matter was clearly not barred by limitation, and the order of the Land Acquisition Collector was erroneous.

5. The Rule must, therefore, be made absolute. There will be a writ in the nature of certiorari quashing and or setting aside the order of the Land Acquisition Collector, Howrah dated the 21st July, 1956. The matter will now be dealt with, in accordance with law. There will be no order as to costs.

6. The facts and the law involved in this case are exactly the same as in Civil Revision No. 2695 of 1956. For the reasons given therein, this Rule is also made absolute and the order of the Land Acquisition Collector is quashed and/or set aside by a writ in the nature of certiorari. The matter will now be dealt with, in accordance with law. There will be no order as to costs.