

(1964) 02 MP CK 0003
In the Madhya Pradesh High Court
Case No : M. P. No. 263 of 1963 (J)

Chhaganlal

APPELLANT

Vs

Land Acquisition Officer, Mahasamund

RESPONDENT

Date of Decision : 06-02-1964

Acts Referred:

Land Acquisition Act, 1894 — Section 53

Citation : (1964) JLJ 730

Hon'ble Judges : V.P. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : R.S. Dabir and V.S. Dabir, for the Appellant; R.J. Bhawe, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.—This order will also govern the disposal of Miscellaneous Petitions Nos. 285, 291 and 97, all of 1963.

2. The petitioners in these four applications under articles 226 and 227 of the Constitution of India seek writs of certiorari for quashing fresh awards made in April 1963 by the Land Acquisition Officer, Mahasamund, in place of the awards which he had made in December 1962 awarding compensation to the petitioners in respect of certain lands belonging to them acquired by the Government for irrigation purposes.

3. In making a fresh award in each case, the Land Acquisition Officer purported to act u/s 53 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) In Misc. Petitions Nos. 263 and 285 the impugned awards on review were made on 22nd April 1963. The impugned awards in the other two petitions were made on 11th April 1963. The original award made in 1962 in each case was first approved by the Collector. Thereafter, the Land Acquisition Officer commenced proceedings with a view to pay to the petitioners the amount of compensation payable to them under the awards and also addressed letters to the Executive

Engineer, Irrigation Division Raipur, to intimate to him the Head of Account to draw the amount of compensation for payment to the petitioners. In the meantime, the petitioners also made demands for the payment of compensation amount awarded to them under the awards made in 1962. In reply to the letters of the Land Acquisition Officer, the Executive Engineer instead of intimating the Head of Account wrote back to the Land Acquisition Officer that the amount of compensation awarded was excessive and that the awards made by him should be reviewed. Thereupon, the Land Acquisition Officer reviewed all the awards which he had originally made and which had been approved by the Collector and made fresh awards purporting to act u/s 53 of the Act. By the fresh awards the petitioners have been made entitled to get amounts much less than those which had been allowed to them under the original awards.

4. The petitioners contend that the awards made in 1962 having been approved by the Collector and having been accepted by them became final and conclusive as between the Collector and them, and the Land Acquisition Officer had no jurisdiction to review those awards u/s 53 of the Act or under any other provision thereof. The respondents, however, contend in the returns filed by them that the awards did not become final as they had not been filed in the Collector's office as required by section 12 of the Act; and that even apart from section 53 the Land Acquisition Officer had inherent power to modify the awards which were merely offers of compensation to them.

5. Having heard learned counsel for the parties we have reached the conclusion that all there petitions must be granted. The Land Acquisition Officer expressly referred to section 53 of the Act and thought that under that provision he had the power to review the awards originally made by him. But as is clear from the language of section 53 itself, he had no such power. Section 53 provides:

Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the CPC shall apply to all proceedings before the Court under this Act.

It will be seen that the CPC has been made applicable by section 53 to proceedings before the "Court under the Act" and not to proceedings before the Land Acquisition Officer. The expression "Court" as defined in section 3 (d) of the Act means "a principal Civil Court of original jurisdiction unless the appropriate Government has appointed (as it is hereby empowered to do) a special Judicial officer with in any specified local limits to perform the functions of the Court under this Act". This definition is clear enough to show that the Land Acquisition Officer is not a Court and cannot, therefore, u/s 53 review an order awarding compensation passed by him.

6. Learned Government Advocate did not dispute before us that the Land Acquisition Officer could not u/s 53 review the awards originally made by him. He, however, submitted that the finality and conclusiveness spoken of in section 12 of the Act is attached to an award only after it is filed in the Collector's office,

and that in none of the cases before us the award made in 1962 was filed in Collector's office. Learned Government Advocate did not indicate to us the act or acts which according to him was or were required to be done before an award could be said to have been filed in the Collector's office for the purposes of section 12. It was also contended by him on the authority of *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, that an award was a tender or offer made by the Collector to the owner of the property for acceptance; and that being so, this offer could be modified at any time. Therefore, it was said that the Land Acquisition Officer acted within his jurisdiction in reviewing the awards made by him in 1962.

7. We are unable to accede to this contention. The language of section 12 does not afford any justification for contending that the filing of an award in the Collector's office is a pre requisite to its finality. Section 12 is in the following terms:

12 (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

As is plain from the language of sub-section (1), it first says that an award made u/s 11 shall be filed in the Collector's office and then proceeds to say that "except as hereinafter provided" the award shall be final and conclusive evidence as between the Collector and the persons interested with regard to the matters mentioned in that sub-section. There is nothing in sub-section (1) to indicate that the finality of the award is dependent on its being filed in the Collector's office or on complying with the provisions of sub-section (2). What sub-section (1) does is to say that the award shall be filed in the Collector's office and provide a rule of evidence that the award shall, except as provided in the later sections of the Act, be final and conclusive evidence. If the intention of the Legislature had been that the award should become final and conclusive only after it is filed in the Collector's office, then the Legislature would have used appropriate language to that effect and would have also indicated the act or acts or formality or formalities necessary for the filing of the award in the Collector's office. In the absence any words making the filing of an award in the Collector's office or compliance with sub-section (2) an essentiality for making the award final, it is impossible to hold on the plain language of sub-section (1) of section 12 that an award made u/s 11 becomes final only after it is filed in the Collector's office or when notice of the award is given to the persons interested under sub-section (2).

8. That the filing of an award in the Collector's offices has little significance in making the award final and conclusive becomes obvious when one notes the meaning of the expression "shall be filed in the Collector's office". The expression "shall be filed in the Collector's office" connotes the idea of permanent preservation as a public record. The Shorter Oxford English Dictionary gives the meaning of the word "file" as "to place in due manner among the records of a Court or public office". Black's Law Dictionary and other legal dictionaries also define "file in an office" as meaning nothing more than "receiving papers officially for orderly, systematic safe keeping subject to inspection by whomsoever it may concern". Our attention was not drawn to any provision in the Act, or in any rules made there under, prescribing any particular form or procedure for the filing of an award u/s 12. When no such form or procedure is prescribed for the filing of an award in the Collector's office, then it stands to reason to hold that the filing of an award in the Collector's office consists in the physical act of receiving the award in the Collector's office so that it may be deposited in the custody and among the records of the Collector's office. In that sense, all the original awards made in the cases before us were filed in the Collector's office. In each case the award was sent by the Land Acquisition Officer to the Collector for approval who then made an endorsement of approval thereon and put his signature signifying his approval. It is legitimate to think that when the awards were sent by the Land Acquisition Officer to the Collector for approval, they were received in his office for approval and record. It is difficult to understand what more than remained to be done for the filing of the awards in the Collector's office. Even if, therefore, learned Government Advocate's contention that the filing of an award in the Collector's office is an essential pre requisite for making the award final and conclusive is accepted as correct, the original awards in all the four Cases became final as they were sent to the Collector and approved by him.

9. The view that for giving finality to an award it is not necessary that it should first be filed in the Collector's office is supported by the observations of Shah J. in *Padamsi Narain vs. Collector of Thand*, AIR 1922 Bora. 161 = ILR 46 Bom. 366. In that case Macleod C. J. observed that when an award is filed u/s 12, it becomes a part of the office record and then it is final and conclusive evidence between the Government and the parties interested. Shah J., however, said:

I agree that the filing is obligatory under the Act, also that the step, when taken, puts it beyond doubt, that the award is made and that it is final and conclusive as provided in the section. But I am unable to agree that it can never be final and conclusive unless it is filed. The section would have been worded in a different way if that had been the intention of the Legislature. The important thing is the making of the award, as provided in section 11, and the filing is a ministerial act. I am unable to attach such significance to the filing of the award as is suggested on behalf of the respondent.

It must be noted that in *Kooverbai vs Assistant Collector, Surat*, 22 Bom. ILR

1136 a Division Bench of the Bombay High Court presided over by Macleod C. J. had ruled that an award made by a land Acquisition Officer, which is not filed in the Collector's office as required by section 12, is, though it is signed and dated, not conclusive and binding as an award on Government. In *Kooverbai's Case* (supra) Macleod C. J. said:

Section 12 of the Act appears to me to make it clear when an award become an award which is conclusive and binding on Government. First the Collector makes under S. 11 an award under his hand. It cannot be in my opinion, the case that as soon as he has signed the document that then it becomes conclusive. He can tear it up and substitute another if he pleases. But under S. 12 award shall be filed in the Collector's office, and shall, except as thereafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested. Then under sub-section (2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made." Therefore it is the filing of the award in the Collector's office which makes it final and conclusive as against the parties interested.

In *Padamsi Narain's case* (supra) Macleod C. J. adhered to the view he had taken in *Kooverbai's Case* (supra). But Shah J. expressed himself thus in regard to *Kooverbai's case*:

I have carefully considered the ratio decidendi in *Kooverbai's Case* 22 Bom. LR 1136. While I recognise that the special facts of the case afford a basis for distinguishing it from *Dossaphai's case* 14 Bom. LR 592, I think that there is a certain degree of conflict in the reasoning underlying these decisions. I have, therefore, stated my own view as to the meaning of the section of the Act and as to the effect of the departmental instructions.

10. The view we have taken is in consonance with the construction put by Shah J. on section 12. As we have endeavored to point out earlier, the language of section 12 does not support the view that it is only after an award is filed in the Collector's office that it becomes final and conclusive evidence between the Collector and the parties interested. Two other cases may be noted on the point of filing of an award in the Collector's office. In *Secretary, Cochin Devaswom Board vs. State of Kerala* ILR 1960 Ker 1460 it has been held that in the absence of any form or procedure prescribed by the Act or the Rules made thereunder for the filing of an award, the usual and ordinary meaning of the word "filing" must be accepted and that "filing" is only a physical act. In *Baru Mal Jain and Others Vs. State of Uttar Pradesh and Others*, which was relied on by the learned Government Advocate, there is no doubt a statement of a learned Single Judge of the Allahabad High Court that "the requirement of sections 11 and 12 of the Act is that after an award is made the same has got to be filed in the Collector's Office and once that is done it becomes final." The learned Single Judge has not,

however, given any reasons in support of this statement.

11. The further argument of the learned Government Advocate that an award made by the Land Acquisition Officer is only a tender or offer of compensation and consequently the offer can be modified at any time is fallacious. It overlooks the fact that once an award is made u/s 11 of the Act, then, so far as the Land Acquisition Officer is concerned, the award embodies an irrevocable offer of compensation on his part, and is final. That finality is subject to the reference, if any, u/s 18 to the Court. The decision of the Supreme Court in *Harish Chandra vs. Deputy Land Acquisition Officer* (supra) does not lend any support to this contention of the learned Government Advocate. Learned Government Advocate relied on the following observations in the Case of *Harish Chandra* (supra) :

In dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector under S. 12.

In a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision *inter alia*, in respect of the amount of compensation which should be paid to the person interested in the property acquired, but legally the award not be treated as a decision; it is in law an offer of tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer S. 18 gives him the statutory right of having the question determined by Court, and it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature for the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for the acceptance.

* * *

...If the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the Communication of the offer to the party concerned. That is the normal acquirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his officer it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words "the date of the award" occurring in the relevant section would not be appropriate.

12. These observations were made by the Supreme Court while considering the question of the commencement of limitation u/s 18 (2) , proviso (b), of the Act.

It was held that the expression "the date of the award" used in proviso (b) to section 18 (2) of the Act means the date when the award is either communicated to the party or is known by him actually or constructively. That decision in no way touches the question of the finality of an award made u/s 11 or the question whether the offer made by the Collector is irrevocable or revocable and, if revocable, up to what stage. The Supreme Court held that an award could appropriately be described as a tender or offer of compensation by the Collector because the owner was not bound to accept the award made by the Collector. If the owner does not accept the award, then he has a statutory right u/s 18 of having the question of compensation determined by the Court. The observations of the Supreme Court cannot be read as meaning that an award made by the Land Acquisition Officer is nothing but a revocable offer which can be modified or withdrawn even after the award is "communicated to the party or is known by him either actually or constructively." The award made by the Land Acquisition Officer, even if it is regarded as an offer or tender of compensation, is final and conclusive subject to the provisions of section 18. The offer or tender of compensation embodied in the award is irrevocable. Once it is made and embodied in the award, the Land Acquisition Officer has no jurisdiction to review it. The offer embodied in the award cannot be treated as an offer under the Law of Contract which can be revoked at any time before "the award is either communicated to the party or is known by him either actually or constructively." As we have already endeavoured to point out earlier, the finality of the award is not subject to sub-section (2) of section 12 and does not depend on the question whether the provisions of sub-section (2) have or have not been complied with.

13. In our judgment, the Land Acquisition Officer held no jurisdiction to review the awards made in December 1962, whether u/s 53 or under any other provision of the Act. Therefore, the fresh awards made by the Land Acquisition Officer on 11th and 22nd April 1963 must be quashed. It is needless to add that when these awards are quashed, the original awards made in December 1962 must stand as legal and final awards u/s 12, and the opponents must give effect to these awards in accordance with the provisions of the Act.

14. For all these reasons, these petitions are allowed. The awards dated 22nd April 1963 in Misc. Petitions Nos. 253 and 285 of 1963 and those dated 11th April 1963 in Misc. Petitions Nos. 291 and 297 of 1963 are quashed; and the respondents are directed to give effect to the original awards made in each case in December 1962. The petitioners in each case shall have costs of their application. Counsel's fee in each case is fixed at Rs. 200/-. The outstanding amount of the security deposit shall be refunded to the petitioners in each case.