
(1972) 04 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 359 of 1971

Budhu Ram etc.

APPELLANT

Vs

The State of Haryana etc.

RESPONDENT

Date of Decision : 21-04-1972

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 12(2), 18, 19

Citation : (1975) 1 ILR (P&H) 14

Hon'ble Judges : Harbans Singh, C.J.;Ranjit Singh Sarkaria, J

Bench : Division Bench

Advocate : P.S. Jain and V.M. Jain, for the Appellant; C.B. Kaushik, for A.G., for the Respondent

Final Decision : Allowed

Judgement

Harbans Singh, C.J.—The facts, which are not in dispute, leading to this appeal under Clause 10 of the Letters Patent may briefly be stated as under.

Some land was acquired for the planned development of Farida-bad in district Gurgaon. The award was given by the Collector on 19th November, 1968. This award was not accepted by the Appellants, Budhu Ram and his brother Devi Ram, whose land had also been acquired. They filed an application on 24th December, 1968, moving the Collector to refer the matter u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), on two points, first the valuation assessed was lower and it should have been held at the rate of Rs. 40 per square yard and, secondly, on its apportionment. It was claimed that the entire compensation was payable to the Petitioners and that Umrao Singh and Tula Ram, who were lessees under a Patta, were not entitled to any compensation with regard to the land except in respect of Hina plantation in some of the fields. A copy of this application is Annexure "A" to the writ petition. In paragraph 3 of the application it was stated as follows:

That your Petitioners are aggrieved by the award and pray that your honour may

be pleased to refer the case to the Civil Court u/s 18 of the Land Acquisition Act (No. 1 of 1894) for the determination of the question of valuation and the compensation and the person entitled to receive the compensation on the following amongst other grounds: --

* * *

The very first ground (a) is that the "land acquired has been greatly under-valued and that its market value should have been held to be not less than Rs. 40 per square yard.

2. Some eight months thereafter, i.e., on 22nd August, 1969, the Collector sent a payment voucher of the compensation amount as awarded by the award to the Petitioners and this voucher, in due course, was encashed by the Petitioners. Nothing happened for nearly one year thereafter when on 10th July, 1970, the letter, copy Annexure "B", was sent by the Collector to the Petitioners intimating that as the Petitioners had accepted the amount of compensation without any protest, the matter cannot be referred to the Civil Court u/s 18 of the Act. On receipt of this letter, the Petitioners protested vide a letter, dated 24th July, 1970, copy Annexure "C", that the award had not been accepted by the Petitioners, that they had challenged the same by filing the application and that the reference application "had been filed long before the payment had been made by voucher which was of course received subject to the aforementioned petition". The Collector was, consequently, asked to refer the matter, but by another letter dated 18th August, 1970, copy Annexure "D", the Collector refused to do so. It was thereafter that the writ petition, out of which the present appeal has arisen, was filed.

In the writ petition the main contention raised was that in the application for reference u/s 18 of the Act it was specifically pointed out that the Petitioners did not accept the award and were aggrieved and that they challenged the amount of compensation as well as its apportionment and had made a request for reference. It was further stated that in these circumstances, the acceptance of the payment subsequently must be taken subject to the facts, as stated in the earlier petition.

3. The learned Single Judge, relying on his earlier decision in Smt. Kailash Devi and Anr. v. The State of Haryana and Anr. C.W. No. 2524 of 1970 decided on 10th November, 1970, which had in turn relied upon the decision of a Single Bench of the Calcutta High Court in Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah, , came to the conclusion that inasmuch as no protest was registered at the time of the acceptance of the compensation voucher, the case fell within second proviso to Section 31(2) of the Act and the Collector had rightly refused to refer the matter u/s 18 of the Act. The writ petition was, therefore, dismissed and hence this appeal.

4. Before referring to the arguments of the learned Counsel for the Appellants, it is necessary to refer to the relevant provisions of the Act. u/s 11, the Collector,

after making an enquiry, is to give an award with regard to the true area of the land and the compensation which, in his opinion, should be allowed for the land and the apportionment thereof amongst different persons interested in the land. u/s 12 such an award filed in the Collector's office is final "except as hereinafter provided". The finality of the award is obviously subject to the reference that can be made to the Court under Part III of the Act. This part begins with Section 18 which is to the following effect:

(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 compensation, the person 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.

5. Section 19 lays down the information that would be included in the statement made by the Collector in referring the matter to the Court. Section 20 provides for the notices that are to be sent by the Court. Section 21 gives the scope of the enquiry. Section 23 deals with the matters to be considered in determining the compensation and Section 24 with the matters that are not to be taken into consideration in arriving at the figure of the compensation. Section 25 provides that the compensation to be awarded cannot be less than that given by the Collector and not more than the compensation claimed by the applicant in pursuance of any notice given u/s 9 of the Act. Section 26 deals with the form of the award, Section 27 with costs and Section 28 with the directions of payment of interest, etc. Sections 29 and 30 are contained in Part IV and deal with the question of apportionment of compensation. Section 31 is in Part V. with the heading "Payment". This section runs as under:

(1) On making an award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next subsection.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the

amount of the compensation in the Court to which a reference u/s 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18:

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It is the interpretation of the second proviso to Section 31(2) of the Act that is for consideration.

6. u/s 18(1), a person, who has not accepted the award, is entitled to make an application for reference. The opening part of Sub-section (1) of Section 31 obviously contemplates that soon after the award u/s 11 has been made, the Collector shall take steps to tender payment of the compensation as awarded by him and if, for any reason mentioned in Sub-section (2), he is not able to make the payment, the same has to be deposited "in the Court to which a reference u/s 18 would be submitted." Normally speaking, therefore, action under Sub-sections (1) and (2) of Section 31 is to be taken much earlier in time than the stage of a reference u/s 18 of the Act. The first proviso to Section 31(2) authorises the person interested to receive the payment under protest as to its sufficiency. The second proviso lays down that if the person interested receives the amount "otherwise than under protest", he shall not "be entitled to make any application u/s 18". Again the wording of the second proviso contemplates that compensation is to be paid earlier than the time which is allowed for making the application u/s 18. The period contemplated within which an application is to be made for reference u/s 18, is given in the proviso to Sub-section (2) of that section, i.e., within six weeks of the Collector's award if some one is present at the time of the award, or, in other cases, 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 shall first expire.

7. On behalf of the Appellants it was vehemently urged, first, that the second proviso to Section 31(2) only deals with a case where the payment has been received before an application u/s 18 has actually been filed and it prohibits a person who has so received the amount "otherwise than under protest" to make an application. This, in no way, covers a case where even before such a payment, an application has been made u/s 18 challenging the award on any one or more of the grounds given in Sub-section (1) of Section 18 and subsequently the payment of the compensation is received. Secondly, it was urged that the said proviso only deals with a case where the payment has been received "otherwise than under protest". Such a protest needs not necessarily be incorporated in the

receipt given at the time of receiving the amount of the compensation, it can even precede the receipt. All that is to be seen is whether, taking all the surrounding circumstances into consideration, the payment of compensation can be said to have been received "otherwise than under protest". If the payment made cannot be treated as "otherwise than under protest" then that will not have any affect on an application to be filed or which has already been filed.

8. The facts in Suresh Chandra Roy's case (2) (supra) were no doubt different from those in the present case. But all the same the observations made therein can be interpreted to mean that according to the learned Judge, who had relied on an earlier unreported decision, the protest must be made at the time of the receipt of the compensation or, in other words, the words of protest must be written in the receipt given by the person interested at the time of receiving the amount.

9. In Suresh Chandra Roy's case (2), a notice was received from the Collector that two sums of money being more than 57,000 and 33,000 respectively, were awarded in favour of the Petitioner and that he was at liberty to withdraw the amount on 18th August, 1958, either himself or through an authorised agent from the Land Acquisition Collector's office. On receipt of this notice, he made an application on 18th July, 1958, praying that a reference be made to Court for determination of the amount of compensation. In that application he inter alia stated that he would receive the compensation as awarded under protest on the date notified. On 12th August, 1958, he filed another application before the Collector for withdrawal of the compensation money authorising one "C" to receive the amounts on his behalf. On 18th August, 1958, he prayed for the issue of two bank drafts for the amounts of the compensation in his favour. On 30th January, 1959, "C" received the amounts in the form of bank drafts and duly executed two receipts therefor. In the application, dated 18th August, 1958, or in the receipts, dated 30th January, 1959, there was no repetition of the protest under which the Petitioner was accepting the amounts. Thereafter, he was informed that the references u/s 18 of the Act were barred u/s 31(2) of the Act, the Petitioner having accepted the amounts. From the unreported decision the learned Judge quoted the following observation: --

It is the receipt of the money that is to be looked into for the purpose of seeing whether the payment was received under protest or not.

10. The observation of the learned Judge in Suresh Chandra Roy's case (2), that the protest must be incorporated in the receipt, was not approved by a Bench of the same High Court in Md. Golam Ali Mina and Another Vs. Land Acquisition Collector and Another, . In this case applications were made by the persons interested "that they were prepared to accept the award amounts under protest and prayed for payments accordingly". The payments were later on made by the Collector and the receipts were endorsed on the back of the said applications. In these receipts the words "under protest" did not appear. The Collector declined to refer the matter to the Court. The Bench held as under:

The receipts of payment, which were ultimately given were endorsed on the back of those applications. In the circumstances, such receipts must be related to the applications themselves and must" be held to be linked with the same and cannot but be held to be receipts under protest.

Then referring to Suresh Chandra Roy's case (2) (supra), it was observed as follows:

* * * *

It is true that there is an observation in the judgment of Banerjee, J., that the protest should be endorsed on the receipt itself, but that observation, in the facts of that case, would be clearly obiter and the said case would, obviously, be distinguishable on its facts. It is unnecessary to say more, so far as this case is concerned, but we would like to add that if it was intended to hold, in that case, that, unless the protest actually appears in the body of the receipt, the receipt must be taken to be a receipt without protest, we are, with respect, unable to agree with the said decision, as such statement of the law would be too wide for our acceptance.

(see paragraph 13 at page 224 of the report).

11. Referring to the unreported decision of Sinha, J. (as he then was) on which reliance was placed by Banerjee, J. in Suresh Chandra Roy's case (2) (supra), the Bench observed as follows in paragraph 14 of the Judgment:

Mr. Banerjee also relied on the earlier unreported decision of Sinha, J., in Atul Kumar Bhadra v. State of West Bengal C.R. No. 1925 of 1957 (Cal.) where, also, some observations were made that unless the protest was embodied in the receipt, the claimant would be disentitled to a reference on the ground that he had accepted payment without protest. It is to be pointed out, in this connection, that Sinha, J.,-- --, in his above decision relied inter alia---and, in our opinion, mainly-

on affidavits before him and came to a finding upon the same that there was, in the case before him, receipt of payment without protest. Upon that finding, the decision of Sinha J.,----in the above case, may be supported. But, if it was meant to lay down the law in the form that, unless the protest was embodied in or endorsed on the receipt itself, the claimant would be out of Court, so far as his prayer for reference is concerned we respectfully differ from the same. Law only requires that the claimant has not accepted payment without protest. If the claimant actually makes an application for receiving the amount or payment under protest and, in pursuance of or following that application, payment is made, and the claimant, as in the instant cases, endorses his receipt of payment on the back of the said application, it would hardly be reasonable to say that the claimant waived his protest and accepted the payment without protest.

12. In view of this Bench decision, it cannot be said that, the view in Suresh Chandra Roy's case (2) that protest must necessarily be incorporated in the

receipt, is good law even in Calcutta High Court.

13. It was urged, and we feel not without force, that, if a receipt given for payment of the amount of compensation can be referred back to an earlier application for the amount being received by him under protest, why should a receipt of the compensation amount be also not referred back to an application praying that a reference be made u/s 18 of the Act and that he does not accept the award, so far as the amount or its apportionment is concerned.

14. In the case before us, there is no evidence whatever that the Appellants made any application to receive the amount. As already indicated, within five days of the award, they filed an application u/s 18 of the Act clearly bringing out that they were not satisfied with the amount of compensation which they claimed at the rate of Rs. 40 per square yard. If thereafter a payment voucher is sent to them and they received the amount covered by the voucher, it would not be correct to disconnect the receipt of the voucher from the earlier application unless there is some other material to show that they waived their right of seeking more compensation, as stated by them in their earlier application.

15. Apart from this, there is also force in the argument of the learned Counsel for the Appellants that the second proviso to Sub-section (2) of Section 31 of the Act only prohibits the making of an application and by itself, in no way, in so many words, deals with an application already pending. The Land Acquisition Act is an expro-priatory legislation and the second proviso to Section 31(2) takes away from a person interested, the right that has been given to him u/s 18 to have a reference made to a Civil Court for the determination of the compensation due to him and the rules of interpretation do not warrant too liberal an interpretation against the subject which interpretation is likely to take away the rights that are given to a person interested u/s 18. This proviso only prohibits a person who received the amount of compensation otherwise than under protest "to make an application". This is the view that has been taken by a learned Single Judge of the Andhra Pradesh High Court in *Shanta Bai Vs. Special Deputy Collector, Land Acquisition, Hyderabad*, . The facts in that case were more or less similar to the case before us. In that case an award was made on 4th July, 1967. The Petitioner filed an application before the Collector on 10th August, 1967, disputing adequacy of compensation and seeking a reference u/s 18 of the Act. The Petitioner was, however, in need of money because of the death of her husband and for this reason she withdrew the amount of compensation from the Land Acquisition Officer. While withdrawing the amount of compensation, she "did not mention there that she was doing so under protest". The Collector refused to refer the matter because of such a withdrawal without protest. The learned Judge, after referring to the first and the second provisos to Section 31(2) of the Act, observed as follows:

The Petitioner objected to the adequacy of the compensation and sought reference of her claim to the Civil Court u/s 18 of the Act even on 10th August, 1967. It was only 11 days later, i.e., on 21st August, 1967, she withdrew the

compensation. What the second proviso to Section 31 prevents is the making of any application u/s 18. This application had already been made and when such an application was made, the Land Acquisition Officer is bound to refer it to the Civil Court. Further, the circumstances of the filing of the petition seeking reference of a claim to a Civil Court is a positive indication that the Petitioner is objecting to the amount of compensation fixed under the award and that the amount subsequently withdrawn, was withdrawn only under protest. There is no particular form of indicating the protest, specified under the Act or under the Rules. Such protest can either be explicit or can be inferred by necessary implication from the circumstances. The very fact that she had earlier filed a petition for reference of her claim to the Court is an indication positive of her protest.

16. A similar view was taken by a learned Single Judge of the Delhi High Court in *Tara Chand v. The Land Acquisition Collector* AIR 1971 Del 116. The learned Judge observed that the statutory right of claiming a reference u/s 18 is taken away if (1) the application is not made within the prescribed time or (2) the applicant has received the amount of compensation otherwise than under protest. Then the learned Judge observed as follows:

* * *

But when a valid application u/s 18 is made the subsequent acceptance of the compensation by the applicant would not debar him from asking the reference merely on the ground that in the receipt itself he has not expressly stated that the same was being accepted under protest.

At page 118 of the report in column 2, the learned Judge went on to observe as follows:

There is no warrant for the extreme contention that the mere failure to write the words "under protest" in the receipt under the first proviso to Section 31(2) would be sufficient to destroy the preexisting facts that the Petitioner had not accepted the award and that the award had not become final against the petitioner because the Petitioner had already made an application for reference u/s 18 of the Act.

19. In *Tara Chand's* case (6) (*supra*), the award was made on 13th June, 1969. The Petitioner made an application to the Collector on 10th July, 1969, asking for payment of compensation to him early, specifically mentioning that he was accepting the payment under protest subject to his right for enhancement of compensation. Some 12 days later, on 22nd July, 1969, the Petitioner made an application to the Collector u/s 18 of the Act. The compensation was paid on 24th July, 1969. With regard to the facts of the case, after mentioning that the application having been made on 22nd July, 1969, it was not barred on that date either by limitation or by acceptance of the compensation otherwise than under protest, the learned Judge observed as follows:

What the Collector has virtually decided is that a valid application filed by the Petitioner could be destroyed later by his acceptance of the compensation under the award. It is to be noted that this conclusion of the Collector is not based on any provision of the Act. It is for consideration, therefore, whether on any general principles of law, such as waiver or abandonment of a statutory right, the application already made by the Petitioner could be dismissed by the Collector for a cause which has arisen after the making of the application though the application when made was valid." The learned Judge then referred to a judgment of their Lordships of the Supreme Court in *Associated Hotels of India Ltd., Delhi Vs. S.B. Sardar Ranjit Singh*, and observed as follows:

The decision of the Supreme Court shows that so long as the conduct of a person is not utterly inconsistent with the continuing possession of a statutory right by him it would not be taken to amount to an implied waiver. Before a person can be held to have lost his right by implied waiver, the conduct of such a person must be clearly inconsistent with the retention of such a right by him.

On the facts of that case, it was observed that the conduct of the Petitioner there was not only consistent with the possession of the right to make a reference u/s 18 but was utterly inconsistent with the theory of waiver of such a right by him.

20. We, with respect, agree with the observations of the learned Judge of the Delhi High Court in *Tara Chand's* case (6) (supra) as also of the learned Judge of the Andhra Pradesh High Court in *Shanta Bai's* case (5) (supra) with regard to the interpretation put on the second proviso to Section 31(2) of the Act. Once a valid application has been made, it does not become invalid by virtue of the application of the second proviso to Section 31(2) by acceptance of the amount of compensation thereafter. However, if such a compensation is accepted and, taking all the circumstances of the case into consideration it can be concluded that there has been a waiver, implied or express, that may be an altogether different matter.

21. In the present case, we find that the application for reference was made on 24th December, 1968, clearly mentioning that the compensation was not acceptable and the same was claimed at Rs. 40 per square yard. No application was made by the Appellants for the payment of the amount of compensation. The mere fact that, on receipt of the voucher from the Collector, they encashed the same, would not be a conduct which would point to their intention to waive their statutory right to make an application for reference, which right they had already exercised, within the prescribed time. As already observed, in normal circumstances the application for reference having been made in 1968, the reference would have been made by the Collector soon thereafter. Supposing the reference has already been made and thereafter the payment is received by the applicants, then it will be too much to say that such subsequent acceptance would invalidate the reference already made. The learned Counsel for the State-Respondent, however, did go to the extreme length of saying that even if the reference had been made to the Court and the Court was seized of the reference,

even then such a reference would become ineffective and the Court will not be entitled to deal with it if subsequently the amount has been accepted without any specific protest. There is no warrant for such an interpretation in the wording of the second proviso to Section 31(2) and we would prefer to follow the view taken in Tara Chand's case (6) and Shanta Bai's case (5) (supra), and hold that once an application has been made and the amount of compensation is accepted subsequently, it is not a case of making an application u/s 18, which is already pending, and that if such an application, was valid at the (time when it was made having been put in without the applicant having accepted the award and within the prescribed period, the Collector has no jurisdiction to subsequently refuse to refer the matter to the Court.

22. Reference was also made on behalf of the Respondent to Jaswant Singh Vs. State of Punjab, . In this case, the Collector rejected the application with the following order:

From a perusal of the award file, it is revealed that the Petitioner had accepted the compensation without protest. No reference can be made. Rejected.

The contention on behalf of the Petitioner was that the Collector was wrong when he observed that the Petitioner had accepted the" compensation without protest. The learned Judge observed as follows: --

In order to verify this contention, the records of the case were sent for. They, however, reveal that the statement made by the learned Collector was correct. The register in which payments to the various landowners have been entered, shows that the Petitioner had accepted the compensation amount without protest. * * * * *

That being so, it cannot be held that the Petitioner had accepted the compensation amount under protest.

23. This case obviously was decided on its facts and there is no indication whether the application was made prior to the acceptance of the compensation or not.

24. In view of the above, we accept this appeal, set aside the order of the learned Single Judge and, while holding that the Collector had no jurisdiction to reject the application and to refuse to refer the same u/s 18 of the Act, allow the writ petition and quash the orders of the Collector, dated 10th July and 18th August, 1970. The Collector will now, without any avoidable delay, refer the matter to the Civil Court u/s 18 of the Act in accordance with law. The Appellants will have their costs in this appeal as well as before the learned Single Judge.

Ranjit Singh Sarkaria, J.

25. I agree