

(2001) 07 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18059 of 2000

Bukka Gangi Naik

APPELLANT

Vs

State of A.P. and others

RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Constitution of India, 1950 — Article 300

Land Acquisition Act, 1894 — Section 10, 11, 12(2), 18, 18(2)

Citation : (2001) 5 ALD 172 : (2001) 4 ALT 701

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : Ms. Sumalini Reddy, for the Appellant; Government Pleader for Land Acquisition, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner is a pattedar of an extent of Ac.7-44 cents of wet agricultural land comprised in Sy.No.1574/ 4-B in Dorigallu village, Mudigubba Mandal, Penukonda Revenue Division, Anantapur District. The respondents-authorities have taken possession to an extent of Ac.0-54 cents of the land for the purpose of formation of 80 Feet wide road from Mudigubba to Middileru Dam site. It is the case of the petitioner that he received only notice under Sections 9(3) and 10 of the Land Acquisition At, 1894, (for short "the Act"), and he is not aware of any proceedings under the Act. It is stated that the petitioner was not served with the copy of the award passed u/s 11 of the Act.

2. On 28-2-1998 the 4th respondent-Mandal Revenue Officer, Mudigubba Mandal, paid a sum of Rs.22,453/- towards compensation. It is stated that as the value of the land is not less than Rs.1,00,000/- per acre, the petitioner protested to the said amount of compensation. However, the 4th respondent promised to refer his protest u/s 18 of the Act and obtained thumb impression of the petitioner and paid the amount of compensation. It is represented that the petitioner made an application on 10-3-1998 to refer the matter to the

competent civil Court. Subsequently, the petitioner made representation to the 3rd respondent in the year 1999 and again on 13-3-2000 with a request to refer the matter u/s 18 of the Act to a competent civil Court. Since his request was not considered the petitioner got issued a legal notice dated 10-7-2000. It is averred that the right of the 1st respondent to acquire personal property under the Act is coupled with the corresponding duty and obligation to pay reasonable compensation and as no reference was made to the civil Court for enhancement of the compensation, the same is violation of Article 300-A of the Constitution of India. It is also stated that the respondents have taken advantage of illiteracy of the petitioner and not referred the matter u/s 18 of the Act to the competent civil Court.

3. The respondents filed a counter-affidavit stating that the land in Sy.No.1574-4B measuring an extent of Ac.0-54 cents of Dorigallu village was acquired vide award No.47/97-98 dated 27-11-1997. It is also stated that the notice under Sections 9(1) and 10 and 9(3) and 10 of the Act were issued and sent for publication directing the land owners to appear for award enquiry on 20-9-1997 at Sub-Collector's Office, Penukonda. The notices were published on the conspicuous places and served on the awardees on 4-9-1997.

4. The petitioner in the reply affidavit stated that he received notice under Sections 9(1) and 10 of the Act, and denied that his father had attended the award enquiry. The petitioner stated that during the award enquiry he requested for fixing the market price at a higher rate.

5. He further stated that neither notice u/s 12(2) of the Act nor the copy of the award was received by him.

6. Learned Counsel for the petitioner contended that since the contents of the award were not known and no notice u/s 12(2) of the Act was served on the petitioner, the limitation for referring the matter u/s 18 of the Act commences from the date of knowledge of Contents of the award passed. It is also contended that inaction on the part of the respondents to refer the matter to civil Court is in violation of Article 300-A of the Constitution of India. In support of her contention, the learned Counsel for the petitioner has drawn my attention to decision of the Supreme Court in R.H.C. Raj Singh v. Dy. Land Acquisition Officer (1962) ISCJ 696.

7. On the other hand the learned Government Pleader appearing on behalf of the respondents submitted that notice u/s 12(2) was served on the petitioner on 13-2-1998 and the same is in compliance with the provisions of the Act. He relied on a decision of Full Bench of this Court reported in Maddela Narsimlu and others Vs. The Special Deputy Collector, Land Acquisition Unit-I, Sriramsagar Project, Nizamabad, . In Maddela Narsimlu's case, the Full Bench of this Court has held as follows:

"Under Section 18(2) of the Land Acquisition Act, 1894 (as amended by A.P. Act 20 of 1959) notice of award under proviso (b) to Section 18(2) (which

corresponds to the first proviso (b) to Section 18(2) in the Central Act), does not mean that it is necessary that the award copy or the reasoning part of the award need be communicated to the persons interested. If the Form 9 as per the A.P. Land Acquisition Manual is served, giving the Award No., the true area acquired, the compensation allowed, the persons known or believed to be interested and the apportionment, it would be sufficient for the commencement of the limitation of two months. The particulars which are to be given in Form 9 amount to sufficient compliance with the requirement of "notice of award" contained in Section 12(2) of the Act read with the first part of proviso (b) to Section 18(2)."

8. I directed the learned Government Pleader for Land Acquisition to produce the records. The learned Government Pleader has produced the records. The record discloses that actually Section 4(1) notification was issued in the name of the petitioner herein and the petitioner was figured as awardee. The award was passed on 27-11-1997. It is the case of the respondents that notice u/s 12(2) of the Act was served on the petitioner on 13-2-1998. From a perusal of the record it appears that though other persons were served, the petitioner's name did not figure with regard to proof of service of notice u/s 12(2) of the Act. However, it is the case of the petitioner that while receiving the compensation he orally protested and thereafter made an application dated 10-3-1998 to make reference u/s 18 of the Act, which letter is very much available in the record. In the circumstances, sub-section 2(b) of Section 18 of the Land Acquisition Act is attracted in the instant case. Curiously, the counter affidavit runs as follows:

"The petitioners attended for award enquiry. On behalf of the land owner (his father) for award enquiry on 20-9-1997 and stated that he has no objection for the acquisition of the land but the land owners have requested for the land compensation at Rs.50,000/- per acre because the rates are increased as the dam is under construction, award was passed on 16-10-1997."

The respondents took a plea in the counter affidavit that, it is not necessary to serve copy of the award and award proceedings to the awardees and it is sufficient if notice u/s 12(2) of the Act giving the award number, the true area acquired, the compensation allowed, the persons known or believed to be interested and the apportionment. The petitioner states after receiving notice under Sections 9(1) and 10 of the Act in the award enquiry he requested for fixing the market price at higher rate and thereafter he is not aware of any of the award proceedings. From the records, it is seen that it is only on 28-2-1998 the petitioner received the compensation from the 4th respondent-the Mandal Revenue Officer. Thereafter, the petitioner claims to have made an oral protest. Evidently, after receiving the compensation on 28-2-1998 the petitioner filed a protest application on 10-3-1998, which letter is very much available in the record of the respondents. In R.H.C. Raj Singh 's case (supra) it was held by the Apex Court as follows:

"If the award is considered as an "order or tender of compensation" to the owner of the property - as held in *Ezra v. The Secretary of State* and other ILR 30 Cat.

At 86 then the making of the award must involve the communication of the offer to the party concerned, the normal requirement under the contract law. Hence "the date of the award" cannot be determined solely by reference to the time when it was signed by the Collector or delivered by him in his office; it must involve the question as to when it was known to the party concerned, either actually or constructively.

If the award is treated as an administrative decision, in the matter of valuation of the property affecting the rights of the owner, it is essentially fair and just that it should be communicated to party concerned. The knowledge of the party affected, actual or constructive, being an essential requirement of fair play and natural justice," the date of award" used in the Proviso must mean the date when the award is either communicated to the party or is known by him actually or constructively.

It would be unreasonable to construe the words "from the date of the Collector"s award" used in the Proviso in a literal or mechanical way.

The said clause (b) read in the light of the statutory requirement in Section 12(2) imposing an obligation on the Collector to communicate the passing of the award tends to show that the literal and mechanical construction of the expression "the date of the award" in clause (b) would be wholly inappropriate.

Where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved the said order, by reference to the making of the said order, the making of that order must mean either actual or constructive communication of the said order to the party concerned."

9. In *Ajit Singh v. State of Punjab*, 1994 (2) Scale 22 (Page 316), the Apex Court observed that:

".....inasmuch as the appellants have filed an application for reference u/s 18 of the Act that will manifest their intention, and therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation."

10. In *N. Sangaiah and others Vs. Special Deputy Collector, Land Acquisition Unit-III, Singur Project, Medak District*, , it was held by this Court that protest by claimant is sine qua non for making application u/s 18 of the Act, however, it can be either oral or written.

11. In *Smt. Suram Ramakka Vs. The Dist. Collector, Karimnagar and another*, , a learned single Judge of this Court held that the law does not prescribe any particular mode of protest and such an oral protest is a valid protest under law.

12. In *Kotipalli Chitti Vs. Special Deputy Collector, Land Acquisition for ONGC*, , another learned single Judge of this Court, following the judgment of the Apex Court in *Ajit Singh's case* (supra) held that a reference u/s 18 is maintainable

even in the absence of express protest at the time of receiving compensation. In the said, case, the petitioner, appears to have filed an application u/s 18 of the Act immediately after receiving the amount and a notice u/s 12(2) of the Act. Under those circumstances, this Court held that an application filed by the claimant for reference u/s 18 Act, itself would manifest the intention of the claimants to accept the amounts under protest. It was a subsequent application filed by the claimant conveying implied protest.

13. In *LAO-cum-RDO, Kamareddy v. D.P. Balawa* 1998 (2) AWR 578, after referring to various judgments of High Courts and the Supreme Court, including the judgment in *Ajith Singh's* case (*supra*) it was held:

"No mode or method of protest and receiving compensation awarded by the Collector under protest is prescribed. A person who is alleged to have received compensation without protest will be one who knew the implications of the award by the Collector u/s 11 of the Act and that he had a right to claim higher compensation and seek reference of the matter to a civil Court. In other words, it should be a conscious and deliberate decision of receiving compensation and not protesting against it in any manner. The Supreme Court has made it clear that when no mode or manner of protesting to the award and amount of compensation is prescribed, the intention that the amount of compensation is not acceptable can be inferred from the objections and demand of reference to the civil Court by the person interested."

14. For the foregoing discussions, and following the decisions referred *supra*, the writ petitions is liable to be allowed. It is accordingly allowed directing the respondents to make reference u/s 18 of the Act to competent civil Court within a period of four weeks from the date of receipt of a copy of this order.

15. The writ petition is accordingly allowed. No costs.