

(1979) 01 MAD CK 0062

In the Madras High Court

Case No : Writ Petition No. 2867 of 1976

Dhanalakshmi

APPELLANT

Vs

The Special Deputy Collector, Land Acquisition

RESPONDENT

Date of Decision : 11-01-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11, 12(2), 18, 18(1), 18(2)

Citation : (1979) ILR (Mad) 405

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Advocate : S.Y. Raghuraman, for the Appellant; V. Ramajagadeesan, for Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Natarajan, J.—By order dated February, 29th, 1976 the Respondent rejected the Petitioner's application u/s 18(1) of the Land Acquisition Act, 1894, hereinafter referred to as the Act and refused to make a reference to the Civil Court for determination of the compensation amount payable to the Petitioner in respect of her lands which had been acquired. In these proceedings the Petitioner seeks a writ of certiorari mandamus to quash the impugned order and issue of direction to the Respondent to make a reference in terms of her application to civil Court.

2. The short facts of the case are as stated below.

3. An extent of 2.43 acres of wet lands in Kadapakkam village Saidapet Taluk belonging to the Petitioner and comprised in Serial Nos. 238 2A, 2B and 2C were acquired along with certain other land measuring 32.23 acres in the same village for providing house sites to the employees of the Madras Refineries etc. and the relevant Award No. 4/74 for acquisition of the lands was passed on 14th October 1974. As per the award a compensation of Rs. 2,535 per acre was awarded to the owner of the lands. Notice of the Award u/s 12(2) of the Act was served on

the Petitioner on 30th October, 1974. The Petitioner made an application on 18th December, 1974 u/s 18(1) of the Act saying that the compensation awarded for her lands was wholly inadequate and as such the Collector should make a reference to the Court for determining the fair amount of compensation payable to her. This application was received by the Collector on 20th December, 1974. Thereupon, he made a reference u/s 18(1) of the Act to the Court competent to deal with the matter, viz. Subordinate Judge's Court, Chengalpattu. The reference was made on 25th April, 1975, but the Principal Subordinate Judge, Chengalpattu returned the reference on 1st July, 1975 stating that the application for reference had been made belatedly and as such the referring officer may quote the provision of law under which the reference can be taken on file. It was only then the Respondent realized that the Petitioner's application had been made beyond the period of six weeks from the date of receipt of notice u/s 12(2) of the Act and as such the application did not satisfy proviso (b) of Sub-section 2 of Section 18 of the Act. As a result of this discovery, the Respondent rejected the Petitioner's application as time barred and sent the impugned order on 29th February, 1976. Aggrieved by that order, the Petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

4. In her affidavit, the Petitioner has stated that her husband died on 14th March, 1974, that within a month thereafter her only son also died after being bedridden in hospital for a considerable period of time and it was in those circumstances, she could not send her application u/s 18(1) of the Act before 18th December, 1974. She has further stated that though the application was sent on 18th December, 1974 it cannot be considered a belated one, because, Clause (B) of Sub-section (2) of Section 18 of the Act provides alternative periods of limitation, viz. (i) a period of six weeks from the date of receipt of the notice from the Collector u/s 12 Sub-section (2) and (ii) a period of six months from the date of the Collector's award; and, therefore, under the second alternative, her application is within time.

5. A detailed counter affidavit has been filed by the Respondent and the stand taken therein is that the notice u/s 12(2) of the Act was served on the Petitioner on 30th October 1974 and as such her application should have been filed within a period of six weeks, but as it was made, beyond the period of six weeks, it was a belated application, and would not therefore, place the Collector under an obligation to make a reference. It is further stated that by a mistake a reference was made to the Subordinate Judge's Court, Chengalpattu, but on the Court pointing out the limitation provision contained in Section 18(2)(b), the correct principle of law has been applied and the Petitioner's application rejected on the ground of limitation.

6. Mr. Raghuraman, the learned Counsel for the Petitioner rightly did not press the contention raised in the affidavit that two periods of limitation having concurrent force are available to the Petitioner and, therefore the application should have been treated as within time in that it had been sent within six

months from the date of award. The fallacy of this contention lies in the fact that it does not take notice of the words whichever period shall first expire occurring in Section 18(2)(B) of the Act. No doubt two periods of limitation are given in Section 18(2) (b) but they are qualified by the words whichever period shall first expire. Therefore, they cannot have concurrent operative force. Admittedly notice u/s 12(2) of the Act had been served on the Petitioner on 30th October, 1974 and, therefore, the period of limitation available to the Petitioner was only six weeks from that date. Inasmuch as her application was sent only on 18th December, 1974 it is beyond the period of six weeks and is, therefore, out of time.

7. Though Mr. Raghuraman, the learned Counsel could not assail the impugned order on the ground of limitation, he raised another argument to justify the Petitioner's claim that her application for reference u/s 18(1) ought to have been acted upon and a reference made to Court, and not rejected on the ground of limitation. His argument was that once the Respondent who is the referring officer had treated the Petitioner's application, as filed within time and made a reference to the Subordinate Judge's Court, Chengalpattu, u/s 18(1) of the Act the subordinate Judge had no jurisdiction to return the reference on the ground of belatedness of the Petitioner's application u/s 18(1) of the Act. In support of his argument, the learned Counsel relied upon two judgments of the Allahabad High Court. *Secretary of State for India in Council v. Bhagwan Prasad* ILR (1929) All. 96 (Division Bench) and *State of Uttar Pradesh Vs. Sri Abdul Karim*, and a judgment by single judge of this Court in *Sri Venkateswaraswami Varu of Bezwada and Another Vs. The Sub-Collector and Another*, . The view taken in those decisions is that it is for the Collector and the Collector alone to determine whether to make a reference u/s 18(1) of the Act or not and, if he decided to make a reference, it is not open to the Court to go behind the decision of the Collector and hold the reference to be out of time. The argument, attractive as it is, is however not capable of acceptance, because, the Supreme Court has now set at rest the controversy on the question, whether the civil Court, on a reference made to it u/s 18 of the Act, can go into the question of limitation. In *Mohammad Hasnuddin v. State of Maharashtra* (Civil Appeal) No. 1926 of 1969 dated 7th November 1978 after a review of the conflicting decision on the matter. The Supreme Court has held thus:

We are inclined to the view that the fulfillment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of the Collector to make the reference exists. It must accordingly be held that the making of an application for reference within the time prescribed by proviso to Section 18, Sub-section (2) is a sine qua non for a valid reference by the Collector.

From these considerations, it follows that the court functioning under the Act being a tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector u/s 18 complies with the conditions laid down therein

as 13 give the court jurisdiction to hear the reference.

In another portion of the judgment, their Lordships have stated as follows:

If an application is made which is not within time, the Collector will not have the power to make a reference. In order to determine the limits of his own power, it is clear that the Collector will have to decide, whether the application presented by the claimant is or is not within time and satisfies the conditions laid down in Section 18. Even if a reference is wrongly made by the Collector the Court will still have to determine the validity of the reference because the very jurisdiction of the Court to hear a reference depends on a proper reference being made u/s 18 and, if the reference is not proper, there is no jurisdiction in the Court to hear the reference. It follows that it is the duty of the Court to see that the statutory conditions laid down in Section 18 have been complied with, and it is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It is only a valid reference which gives jurisdiction to the Court and, therefore, the Court has to ask itself the question whether it has jurisdiction to entertain the reference.

8. In view of this pronouncement, the submission of the Petitioner's Counsel that the Subordinate Judge had no jurisdiction to return the reference made to him on the ground of limitation cannot be countenanced.

9. Yet another submission made by the Petitioner's Counsel was that even if a notice u/s 12(2) of the Act had been served on the Petitioner on 30th October 1974, the limitation period will not start running from that date, unless the Respondent proved that the notice served on the Petitioner was an effective one. What, in effect, the Petitioner's Counsel urged was that a notice u/s 12(2) of the Act merely containing the particulars regarding the true area of the land, the compensation he was awarding for the land and the manner in which the compensation was to be apportioned between the claimants, if in order there were more than one, will not be an effective notice and that the notice should be an effective one, it should have been accompanied with the full text of the award containing therein the reasons given by the Collector for computing the value of the land, buildings, trees, etc. at a particular rate in order to enlighten the owner of the land, the basis on which compensation had been fixed and to afford him material to decide whether he should ask, for enhanced compensation by means of reference u/s 18(1) of the Act or accept the award as such. Though this contention has not been raised in the counter, I have heard arguments on this plea because it is one of law and it is intimately connected with the plea of bar of limitation raised by the Respondent. As authority for this argument the Petitioner's Counsel relies upon the judgment of a Division Bench of the High Court of Bombay in *Mangilal Jawanmal and Others Vs. The Special Land Acquisition Officer (I), Thana*, in which the view taken is that it is not every notice u/s 12(2) of the Act which shall attract the running of the limitation period, but only an effective notice which contains not only the particulars referred to u/s 11 of the Act but also other particulars indicating to the parties

receiving notice, the factors which had influenced the mind of the Acquisition Officer in fixing the compensation for the acquired property at a certain rate. The dictum of the Division Bench is contained in the following words:

In our view therefore, apart from the three items mentioned in Section 11 of the Act which go to comprise the award of the Collector, the other particulars indicated above including the reasons or the basis on which the quantum of compensation has been fixed and offered would also constitute the essential contents of the award and unless the Petitioners or the claimants are posted with knowledge of these particulars including the reasons or the basis for fixing compensation, it would not be possible for them to file a proper application for reference stating the grounds of objection to the award;....

In fact as we have pointed out earlier, u/s 11 an inquiry into the measurement, the value and the claims is contemplated at the hands of the Collector or the Special Land Acquisition Officer and during the course of the inquiry, the Collector or the Special Land Acquisition Officer, would either accept what the claimant has claimed or may reject it on certain grounds and may arrive at compensation on certain other basis, but such basis on which compensation is fixed and the other particulars and the different hands of property must form part of his award and these things in our view would constitute the essential contents of the award without knowledge of which it would be utterly impossible for any claimant to make his application for reference stating the grounds of his objection to the award. If that be the correct position, we are clearly of the view that the phrase within six weeks of the receipt of the notice occurring in the first part of proviso (b) to Section 18(2) must be interpreted to mean within six weeks from the receipt of effective notice meaning thereby from the receipt of the knowledge of the essential contents of the award by the claimants including the reasons or the basis on which the quantum of compensation has been fixed as also the other particulars mentioned above. Such construction to our mind would be the most fair and reasonable and in our view the period of six weeks limitation prescribed under the first part of proviso (b) to Section 18(2) would commence from the receipt of such effective notice.

10. In justification of their conclusion that the notice contemplated in proviso (b) to Section 18(2) must be an effective notice, the learned Judges of the Bombay High Court have placed reliance upon the decision of the Supreme Court in *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, where the Court had to find out the meaning to be given to the words within six months from the date of the Collector's Award occurring in proviso (b) to Section 18(2) of the Supreme Court held that the words have to be construed in the following manner (at page 1687):

It seems clear to us that the ratio of the decision in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, is that the party affected by the award must know it, actually or constructively and the period of six months will run from the date of that knowledge. Now knowledge of the award does not mean the mere knowledge of the fact that an award has been

made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party u/s 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly when a party is present in Court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act, we think that knowledge of the award must mean knowledge of the essential contents of the award.

The Division Bench of the Bombay High Court have followed this ratio and held that the words receipt of notice occurring in the proviso must be so construed as to mean receipt of effective notice i.e., a notice which not only mentions essential details such as the area of the land, the amount of compensation, the manner of apportionment of the compensation, but also the basis on which the Collector had arrived at his conclusions. In the judgment of the Division Bench they have also quoted with approval a judgment in Spl. L.A.O. Ghataprabha v. A.R Gadakari AIR 1973 Mys. 22 and Civil Revision Application No. 583 of 1973 on the file of the Bombay High Court.

11. In view of this interpretation given to the crucial words with which we are now concerned what has to be seen is whether that ratio will not be attracted to the instant case also. Admittedly, the notice u/s 12(2) did not contain the reasons which prompted the Land Acquisition Officer to fix the compensation at the rates mentioned in the notice. The learned Government Pleader concedes that notice issued u/s 12(2) will refer only to the particulars mentioned in Section 11 of the Act and the full text of the award or even a gist of the reasoning contained therein will not be furnished to the parties when notice u/s 12(2) is served. Therefore, on facts the Petitioner is entitled to claim that she had no effective knowledge of the award when the notice u/s 12(2) was served on her. The learned Government Pleader however attempted to distinguish Mangilal Jawanmal and Others Vs. The Special Land Acquisition Officer (I), Thana, , by arguing that the decision was rendered under totally different circumstances and as such the dictum cannot provide assistance to the Petitioner in the present case. He pointed out that the affected party in the Bombay case had applied for a certified copy of the award as soon as notice u/s 12(2) was served and the certified copy was not furnished within the six weeks" time and therefore, there was justification to extend the period of limitation. His further contention was that under the Bombay Court-fees Act advalorem Court-fees had to be paid on the enhanced compensation asked for by the claimant and for the purpose of calculating the Court-fees the claimant would have to know the reasons which impelled the Collector to fix the compensation at a particular rate. But so far as Tamil Nadu is concerned the Tamil Nadu Court-fees Act does not prescribe the payment of Court-fees on references u/s 18(2) for payment of enhanced compensation and such being the case there was no need for the Petitioner to know the contents of the award before making an application u/s 18(1) for

requesting the Land Acquisition Officer to make a reference to Court. Neither of the contentions of the Government Pleader can be accepted. When the statute prescribes the service of notice, which has been construed by Courts to be effective notice there is no need for a claimant to apply for a certified copy of the award in order to get enlightenment about the factors which influenced the Land Acquisition Officer to (1) determine the true extent of land where there is a dispute about the extent, (2) the compensation to be paid for the land where a higher amount was asked for by the claimant and (3) the persons to whom the compensation was to be awarded if there was dispute about the persons to whom the compensation was to be given. Therefore the question whether the claimant had applied for certified copy or not cannot have any significance and once that position is established then the question of the commencement of limitation period will have nothing to do with the claimant applying for a certified copy of the award or not. As regards the second contention it is no doubt true the Tamil Nadu Court fees and Suit Valuation Act does not stipulate payment of Court fee by a claimant who asks for enhanced payment of compensation, but, even so the claimant is entitled to have full knowledge of the award, because Sub-section 2 of Section 18 expressly states that the application shall state grounds on which the objection to the award is taken. In view of this clear stipulation a claimant has to specifically state the grounds of objection to the award passed by the Collector and this specific objection cannot be taken unless the full details of the award are known to him. Therefore, I am unable to accept the learned Government Pleader's contention that the ratio laid in *Mangilal Jawanmal and Others Vs. The Special Land Acquisition Officer (I), Thana*, can be distinguished with reference to the facts in that case and as such held not attracted to the facts of the Petitioner's case.

12. In view of my conclusion stated above, the petition deserves to be allowed and accordingly will stand allowed with costs. Counsel's fee is fixed for Rs. 150. As the Petitioner had six weeks time to make the application u/s 18(2) from the date of effective notice and as the notice served on her was not an effective one, her application cannot be considered to be out of time. Therefore, the second Respondent will make a fresh reference to the Subordinate Judge, Chengalpattu in the light of this judgment.