

(2011) 02 GUJ CK 0163
In the Gujarat High Court

Case No : First Appeal No. 438 of 2008 to First Appeal No. 445 of 2008

Dudhiben Kathad @ Khant Bhikhakathad	APPELLANT
Vs	
State of Gujarat and Another	RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Land Acquisition Act, 1984 — Section 12, 18

Citation : (2011) 02 GUJ CK 0163

Hon'ble Judges : J.C. Upadhyaya, J

Bench : Single Bench

Advocate : Vimal M. Patel, for the Appellant; Shachi Mathur, AGP, for the Respondent

Final Decision : Allowed

Judgement

J.C. Upadhyaya, J.—By means of preferring this group of appeals, the Appellants, who were original claimants, have challenged the legality and validity of the impugned judgment and order dated 9/3/2007 passed by the Ld. Principal Sr. Civil Judge, Junagadh [for short "the Reference Court"] in Land Reference Case Nos. 183 to 191 of 1999, whereby the Reference Court held all the reference cases as barred by the limitation and accordingly the reference cases came to be dismissed.

2. Mr. Vimal M Patel, Ld. Counsel for the Appellants original claimants, drawing my attention to the relevant dates together with the provisions contained u/s 12 of the Land Acquisition Act, 1984 [for short "the Act"], submitted that the Reference Court committed serious illegality in coming to the conclusion that the references preferred by the claimants were time barred. It is submitted that Section 4 notification was published on 14/3/1983 and Section 6 notification was published on 2/2/1984. The Collector in LAQ Case No. 12/1983 pronounced the award u/s 11 of the Act on 16/9/1986. The payment in terms of the award of the Collector was made to all the claimants. However, they recovered the amount with protest. The references were filed on 15/1/1987.

2.1. Mr. Patel, Ld. Counsel for the Appellants further submitted that considering the entire oral and documentary evidence adduced by both the sides on record before the Reference Court, nothing emerges that any notice as contemplated in Section 12[2] of the Act was ever issued to any of the claimants. My attention was drawn to para. 8 of the impugned judgment and order, wherein even the Reference Court has come to the conclusion that the opponent [the Respondent herein] failed to establish that the notices u/s 12[2] of the Act were served on 18/11/1986. The Reference Court, it is submitted, took into consideration the evidence of Mahesh Amrutlal Joshi, who happened to be Deputy Mamlatdar at the relevant time, wherein he expressly admitted that the notices u/s 12[2] of the Act were not served and it is not further specified as to who have served the notice and on which date the said notices came to be served upon the claimants. This witness further admitted that the office copy of notices issued u/s 12[2] was not produced on record. Mr. Patel, Ld. Counsel, therefore, asserted that in absence of any evidence regarding statutory notice contemplated u/s 12[2] of the Act, the Reference Court should have considered the provisions contained in Section 18[2][b] of the Act, wherein the limitation is provided to be six months from the date of the Collector's award, as in the facts and circumstances of the case and in absence of any evidence regarding the notice the period of six months first expires if Section 18[2][b] is strictly considered.

2.2. Mr. Patel, Ld. Counsel, therefore, submitted that in the instance case, in absence of any evidence regarding statutory notice, the period of limitation would be six months from the date of award by the Collector and six months" period would commence from 16/9/1986; whereas the applications for reference in the instant case, came to be filed on 16/1/1987 and, therefore, it was within the time span of six months.

3. Per contra, Ms. Mathur, Ld. AGP representing the Respondent - State, vehemently opposed these appeals and submitted that the Reference Court rightly dismissed the references holding those references as hopelessly time barred. It is submitted that there is ample evidence regarding issuance of statutory notice as contemplated u/s 12[2] of the Act as well as its receipt by the claimants. It is, therefore, submitted that in the instant case, for the purpose of calculation of limitation, first part of Section 18[2][b] of the Act would apply and the period of limitation would be six weeks of the receipt of the notice from the Collector. Therefore, it is submitted that the Reference Court rightly held all these references as time barred and rightly dismissed the reference cases.

4. At the outset, if the relevant dates are considered, there is no dispute between the parties. The notification u/s 4 of the Act was published on 14/3/1983 and the notification u/s 6 was published on 2/2/1984. The award by the Collector u/s 11 was declared on 16/9/1986. There is also no dispute that on 18/11/1986 the Appellants - claimants with protest received the payment of the amount offered by the Collector. There is also no dispute that the application for reference came to be filed on 16/1/1987. However, moot question involved in this matter and

which is very relevant for the purpose of calculating the extent of limitation and its commencement point is as to whether the notice contemplated u/s 12[2] of the Act was ever issued by the authorities to the claimants or if the same were issued to the claimants, whether there is any evidence regarding receipt of the same or not.

5. In the above perspective, if the impugned judgment and order of the Reference Court are considered, the Reference Court, appreciating the oral and documentary evidence on record, at para. 8 of the impugned judgment, categorically, arrived at the conclusion that the opponent [the Respondent herein] failed to establish that notices u/s 12[2] have been served on 18/11/1986. In arriving at such conclusion, the Reference Court relied upon the evidence of the then Deputy Mamlatdar Mr. Mahesh A. Joshi. I have re-appreciated the evidence of the then Deputy Mamlatdar Mr. Joshi and perusing his deposition, it has been clearly stated that neither the office copy of the notice nor any evidence regarding receipt of the notice has been produced on record before the Reference Court. It further transpires that on behalf of the Respondent State much reliance was placed upon the Exhs. 39, 40 and 41, but if those documents are perused, they are neither the office copies of the notice nor the evidence regarding receipt of the notice, but those documents pertained to payment made to the claimants pursuant to the order of the Collector.

6. If the law on this point is considered, Sub-section [2] of Section 12 of the Act requires the Collector to give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award was made. In the instant case, neither there is such defence of the Respondent - State nor there is evidence to that effect that the date on which the award was declared by the Collector i.e. 16/9/1986, all or any of the claimants or their representatives had remained present. When such is the situation, it was a statutory duty of the Collector to issue the notice as contemplated in the above referred provision. Needless to say that the issuance of statutory notice as contemplated hereinabove has direct nexus with the limitation of the reference. In this connection, if Section 18 and more particularly Sub-section [2] of Section 18 is considered, it prescribes the limitation for filing application for reference. Section 18[2][a] may not be relevant for our purpose because it contemplates the situation where the claimant remains present before the Collector at the time when the award is made. In the instant case, Section 18[2][b] of the Act would play predominant role. The first part of this Sub-section states the limitation being six weeks if the statutory notice as contemplated hereinabove has been received by the claimant, for the purpose of filing application for reference and the second part contemplates the period of limitation to be six months from the date of the Collector's award. If second part of Section 18[2][b] of the Act is considered, it can safely be said that, that part covers the situation when no notice is issued. Section 18[2][b], therefore, contemplates two situations, namely if the statutory notice is issued, then the period of limitation would be six weeks from the receipt of such notice or else it

would be six months from the date of the Collector's award and it is further prescribed that the commencement of the period of limitation in either of the situation, would be that whichever period would first expire. Needless to say that in absence of issuance of statutory notice and subsequent receipt thereof, the period which is first expiring would be the second part of Section 18[2][b], namely limitation of six months from the date of the Collector's award.

7. In the above light of the matter, if the impugned judgment and order rendered by the Reference Court are considered, it would clearly transpire that the Reference Court committed error in coming to the conclusion that the application for reference was time barred. In the instant case, the award of the Collector u/s 11 of the Act was declared on 16/9/1986 and the application for reference was filed on 16/1/1987, meaning thereby that as contemplated in part two of Section 18[2][b] of the Act, the application for reference was made within four months from the date of the declaration of the award by the Collector and at any rate it was within six months.

8. There is no dispute that the Reference Court decided the issue of limitation at the time of rendering the final judgment after the evidence was already recorded in this matter. However, it seems that in the impugned judgment more emphasis of the Reference Court was on the issue of limitation and, therefore, it transpires that there is no just and proper appreciation of evidence regarding the fixation of just and fair market value of the property. The matter is, therefore, deserves to be remanded to the Reference Court keeping open the rights of both the sides to adduce any more evidence if they so desire.

9. In the result, all these appeals deserve to be allowed and Land Reference Cases Nos. 183 to 191 of 1999 deserve to be remanded to the Reference Court. Since the reference cases are very old and it would be in the fitness of things if certain direction in that regard is issued.

10. For the foregoing reasons, these appeals are allowed and the impugned judgment and order dated 9/3/2007 rendered by the Ld. Principal Senior Civil Judge, Junagadh, is hereby set aside. The above Land Reference Cases are hereby ordered to be remanded to the Reference Court for disposal on merits in accordance with law, reserving the liberty of both the parties to adduce any more evidence before the Reference Court, if they so desire. The Reference Court is further directed to decide these reference cases as expeditiously as possible, preferably within three months from the date of receipt of the record and proceedings of the cases. The Registry is directed to send back the record and proceedings of the reference cases immediately to the concerned Court. There shall be no order as to costs and parties to bear their own costs.