

(1953) 01 CAL CK 0020
In the Calcutta High Court
Case No : Civil Rule No. 2940 of 1951

Birendra Nath Ray Sarkar and Another	APPELLANT
Vs	
Union of India (UOI) and Another	RESPONDENT

Date of Decision : 12-01-1953

Acts Referred:

Land Acquisition Act, 1894 — Section 18(2)
West Bengal Land (Requisition and Acquisition) Act, 1948 — Section 8(2)

Citation : AIR 1953 Cal 595 : 57 CWN 283

Hon'ble Judges : Chakravartti, C.J.;Sinha, J

Bench : Division Bench

Advocate : Rajendra Bhusan Bakshi and Satya Priya Ghose, for the Appellant; Hemendra Kumar Das and Smriti Kumar Ray Choudhury, (for No. 2), Bhabesh Narayan Bose and S.K. Guha, (for No. 1), for the Respondent

Judgement

Chakravartti, C.J.—This Rule raises an interesting question u/s 8 (2) of the West Bengal Land (Requisition and Acquisition) Act, 1948 regarding limitation for applications for a reference to this Court that may be made under the Act.

2. The facts are simple and are as follows. It appears that on 6-10-1949, a notification, numbered 8214/L. A., (P. W.) dated 23-9-1949, was published u/s 4 of the Act to the effect that the Provincial Government had decided to acquire a particular area of land belonging to the petitioners. The area concerned, we are informed, is 108.07 acres of which 82.52 acres are in the occupation of tenants, while the rest, namely 25.55 acres are in the khas possession of the petitioners. On the publication of that Notification, the petitioners lodged a claim, presumably u/s 5 (2) of Act, and asked for an award at the rate of Rs. 200/- per cottah. So far as the tenanted lands are concerned, they asked for a total amount of Rs. 9,86,000/- of which according to them, Rs. 6,16,250/- would have to be their own allotment, while Rs. 3,69,750/- would go to the tenants as their share of the compensation. With regard to the khas lands the claim was for an amount of Rs. 3,02,000/- which there would be nobody to share, inasmuch as they were lands in khas possession. After the above claim had been lodged, the Land Acquisition

Collector made an award on 5-2-1951, by which he awarded on account of all the lands acquired a total amount of only Rs. 17,379/-. The order of the Collector mentions three other sums as component parts of the said sum of Rs. 17,379/- but what those sums individually stand for, could not be explained to us by either of the parties.

3. A notice of the award was served on the petitioners on 6-2-1951, presumably, under some rule or practice, but it was not till 30-7-1951, that they made an application for a reference to the Court u/s 8 (1) (a) of the Act. That application was thrown out by the Collector on 21-8-1951 on the ground that it was barred by limitation. The Collector referred to Section 8 (2) of the Act under which the provisions of the Land Acquisition Act apply mutatis mutandis in respect of any reference made to the Court under Sub-section (1). The Collector "took the view that since the petitioners had not made their application within six weeks from the date on which the notice of the award had been served upon them, their application was time barred, although it was within six months from the date of the award. The present Rule is directed against that order.

4. On behalf of the petitioners it was contended by Mr. Bakshi that, in fact, there was no period of limitation at all for applications for a reference to the Court to be made under the Act. He pointed out that all that Sub-section (2) of Section 8 provided was that the provisions of the Land Acquisition Act would apply mutatis mutandis in respect of any reference made to the Court under Sub-section (1). The language being "any reference made to the Court", it was contended that what this section incorporated by reference were only those provisions of the Land Acquisition Act which related to the merits of the questions regarding which a reference might have been made, taut the process of making the reference itself, in other words, the making of the reference, was not covered by the language of the sub-section. I am bound to say that if one takes the language of Section 8 (2) literally, the conclusion contended for by Mr. Bakshi must follow. It may, however, be that what one finds here is only one of the examples of unprecise draftsmanship with which we have now become familiar and it may have to be considered in a proper case whether by the language used in Section 8 (2) the Legislature had not really intended to cover not merely a reference as made, but also the making of the reference itself. In view, however, of the special facts of the present case, it is not necessary to decide the points and we may proceed on the footing that even the making of a reference is covered by the sub-section.

5. The language of the sub-section has already been quoted. Even assuming that it bears the extended meaning to which I have referred, only so much of the Land Acquisition Act can be held to have been imported under that language as bears upon the application for a reference, the making of a reference and the consideration of a reference. The language of the sub-section cannot entitle one to go back further along the Land Acquisition Act and import any other section which has no bearing upon or connection with a reference to the Court. Mr. Das,

who appears on behalf of the State, pointed out that the sub-section made the relevant provisions of the Land Acquisition Act applicable "mutatis mutandis". So it does, but the question is not whether the relevant provisions of the Act apply "mutatis mutandis" or "so far as they may be applicable". But the question is what provisions of the Land Acquisition Act are at all imported and what provisions apply, though it may be mutatis mutandis. The provision relating to the making of a reference is to be found in Section 18 of the Land Acquisition Act and the time for making an application is dealt with in Clauses (a) and (b) of Sub-section (2) of the section. Those clauses read as follows :

"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."

6. It is not disputed that the petitioners who applied for a reference to the Court, were not before the Collector when he made his award, nor were they represented. Clause (a) of Sub-section 18 (2) is, therefore out of the way. Proceeding next to Clause (b) one finds that it contains two alternatives, six weeks from the receipt of the notice u/s 12(2) that is to say, that section of the Land Acquisition Act and six months from the date of the Collector's award. The second alternative presents no difficulty. As under the Land Acquisition Act, so under the West Bengal Land (Requisition and Acquisition) Act, 1948, it is the Collector who makes the award and, therefore, there is a Collector's award from which time may be computed. But so far as the first alternative is concerned, in order that it may apply, there must be a notice from the Collector u/s 12(2) of the Land Acquisition Act. The West Bengal Land (Requisition and Acquisition) Act, 1948, does not provide for any notice to be given in respect of awards made under that Act u/s 12 of the Land Acquisition Act, nor is there, and there could not be, any provision in the Land Acquisition Act itself for issuing any notice of an award given in respect of acquisitions made under the subsequent and the special Act. It therefore follows that although u/s 8(2) the provisions of the Land Acquisition Act may apply "mutatis mutandis" in respect of applications for references or the making of references or the consideration of references under the special Act, the first alternative in Section 18(2)(b) of the Land Acquisition Act cannot possibly be fitted into the scheme of the Statute. In order that limitation may be computed against the applicant for a reference under the first alternative contained in Section 18(2)(b), it is necessary that there should be a notice u/s 12(2) of the Land Acquisition Act. But that section is not attracted by Section 8(2) of the special Act, because it deals only with giving notice of an award and has nothing to do with a reference, nor does the reference to Section 12(2) in Section 18(2)(b) make the former section itself applicable. Since in the case of awards made under the special Act there can be no question of any notice u/s 12(2) of the Land Acquisition Act and in fact no notice under that Act

is served, it is clear that the first alternative contained in Section 18(2)(b) does not and cannot apply to applications for a reference under the West Bengal Land (Requisition and Acquisition) Act. So far as the first alternative contained in Section 18(2)(b) is concerned, the provision implied in Section 8(2) of the special Act that it will apply to references made thereunder "mutatis mutandis" is therefore meaningless. The only provision which applies in such a case is the second alternative u/s 18(2)(b) and that alternative, it will be recalled, is six months from the date of the award.

7. It is not disputed that the petitioner's application in the present case was within six months from the date of the award. It follows that their application was within time and the Land Acquisition Collector was in error in throwing it out as time barred.

8. In the result, the Rule is made absolute, the order passed by the Land Acquisition Collector is set aside and he is directed to entertain the application filed by the petitioners and to dispose of it in accordance with law. The petitioners are entitled to their costs of this Rule -- the hearing fee being assessed at three gold mohurs.

9. Let the affidavit in reply filed in Court to-day be kept on the record.

Sinha, J.

10. I agree.