
(2013) 09 MP CK 0020

In the Madhya Pradesh High Court

Case No : Writ Petition No. 10671 of 2013

Devchand

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2013) 4 MPLJ 691

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : Shailendra Mukati and Manish Sakhla, for the Appellant; Bhuwan Deshmukh, Government Advocate, for the Respondent

Judgement

N.K. Mody, J.—This order shall also govern the disposal of W.P. Nos. 10697/13, 10698/13, 10701/13, 10703/13, 10707/13, 10709/13, 10710/13, 10713/13, 10718/13, 10720/13, 10721/13, 10722/13, 10724/13 to 10729/13, 10731/13 to 10742/13 as the question involved in all the petitions are identical in nature and parties to the petition are also same except petitioner. In all the petitions the order under challenge is dated 29-6-2013 passed by respondent No. 2 whereby application filed by the petitioner u/s 18 of Land Acquisition Act (which shall be referred hereinafter as "Act") was dismissed.

2. Short facts of the case are that the land of the petitioner was acquired as per provisions of Land Acquisition Act. Before acquisition the land was acquired and award was passed on 28-2-2003. After lapse of several years, petition was filed u/s 18 of the Act being dissatisfied with the amount awarded. Writ Petition No. 8288/12 was filed before this Court for certain directions as no order was passed by respondent No. 2 on the application preferred by the petitioner. In the Writ Petition it was prayed that respondent No. 2 be directed to decide the application preferred by the petitioner in accordance with law. Vide order dated 12-9-2012 Writ Petition was decided with a direction to decide the petition u/s 18 of the Act within a period of 30 days. In compliance of that impugned order has been passed whereby respondent No. 2 has dismissed the application filed by

petitioner on the ground that the application filed u/s 18 of the Act is after 10 years, therefore, the same cannot be considered, against which present petitions have been filed.

3. Learned counsel for the petitioner argued at length and submits that the impugned order passed by the respondent No. 2 is illegal, incorrect and deserves to be quashed. It is submitted that since the petitioner in all the petitions are from backward area and the petitioner in all the petitions are rustic villagers, therefore, learned Court below was not justified in dismissing the petition filed by petitioner in all the petitions. Another ground which has been taken is that the petition has been decided by the SDO/respondent No. 2, which ought to have been decided by the Collector, therefore, the order is without jurisdiction. It is submitted that the petitions filed by the petitioners be allowed and impugned order be set aside with a direction to the learned Court below to redetermine the application filed by the petitioner in all the petitions.

4. Learned counsel for respondents supports the order and submits that in earlier round of litigation, petitioner in all the petitions themselves requested for direction to respondent No. 2 to decide the application filed u/s 18 of the Act. It is submitted that in the circumstances if respondent No. 2 has decided the application under the direction of this Court, then it cannot be said that order is without jurisdiction. So far as other contention is concerned, it is submitted that since the application is filed after 10 years, therefore, respondent No. 2 has rightly dismissed the application. It is submitted that all the petitions be dismissed.

5. The word "Collector" is defined under the Act. According to sub-clause (c) of section 3 of the Act the expression "Collector" means the Collector of a District and includes a Deputy Commissioner and any officer specially appointed by the (appropriate Government) to perform the functions of a Collector under this Act.

6. A person who is dissatisfied with the award has a right to file an application u/s 18 of the Act, in which limitation is prescribed u/s 12 of the Act, which reads as under:--

Section 12. Award of Collector when to be final.-- (1) Such award shall be final 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 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.

7. In the matter of Umesh Pahawa and others vs. State of M.P., W.P. No. 10293/11 decided on 6-11-2012 this Court had an occasion to deal with the word

"Collector" as defined under the provision of Land Acquisition Act and held that the definition of word "Collector" for the purpose of Land Acquisition Act SDO is also a Collector for the purpose of deciding the objections, but the said Officer is required to be appointed specially by the appropriate Government.

8. In the matter of Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, wherein in a claim to compensation for land acquired and the proceedings were held by the Land Acquisition Officer for determining the amount of compensation and the award was made signed and filed and no notice of award was given as required u/s 12(2) of the Act and application filed by the claimant was dismissed as barred by time, Hon"ble Apex Court set aside the order passed by the High Court of Allahabad holding that the expression "the date of the award" used in proviso (b) to section 18(2) of the Act must mean the date when the award is either communicated to the party or is known by him either actually or constructively. It was further held that it will be unreasonable to construe the words from the date of the Collector's award used in the proviso to section 18 in a literal or mechanical way. In the matter of Basant Kumar Jena and Another Vs. State of Orissa and Another, wherein the land belonged to uneducated tribals, who accepted the payment of compensation under oral protest and filed an application for reference, which was rejected by Collector. Orissa High Court held that rejection is illegal, especially when Collector failed to explain relevant provision to rustic tribals. In this case the land was acquired before five years and the Orissa High Court has held that having regard to the object of the provisions and the type of persons he was dealing with the tribal area, it was his duty to do so. Failure to perform this obligation would disentitle him from raising the question of such a bar to the maintainability of reference. Unless it is clear that the owner knows about the provisions or that the provisions were explained to him, waiver of the right cannot be presumed and the Collector would have no right to reject the reference on grounds like this and would also not be entitled to raise the question of bar when controversy arises. In the matter of Bhagwan Das and Others Vs. State of UP and Others, Hon"ble Apex Court held that the reference to date of knowledge of essential contents of award and not actual date of Collectors award, application for reference filed on date when appellants, claimant become aware of contents of award is maintainable.

9. From perusal of the record it is evident that impugned order is passed by SDM, Jhabua and not by Collector, Jhabua. There is nothing on record to demonstrate that the concerned Officer was appointed specially by the appropriate Government to decide the application filed u/s 18 of the Act. In the facts and circumstances of the case, petition filed by the petitioner is allowed and impugned order is set aside with a direction to Collector, Jhabua to re-decide the application filed by petitioner u/s 18 of the Act keeping in view the law mentioned hereinabove. While deciding the application, competent authority shall also take into consideration the area of the land acquired from each of the land owner and the compensation assessed by the acquisition officer. With the

aforesaid, petition stands disposed of. Copy of the order be placed in the connected cases.