

(1967) 11 PAT CK 0006
In the Patna High Court
Case No : C.W.J.C. No. 55 of 1966

Dr. J. Dubey

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 14-11-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 11, 12, 18, 3, 30

Citation : (1968) 16 BLJR 562

Hon'ble Judges : R.L. Narasimham, C.J;B.N. Jha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.N. Jha, J.—In this application under Articles 226 and 227 of the Constitution of India, the order of the Land Acquisition Officer, Palamau (Annexure D), passed in Land Acquisition Case No. 23 of 1957-58 on the 22nd November, 1965, refusing to make a reference to the court u/s 18 of the Land Acquisition Act (Hereinafter referred to as the Act) for the determination of valuation of the land acquired is under challenge.

2. It appears that a land acquisition proceeding was started for the acquisition of 30 acre of land out of the land of plots No. 1645/1915 and 1645/1904 along with the other lands by the Land Acquisition Officer, Palamau in Land Acquisition Case No. 23 of 1957-58. Notice of this proceeding was served on the petitioner u/s 9 of the Act and in pursuance thereof he filed objection before the officer asserting therein that the value of the land was worth more than Rs. 100 per 0.01 acre and as such he was entitled to get more than Rs. 3,000 as compensation. The Land Acquisition Officer after making inquiry made an award on the 15th January, 1959, u/s 11 of the Act. The award was prepared in respect of the aforesaid 30 acre of land in the name of the petitioner and a sum of Rs. 156.98 was ascertained as compensation payable to him for the aforesaid 30 acre of land. One Haribansi Mahto claimed the compensation money in respect of the

aforesaid .30 acre of land and filed an application before the Land Acquisition Officer for making reference u/s 30 of the Act. The Land Acquisition Officer, by his letter No. 204, dated the 26th March, 1962, made a reference to the District Judge of Palamau for a decision as to which of the two claimants, viz., Dr. J. Dubey and Haribansi Mahto, was entitled to receive the compensation money. A sum of Rs. 156.98 was also deposited in court. Land Acquisition Case No. 11 of 1962 was started in the Court of the District Judge, in which Dr. J. Dubey was the applicant and Haribansi Mahto was the opposite party. Notice of this reference case was served on the petitioner on the 29th March, 1962. The petitioner appeared in the case and filed objection there. The relevant portion of his petition reads as follows:

1. That the award given by L.A.O. is quite wrong and incorrect.

* * * 4. That Haribansi Mahto has got no locus standi as he has no concern with these plots and this objector has absolute and perfect right to the compensation.

5. That the amount of award fixed by L.A.O. is quite meagre and it is not according to the market value. The award has been given behind the back and without any knowledge of this objector and only a nominal sum has been shown in the award.

6. That according to present market value, these plots are worth Rs. 3,000/- and so if it is acquired a sum of Rs. 3,000/- be awarded to this objector as compensation.

* * *

3. Both the parties contested the case and adduced evidence in support of their respective claims. The learned District Judge by his judgment dated the 7th June, 1965, held that the first party Dr. J. Dubey was entitled to receive the compensation money awarded in the case.

4. Thereafter, on July 3, 1967, the petitioner filed an application before the Land Acquisition Officer (Annexure A) and prayed that compensation of Rs. 3,000/- in respect of the value of his land be granted to him. The Land Acquisition Officer by his order No. 109, dated the 13th July, 1965 (Annexure B), rejected his petition holding that the award was declared on the 13th January, 1959, and so far as the value of the land is concerned, the award was final and conclusive.

5. The petitioner again filed an application on the 14th September, 1965, before the Land Acquisition Officer, Palamau, for making a reference to the District Judge u/s 18 of the Act for determining the proper compensation of the land (Annexure C). The Land Acquisition Officer rejected that application also by his order dated the 22nd November, 1965, on the ground that the award was made more than six years ago and as such the application was barred under the proviso to Section 18(2) of the Act, Hence, the petitioner has come to this Court for the issue of an appropriate writ in the nature of certiorari and mandamus for quashing the order of the Land Acquisition Officer, Palamau, dated the 22nd

November, 1965, (Annexure D) and directing him to make reference u/s 18 of the Act.

6. The State of Bihar has filed a counter affidavit in this case. The grounds taken in the counter affidavit are that a notice was issued by the Land Acquisition Officer intimating to the petitioner that reference u/s 30 of the Act had been made to the District Judge of Palamau by his letter dated the 26th March, 1962, (Annexure I to the counter affidavit) and as such at least on the 29th March, 1962, the petitioner came to know about the award by the Land Acquisition Officer and hence his application dated the 14th September, 1965, before the Land Acquisition Officer was barred by time. It is further stated that as the petitioner's right to receive compensation was disputed, payment of the compensation money could not be made to him and, therefore, no notice u/s 12(2) of the Act was issued to him. The impugned order, in the circumstances, was correct; and, as such, there was no illegality so far as the impugned order was concerned.

7. Learned Counsel for the petitioner urged before us that no notice u/s 12(2) of the Act was served on him and as such the award was not final. Besides this he submitted that the petitioner's title to the land was finally determined by the District Judge in the land acquisition case No. 11 of 1962 by his judgment dated the 7th June, 1965, and his cause of action to apply to the Land Acquisition Officer for making a reference u/s 18 of the Act did not arise before that date, and as such he had no locus standi to make such application to the Land Acquisition Officer before. Therefore, the application for making a reference was not time barred.

8. It is submitted by the petitioner that he received notice u/s 9 of the Act and thereafter he filed objection before the Land Acquisition Officer asserting therein that he was entitled to more than Rs. 3,000/- as compensation in respect of his land. But his grievance was that he was never given a hearing at the inquiry for the determination of quantum of compensation made by the Land Acquisition Officer and as such his objection was still pending before him. It appears from the record of the land acquisition case that the petitioner filed several documents in support of his claim before the Land Acquisition Officer, which he took back on the 17th November, 1962. Therefore, it cannot be said that no opportunity was given to him to represent his case before the Land Acquisition Officer. The record of the case shows that after a detailed inquiry regarding the valuation of the lands acquired, the Land Acquisition Officer made an award u/s 11 of the Act on the 15th January, 1959, in which a sum of Rs. 156.98 was shown as the compensation money in respect of .30 acre of land payable to the petitioner. Section 12 of the Act provides as follows:

(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.

Therefore, the finality of the award does not depend on the fact whether the petitioner appeared before the Collector or not. As to the quantum of valuation, the award is final, subject to the decision of the court if a reference is made to it u/s 18 of the Act. In the present case admittedly no reference u/s 18 of the Act was made and as such the award as to the quantum of compensation money became final. Therefore, the plea of the petitioner that his objection u/s 9 of the Act was still undisposed of and the award as to the quantum of compensation was not finally determined cannot be sustained.

9. Learned Counsel for the petitioner asserted that the petitioner was neither present nor represented before the Collector at the time when he made the award and as such it was necessary for the Collector to have issued notice u/s 12(2) of the Act. Admittedly, no notice as contemplated u/s 12(2) of the Act was issued. Therefore, the plea of the petitioner was that the so-called award could not be an award in the eye of law. There is no substance in this contention either. The validity of the award does not depend on the issue of notice u/s 12(2) of the Act, which is contemplated to be issued after the award has become final u/s 12(1) of the Act.

10. Issue and service of notice u/s 12(2) of the Act are of some importance for the purpose of determination of the question of limitation for an application for making a reference u/s 18 of the Act. Section 18 of the Act runs as follows:

(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 in 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.

A person interested in the award may accept the award as final as to the quantum of compensation payable for the land acquired. If he is not satisfied as

to the quantum of compensation allowed by the award, he may file a written application before the Collector u/s 18 of the Act for making a reference to the Court for determination of proper amount of compensation payable in respect of the land so acquired. The Section does not contemplate suo motu reference to the court for the said purpose. A written application to that effect is required to be filed by any person interested. The application must be made under proviso (a) within six weeks if he was present or represented before the Collector at the time when he made the award. The petitioner asserted that he was neither present nor was he represented before the Collector when the award was made. He could not have, therefore; made an application for reference within six weeks.

11. Under proviso (b), if notice u/s 12(2) of the Act is issued and served on the person, the application will have to be filed within six weeks of the receipt of the notice. No notice admittedly was served on the petitioner u/s 12(2) of the Act. In the second part of proviso (b) the period of limitation is six months from the date of the Collector's award in those cases which are not covered by the above contingencies. While interpreting proviso (b) of Section 18 of the Act, the Supreme Court has held in *State of Punjab v. Mst. Qaiser Jehan Begum* AIR 1968 S.C. 1604 that the expression "six months from the date of the Collector's award" used in the proviso must mean when the award is either communicated to the party or is known to him either actually or constructively. Therefore, for the purpose of determining the period of limitation in such a case, it is necessary to find out as to when the petitioner had knowledge of the contents of the award. The petitioner did not state in clear terms as to when he came to know about the award and its contents. The counter affidavit shows that the petitioner was served with a notice (Annexure f) on the 29th March, 1962, by the Land Acquisition Officer, Palamau, intimating to him that reference u/s 30 of the Act had been made by him to the District Judge of Palamau by letter No. 204 dated the 26th March, 1962. The petitioner in reply to the counter affidavit admitted that though by that letter respondent 2 informed him that since Haribansi Mahto had disputed the petitioner's title to the land under acquisition, the dispute had been referred to the District Judge for adjudication of the dispute, but it did not convey any intimation to him that an award had been made on the 15th January, 1959. The objection filed by the petitioner on September 22, 1962, before the District Judge in Land Acquisition Case No. 11 of 1962 quoted above, however, clearly shows that the petitioner had full knowledge of the award and its contents at the latest on the 29th September, 1962. Therefore, the application (Annexure C) filed by the petitioner before the Land Acquisition Officer on the 14th September, 1965, after more than six years for making a reference to the court u/s 18 of the Act is clearly barred by limitation. Hence, the impugned order of the Land Acquisition Officer, dated the 22nd November, 1965 (Annexure D), cannot be said to be erroneous in law.

12. Learned Counsel for the petitioner, however, urged that as the title to the land was disputed by Haribansi Mahto, he had no locus standi to file an application before the Land Acquisition Officer for making reference to the court

u/s 18 of the Act and his cause of action remained in abeyance. It is difficult to accept this contention. There is nothing in Section 18 to indicate that the person whose title is in dispute can file an application under this Section only after his title is finally determined by a competent civil court. Under the provisions of Section 18 of the Act, any person interested who has not accepted the award may by a written application to the Collector require that the matter be referred to by the Collector for the determination of the court. Therefore, if a person is interested in the award he can file an application under this Section. Person interested has been defined in Section 3(b) of the Act as follows:

The expression "person interested" includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act, and a person shall be deemed to be interested in land if he is interested in an easement affecting the land:

In the present case, the award was prepared in the name of the petitioner as being entitled to receive Rs. 156.98 as compensation in respect of the land. Therefore, he is the most vitally interested person in the award and as such he should have filed an application u/s 18 of the Act as soon as he had known about the existence and contents of the award. His status to file an application u/s 18 was in no way dependent on the decision of the District Judge in a case arising out of reference u/s 30 of the Act made at the instance of Haribansi Mahto. The two kinds of reference contemplated under Sections 18 and 30 of the Act are quite distinct and independent of each other. Section 18 contemplates a case of reference when the quantum of compensation was disputed by the person interested and Section 30 contemplates a reference when there is a dispute as to the title of the land acquired and consequently to receive the compensation money. The effect of the decision of the District Judge dated the 7th June, 1965, was only to affirm the title of the petitioner to receive the compensation money and nothing more. In my Judgment therefore, the contention of the petitioner that his cause of action to apply to the Land Acquisition Officer for making a reference to the District Judge u/s 18 of the Act remained suspended till June 7, 1965, must be over-ruled.

13. For the reasons stated above, there is no merit in the application and accordingly it is dismissed with costs. Hearing fee : Rs. 100.

R.L. Narasimham, C.J.

14. I agree.