
(1960) 02 MAD CK 0037
In the Madras High Court
Case No : Writ Application No. 170 of 1959

E.K. Raghava Reddiar

APPELLANT

Vs

The Collector of Madras

RESPONDENT

Date of Decision : 02-02-1960

Acts Referred:

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

Citation : AIR 1961 Mad 33 : (1960) ILR (Mad) 984 : (1960) 73 LW 433 : (1960) 2 MLJ 266

Hon'ble Judges : P.V. Rajamannar, C.J.; Jagadisan, J

Bench : Division Bench

Advocate : R. Gopalaswami Aiyanger and C.P. Rajagopala Aiyangar, for the Appellant;

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—This is an appeal against the judgment of Balakrishna Aiyar J. dismissing a petition filed by the appellant under Article 226 of the Constitution for the issue of a writ of mandamus directing the Collector of Madras to make a reference to the court u/s 18 of the Land Acquisition Act in the matter of an award passed by him dated 25-3-1957. It is common ground that the Land Acquisition Officer who was the Collector made his Award u/s 11 of the Land Acquisition Act on 25-3-1957. The appellant was not present at the time when the award was passed either in person or by representative.

On the same day the Land Acquisition Officer served a notice on the appellant purporting to be u/s 12(2) of the Act informing him that an award had been passed in respect of the lands of the appellant. On 11-5-1957 the appellant intimated to the Collector that he did not accept the award on the ground that the quantum of compensation was inadequate and required him to refer the matter for determination by court u/s 18 of the Act. The Land Acquisition Officer replied that the application for reference was barred by time. The appellant then enquired whether the award had been filed in the Collector's office as required

by Section 12(1) of the Act. To this query he received a reply that the petition for reference should have been filed within six weeks from the date of the receipt of notice u/s 12(2) of the Act and the question of filing of the award did not arise.

It is on account of the refusal by the Land Acquisition Officer to make the reference that the appellant came up to this court seeking a writ of mandamus. Balakrishna Aiyar J. who heard the petition, dismissed it on the ground that the application for reference made by the appellant was clearly barred by time as it was made more than six weeks after the service of notice u/s 12(2). Hence this appeal.

2. If we understand the argument of Mr. Gopalaswami Aiyangar, learned counsel for the appellant aright, it was this. u/s 11, after an enquiry the Collector shall make an award. u/s 12(1) such award shall be filed in the collector's office. It is only after it is filed that it becomes 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. u/s 12(2) it is only after the Collector has filed his award that he shall give immediate notice of the award to such of the persons interested as are not present personally or by their representatives when the award is made.

For the purpose of computing the period of limitation provided in Section 18 proviso (b), it is only after notice under Sub-section (2) of Section 12 is given after the filing of the award that the application should be filed within six weeks after the receipt of such notice, but if the award has not been filed time would not begin to run even though a notice purporting to be u/s 12(2) is served on the party. The result would be that the application can be filed within six months from the date of the Collector's award, which, according to learned counsel, means the date of the filing of the award. Ergo if the award has not been filed, no question of limitation would arise at all.

3. We are unable to accept any part of the above argument of Mr. Gopalaswami Aiyangar. He has cited to us certain decisions, namely, Secy. of State Vs. Bhagwan Prasad and Another , State of Travancore-Cochin Vs. Narayani Amma Ponnamma and Others, , and Padamsi v. Collector of Thana, ILR 46 Bom 366: (AIR 1922 Bom 161). In none of these decisions have we been able to find any support for the contention that the validity and finality of an award depends on its being filed. The facts in ILR 46 Bom. 366: (AIR 1922 Bom 161) were peculiar and as the learned. Judge points out, the award :which was prepared by the Deputy Collector in that case was in no sense an award within the meaning of Section 11 of the Land Acquisition Act as it was only a tentative proposed award for approval by the higher authority.

The scheme of the Land Acquisition Act is quite clear. After, notice to persons interested, u/s 9, on a day fixed or any adjourned day the Collector shall proceed to enquire into the objections, if any, which any person interested has stated

pursuant to a notice given u/s 9 and shall make an award under his hand of the true area of the land, the compensation which in his opinion should be allowed for the land and the apportionment of the compensation among all the persons known or believed to be interested in the land. u/s 12 it is obligatory on the part of the Collector to file the award in the collector's office. Sub-section (1) declares that except as provided further on in the Act, such award shall 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. Obviously the reference to such award is to the award which has been made u/s 11.

Under Sub-section (2) of Section 12 the Collector has to give immediate notice of his award to such of the persons who are interested as are not present personally or by their representatives when the award was made. It is important to notice that the words are not "where the award is filed" but "when the award is made." That has reference to Section 11 of the Act. Section 16 declares that when the Collector had made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Crown free from all encumbrances. The mechanical act of keeping the award on the file of the collector's office is not what empowers the Collector to take possession of the land. It is the making of the award u/s 11 which gives him such power.

Whether the award has been filed or not u/s 16, once the award is made u/s 11, the Collector can take possession of the land and thereupon the land shall vest absolutely in the Crown free from all encumbrances. Section 18 provides for a reference to court at the instance of an aggrieved claimant, whether the complaint is as regards the measurement of the land, the quantum of compensation or the persons to whom the compensation is payable or the apportionment of the compensation. Any person interested who has not accepted the award may by written application to the Collector require that the matter be referred to the court. Then occurs a proviso for the computation of limitation. The proviso runs thus :

"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 shall first expire." Taking Clauses (a) and (b) together, we find two distinct dates for computing the time namely, (1) the date of the Collector's award and (2) the date of the receipt of the notice from the Collector u/s 12(2). So far as the second date is concerned, the period is fixed, namely, six weeks from the receipt of such notice. But as regards the other date, namely, the date

of the Collector's award, there are two periods, one is a period of six weeks from that date if the person seeking the reference was present in person or by representative.

In other cases the period is six: months from the date of the Collector's order. There is a further provision in Clause (b) of the proviso that in cases other than those which would fall under Clause (a) of the proviso, there would be an alternative period provided but subject to this namely, it is only the shorter period which would be available to the claimant.

This obviously would become relevant when notice u/s 12(2) is not given immediately, as the section enjoins on the Collector, but very much later. To give a concrete instance, if the date of the Collector's award is 1st January, 1920 but the notice u/s 12(2) is served on 1st July, 1920, then the period available to the claimant would only be six months from the date of the Collector's award and not six weeks from the receipt of the notice.

4. In the two cases strongly relied upon by Mr. Gapalaswami Aiyengar, there are observations which directly support the view we are taking in this case. In Secy. of State Vs. Bhagwan Prasad and Another , Mukerji J. on whose judgment learned counsel for the appellant relied observed thus :

"It will be noticed that u/s 18 of the Land Acquisition Act, an application by a person who has not accepted the award to make a reference to the court must be made within a specified period. This period, in the case of the owners who were not present when the award was made is within the six weeks of the receipt of the notice or within six months from the date of the Collector's award, whichever period shall first expire. It is clear that the maximum period allowed for making a petition to the Collector is six months from the date of the award. This maximum period is liable to be cut short, if there is a service of notice by the Collector, concerning the award, on a party interested in making the application. In the case of service, the time allowed is six weeks from the service, provided those six weeks do not go beyond the six months already mentioned, from the date of the award."

In that case there was a notice served by the Collector u/s 12(2) and the claimants applied for a reference within six weeks of the service of notice. But an objection was taken on behalf of the Collector that the petition was barred by time because the application for reference was made beyond the period of six months from the date of the Collector's award. It therefore became necessary for the learned Judges who formed the Division Bench of the Court to decide as to the date of the Collector's award.

Mukerji J. was inclined to take the: view that the expression "date of the award" meant "date of the filing of the award", whereas the other learned Judge, Niamatullah, J. held that the date of the award is the date when the award is made u/s 11 of the Act. In the case before us the application for reference was made beyond the period of six weeks from the service of notice u/s 12(2). On

the observations made in the Allahabad case, the appellant's application would be barred by time. In *State of Travancore-Cochin Vs. Narayani Amma Ponnamma and Others*, , the facts were similar to the facts in the Allahabad case. There too it was observed.

"Where such notice (notice u/s 12(2)) has been issued, the claimant has six weeks from the receipt of notice u/s 12(2) for the purpose of filing the reference application".

The learned Judges of the Kerala High Court followed the view taken by Mukerji J. that for the purpose of calculating the period of six months provided in the latter part of proviso (b), the date of the award would be the date of its filing in the Collector's office and not the date on which the Collector had written or signed the award.

5. In the absence of any binding authority on the point we feel no hesitation in overruling the contention raised on behalf of the appellants. There is nothing in any of the provisions of the Act to warrant us in holding that unless an award is filed in the Collector's office, it is ineffective and invalid. The provision for filing of the award in Section 12(1) does not have the legal consequence of rendering an award invalid or not final or conclusive against a party. What matters really is the making of the award.

It is upon such making that the Collector is empowered to take possession of the land and the acquired land vests in the Government. Even for the purpose of calculation of the period of limitation u/s 18 we are inclined to take the view that the date of the Collector's award is the date when he makes the award but it is not necessary for us to pronounce on this point as it does not arise in this case. It suffices to say that a notice purporting to issue u/s 12(2) is not invalid because there is no evidence that the award has been filed in the Collector's office before the issue of such notice. Once an award is made u/s 11, it is the duty of the Collector to give immediate notice of the award to persons who are not present personally or by representative when the award is made. Once such a notice is issued, the period of limitation is six weeks from the date of: receipt of such notice. In the present case the application was admittedly beyond this period and was rightly rejected. This appeal is dismissed.