

(2013) 12 AP CK 0097
In the Andhra Pradesh High Court
Case No : W.P. No. 34141 of 2013

Faqrunnisa Begum

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Citation : (2014) 3 ALD 245

Final Decision : Disposed Off

Judgement

P. Naveen Rao, J.—For the purpose of widening of the road from Noble Talkies Junction to Mehdipatnam Junction, notification u/s 4(1) of the Land Acquisition Act, 1894 (for short, "the Act") was issued on 17.1.2008. Property of the petitioner was acquired by following due process of law and award was passed on 26.11.2008. The case of the petitioner is, petitioner was not aware of passing of the award. To his surprise, petitioner was served Section 12(2) notice dated 31.5.2011, served on her on 18.7.2011 through special messenger. On 18.7.2011, petitioner was served with cheques towards compensation amount determined. Disputing the compensation amount paid on 18.7.2011, petitioner filed application dated 11.8.2011 before the 3rd respondent for reference u/s 18 of the Act. The said application of the petitioner was rejected by order dated 21.8.2012 on the ground that the application filed u/s 18 is time barred. Petitioner submitted an application under Right to Information Act, on 1.10.2012, on which information was furnished on 28.11.2012. In the information furnished, against Sl. No. 5, it was stated that award copy was not communicated to her earlier and the same is enclosed. Petitioner filed another application dated 21.8.2013 under Right to Information Act, soliciting information on the date and time of dispatch of notice u/s 12(2) of the Act. Petitioner was informed that notice was sent through the Special Revenue Inspector. With reference to service of copy of award, petitioner was informed that along with two cheques paid on 18.7.2011, copy of the award was also enclosed and another copy of the award was issued on 30.11.2012.

2. On instructions, learned Assistant Government Pleader submits that according to proviso to Section 18, an application for enhancement of compensation should be made within six weeks from the date of receipt of notice u/s 12(2) of the Act. Petitioner was served Section 12(2) notice dated 31.5.2011 on the same day. He thus contends that the limitation for making an application u/s 18 starts from that day and as the application dated 11.8.2011 was submitted beyond the period prescribed u/s 18, the same was validly rejected.

3. Learned Counsel for the petitioner submits that the award was not enclosed to Section 12(2) notice. Copy of the award was not served to the petitioner prior to 18.7.2011. Even 18.7.2011 is taken as relevant date, the application u/s 18 was made within six weeks from that date and that date alone is criteria for the computation of the period of limitation. In support of his contention, learned Counsel placed reliance on the decision of the Supreme Court in Premji Nathu Vs. State of Gujarat and Another, .

4. Petitioner fitted WP No. 29256 of 2011 seeking a writ of mandamus against the action of respondent in not referring the award to the competent Court for adjudication u/s 18 of the Act for determination of correct market value. Petition was disposed of by an order dated 16.11.2011 directing the respondent to refer the matter to the competent civil Court as contemplated u/s 18 of the Act, if the petitioner fulfils the condition laid down under the Act. Pursuant to the above order of this Court, request of the petitioner for reference to the civil Court for enhancement of the compensation; was rejected, decision of which is communicated to the Counsel representing the petitioner vide letter dated 21.8.2012. The rejection was on the ground that after service of notice u/s 12(2), dated 31.5.2011, served on 31.5.2011, application for reference u/s 18 was not made within six weeks and, therefore, such application is not maintainable.

5. The issue for consideration is whether the period of limitation for making an application for reference u/s 18 of the Act, should be computed from the date of service of notice u/s 12(2) of the Act even if the copy of the award is not enclosed or from the date of communication of award?

6. In Premji Nathu's case (supra), on review of several precedents on the subject, Supreme Court is pleased to hold as under:

A careful reading of the averments contained in Para. 2 of the application filed by the appellant u/s 18(1) shows that the notice issued by the Collector u/s 12(2) was served upon him on 22.2.1985. Thereafter, his advocate obtained certified copy of the award and filed application dated 8.4.1985 for making a reference to the Court. This implies that the copy of the award had not been sent to the appellant along with the notice and without that he could not have effectively made an application for seeking reference.

On behalf of the State Government, no evidence was produced before the reference Court to show that the copy of the award was sent to the appellant

along with the notice. Unfortunately, while deciding Issue 3, this aspect has been totally ignored by the reference Court which mechanically concluded that the application filed on 8.4.1985 was beyond the time specified in Section 18(2)(b). The learned Single Judge of the High Court also committed serious error by approving the view taken by the reference Court, albeit without considering the fact that the notice issued by the Collector u/s 12(2) was not accompanied by a copy of the award which was essential for effective exercise of right vested in the appellant to seek reference u/s 18(1).

7. In the instant case, respondents tacitly admit that along with Section 12(2) notice, copy of the award was not communicated. For the first time, copy of the award stated to have been communicated to the petitioner only on 18.7.2011. In fact petitioner disputes service of notice dated 31.5.2011 on said date, but served only on 18.7.2011. Seeking enhancement of compensation determined by the Land Acquisition Officer is a statutory right provided by the Act. It is valuable right. To exercise such a right, it is essential for the land looser to know the nature of the award. Thus, unless a person reads the award, he cannot effectively make an application for enhancement of compensation. It is also mandatory for the Land Acquisition Officer to serve the copy of the award. As held by the Supreme Court, the period for computation of time for submission of an application for reference u/s 18 of the Act starts from the date of service of the award and not from the date of service of notice u/s 12(2) if such notice does not accompany copy of the award.

8. It is clearly admitted by the respondent as evident from the response given by the competent authority to the application under Right to Information Act on 28.11.2012 and on 21.9.2013 that the copy of the award was served on the petitioner only on 18.7.2011 or later. Petitioner filed application for enhancement on 11.8.2011. In view of the same, the decision of the respondents in refusing to refer the case for enhancement of compensation u/s 18 on the ground that it was not submitted within the time prescribed under proviso to Section 18 is erroneous. Consequently, the 3rd respondent is directed to consider the application of the petitioner as submitted within the time prescribed u/s 18 of the Act and take appropriate further course of action as warranted by law within four weeks from the date of receipt of copy of this order. Accordingly, the writ petition is disposed of. No costs.

Consequently, miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.