

(1968) 06 DEL CK 0003

In the Delhi High Court

Case No : Miscellaneous First Appeal No. 47 of 1966

Collector

APPELLANT

Vs

Upinder Kumar

RESPONDENT

Date of Decision : 10-06-1968

Acts Referred:

Citation : (1968) 4 DLT 688

Hon'ble Judges : T.V.R. Tatachari, J; I.D. Dua, J

Bench : Division Bench

Advocate : S. Malhorta and Hem Chand, for the Appellant;

Judgement

I.D. Dua, J.

(1) The Collector, Land Acquisition. Mandi, has preferred this appeal from the award of the learned Additional District Judge, Himachal Pradesh, at Mandi, dated 31st May, 1966 and the learned counsel turn the appellant has confined his challenge only to two issues namely issues Nos. 1 and 4. Issue No. 1 deals with the question of limitation of the reference u/s 18 of the Land Acquisition Act (here after called the Act) to the District Judge and issue No. 4 raises the question whether the land comprising Khasra Nos. 188/1 and 714/367/1 has not vested in the Himachal Pradesh Government.

(2) Dealing first with the issue of limitation, the Collector's award is dated 31st March, 1962, which is recorded to be the date of announcement. There is also an endorsement dated 8th June, 1962 showing that the copy of the award was forwarded to : -

(1)Collector, Mandi District, Mandi, and

(2)Executive Engineer, Division No. 1 HP. P. W. D. Mandi for information and necessary action.

The reference to the District Court was made in May, 1963. There is some controversy in regard to the exact date, for, according to the learned Additional

District Judge, the reference was made on 28th May, 1963, whereas, according to the learned counsel for the appellant, it was actually made on 30th May, 1963, though it is dated 28th May, 1963. But this difference is wholly immaterial because on either hypothesis, the reference would prima facie be barred by time. It may be stated that u/s 18 of the Act, any person interested who has not accepted the award of the Collector, may, by written application to the Collector, require the matter to be referred by the Collector for the determination of the Court within six weeks from the date of the Collector's award, if he was present or represent.

(3) The question, Therefore, arises whether on the present record, the application for reference is within limitation. The learned Additional District Judge has observed that the applicant before him had no notice of the acquisition proceedings, nor had any notice been received by him because the amount awarded in bids favor had been deposited in the treasury and as soon as he came to know about it, he filed the application, which would be within time if it is computed from the date of his knowledge.

(4) Before us, Shri Sushil Malhotra has submitted that it was for the claimant to affirmatively establish all the necessary facts to bring his application within limitation. Having not specifically established the date of his knowledge, the application must be held to be barred by

(5) On the other hand, Shri Hem Chand, the learned counsel for the respondent has submitted that the Collector had, after satisfying himself that the application was within time, forwarded the same to the Court, and indeed he has emphasised the fact that as required by section 19(2) of the Act, no particulars of the notice served upon the parties interested were attached with the statement forwarded to the Court while making a reference. He has also placed reliance on a decision of the Supreme Court in *Raja Hansh Chandra Raj Singh v. The Deputy Land Acquisition officer*¹ for the submission that the expression the date of the award used in proviso (b) to section 18(2) of the Land Acquisition Act must mean the date when the award is either communicated to the party or is known by him either actually or constructively and it would be unreasonable to construe the words from the date of the Collector's award used in the provision to section 18 in a literal or mechanical way.

(6) In our opinion, the appellant's challenge to the decision of the learned Additional District Judge on issue No. 1 must be repelled. It has not been shown that the claimant had acquired knowledge of the award more than six months before the date when the application was made u/s 18 of the Act. In the application for reference made to the Collector, the present respondent had expressly averred that he had no notice of the acquisition proceedings, nor was any notice of the award received by him. He had come to know of the award only in the beginning of May, 1963 and it was for this reason that his application was within time. This, in our opinion, was a sufficient averment and in the absence of any convincing material to the contrary, we have not the least hesitation in

holding that issue No. 1 has been rightly decided by the learned Additional District Judge against the present appellant. It may be pointed out that the law of limitation is not to serve as a trap for the unwary limit Gants to defeat their legitimate claims. The litigants who are reasonably diligent, are entitled to protection against the oppressive operation of the Jaws of limitation when they are unaware of adverse orders, without being guilty of any laches or carelessness on their part. The challenge to the decision on issue No. 1 is accordingly repelled

(7) Coming now to issue No. 4, the only contention raised by Shri Sushil Malhtora is that the land in question must be held to have vested in the Government u/s 27 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act and that, Therefore , the respondent is not entitled to any compensation. This submission is just as unmeritorious as the submission in regard to issue No. 1. To begin with, one cannot conceive of the Government acquiring its own property. And then, it has to be remembered that for the purpose of determining as to which land vests in the Government u/s 27, one has to hold an enquiry into the fact whether or not a particular piece of land was under the personal cultivation of the land-owner concerned. On this aspect, there is no material on the record and indeed nothing has been urged at the bar so as to enable this Court to come to any satisfactory conclusion on the question of the operation of section 27(1) of the said Act. We have, Therefore, no hesitation in repelling this contention as well.

(8) For the foregoing reasons, this appeal fails and is dismissed with costs.