

(1983) 07 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 96 of 1983

Chuhroo Ram

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 06-07-1983

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 18(2)

Citation : AIR 1984 HP 61 : (1983) 12 ILR HP 305

Hon'ble Judges : Vyas Dev Misra, C.J

Bench : Single Bench

Advocate : Rajendra Kishore Sharma, for the Appellant; P.N. Nag, General, for the Respondent

Final Decision : Allowed

Judgement

Vyas Dev Misra, C.J.—This revision is directed against the order of the Land Acquisition Collector. Beas Dam Project, Talwara, rejecting the petitioner's application u/s 18 of the Land Acquisition Act (referred to as the Act) claiming a reference to this court.

2. The facts, in brief, are these Petitioner's land was acquired for the construction of Pong Dam. An award in respect of Tika Balta, in which the petitioner's land fell, was announced on 28-10-1972. The petitioner sent his application u/s 18 of the Act by post to the respondent. This application was posted on 7-12-1972 but was received by the respondent on 13-12-1972. This application was rejected by the respondent on 18-2-1976 on the ground that the petition was barred by time by four days.

3. Mr. R.K. Sharma, learned counsel for the petitioner, contends that the petitioner was not present at the time the award, was announced. It is also contended that the award was never explained to the petitioner. It is submitted that in any event the date of posting of the application, that is 7-12-1972, should be the date of presenting the application. It is not disputed before me that if

7-12-1972 is taken as the date of milking the application then it is within time.

4. Mr. Nag, the learned Advocate General, contends that the petitioner has not specifically stated in the grounds of revision that he was not present at the time when the award was announced. He, therefore, submits that the award should be taken to have been announced in the presence of the petitioner and, therefore, he should have applied within the period prescribed u/s 18(2)(a) of the Act. He also contends that the petitioner was expected to present the application in person u/s 18 of the Act, and not send it by post.

5. As I am of the opinion that the petition could be sent by post. I am not dealing with other questions which have been raised by the parties.

6. Section 18 of the Act reads as under :

"18. (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 the compensation, the persons 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."

Clause (a) of Sub-section (2) requires the application u/s 18 of the Act to be made within six weeks from the date of Collector's award. Now, it is not disputed before me that there are no rules laying down the method of presentation of the application. It is also not in dispute that the Land Acquisition Collector while making his award acts administratively. A Division Bench of this Court in *State of Himachal Pradesh v. Jiwan Singh*, 1981 Sim LJ 43, observed ;

"It is now well settled that the Collector while holding an inquiry to find out the market value of the property acquired does not act as a judicial officer. He only acts administratively. His award only amounts to an offer. Except the Government no one is bound by it. In case the offer is not accepted, the person whose property is acquired can have a decision from a court of law u/s 18 of the Act. This was settled by the Judicial Committee of the Privy Council as far back as 1905 in *Ezra v. Secretary of State* ILR (1903) Cal 36."

7. Section 18 is in Part III of the Act. This section provides for a reference to be

made to the court by the Collector on the request of a person interested who has not accepted the award. Section 19 enjoins upon the Collector to state certain facts for the information of the Court. These are stated in this section. Thereafter Section 20 onwards deals with the procedure before the Court.

8. The method of presentation of applications, appeals, revisions, reviews, complaints etc. before the Courts is laid down by the rules and orders made by the High Court. It is because of these rules that these are required to be presented either by a person himself or through a recognised agent. In an application for permission to sue as an indigent person, the person is required to be present in person in Court for making the application, but in other cases the petitions have to be put in the petition box. Had these rules been not there, a person might have had the right to send his petition even by post. In other words, because of the aforementioned rules a person is not allowed to send the petitions by post. However, as already stated, no rules have been framed under the Act in respect of the presentation of the applications u/s 18 of the Act to the Land Acquisition Collector. Therefore, a person is entitled to send an application by post. It is for that reason that these applications are entertained by the Land Acquisition Collector as has been done in the present case.

9. Now the question arises whether it is the date of the receipt of the application by the Land Acquisition Collector which has to be treated as the date of making the application or the date when a person posts the application. The vagaries of the post are common knowledge. To non-suit a party only because there is some delay (and sometimes the post may never be delivered) is to punish an applicant for no fault of his. Since an applicant is not required to present an application in person or by a recognised agent to the Land Acquisition Collector, the applicant is justified in sending it by post. Therefore, the date of posting should be taken as the date of making the application. I find that a learned single Judge of the Madras High Court in *Ranganathan Vs. Revenue Divisional Officer Pattukottai*, took a similar view. In that case it was observed (para 4):

"Under the Act, a communication by post is permitted. The learned Government Pleader concedes that position. It is not stated in Section 18(2) of the Land Acquisition Act that the application shall be presented in person to the Acquisition Officer. The expression used is general and it is "application shall be made". If, for instance, in a case, the owner of the land sends his requisition for making a reference u/s 18 of the Act well in advance before the expiry say, ten days before the expiry of the time, and if for some reason or other for which he is not responsible, the postman delays and hands over the requisition to the Acquisition Officer after the expiry of the time, it cannot be said that the owner did not make the application within that time. So long as the law permits an application to be sent by post, it should be deemed that the moment an application is posted, it is an application made on that date, and the fact that the application reached the other side some days later cannot make it an application made after the due date. In this view, I find that the application made by the

petitioner on the last date is an application within the time, though it reached the respondent the next day."

10. I, therefore, hold that the date of making the application by the petitioner should be the date on which he posted it, that, is 7-12-1972. Admittedly this was within the period of limitation. The Land Acquisition Collector was, therefore, wrong in holding that the application was barred by time. The petition is, therefore, accepted and the impugned order is set aside. The respondent is directed to make a reference, as desired by the petitioner, according to law. The petitioner will have his costs.