

(1975) 12 DEL CK 0006
In the Delhi High Court
Case No : Civil Writ No. 720 of 1969

Fateh Singh

APPELLANT

Vs

Land Acquisition Collector and Others

RESPONDENT

Date of Decision : 09-12-1975

Acts Referred:

Citation : AIR 1976 Delhi 162 : (1976) 1 ILR Delhi 878

Hon'ble Judges : Prithvi Raj, J

Bench : Single Bench

Advocate : S.K. Bisaria, for the Appellant; Urmila Kapur and Kamlesh Bansal, for the Respondent

Judgement

1. Since common question of law is involved in these petitions, it would be convenient to dispose them of by a single judgment.

2. The relevant facts for the disposal of these writ petitions areas under. Land measuring 4826 Bighas 4 bids was situated in village Masoodpur was notified u/s 4 of the Land Acquisition Act, hereinafter referred to as the Act, vide notification dated 23-1-1965 for acquisition for a public purpose viz. for the planned development of Delhi. The aforesaid notification included land comprised in Khasra Nos. 267, 269, 275, 303 Min and 274/2 Min in all measuring 63 Bighas belonging to the petitioners. The petitioners filed objections u/s 5-A of the Act to their land being acquired. The appropriate authority after considering the objections, rejected the same and issued declaration dated 6-9-1966 u/s 6 of the Act for acquisition of the land of petitioners including other land. Notices under Sections 9 and 10 were issued to the petitioners. The Land Acquisition Collector after considering the claims of petitioners made and filed Award No. 225 dated 26-3-1969 offering compensation to the petitioners for their land, acquired under the award. The case of the petitioners is that they accepted the compensation offered to them under protest and being not satisfied with the amount of compensation, filed an application on the same day before the Collector stating that the compensation offered was less and that petitioners would prefer appeal/

revision/representation against the award in accordance with the law in a competent court stating that the petitioners received the compensation under protest keeping their right alive and that payment be made to them under protest. Petitioners subsequently filed an application u/s 18 of the Act before the Collector requiring him to refer the matter for determination of the Court. The Collector by his impugned order dated 24-5-1969 Annexure "C" withheld the reference application on the ground that the same was barred under IIInd proviso to Section 31(2) of the Act. The petitioners feeling aggrieved by the aforesaid order, challenge the same in these writ petitions alleging that they had accepted the compensation under protest through the cheque without waiving their right of filing reference petition u/s 18 of the Act.

3. The respondents controvert, the said assertion contending that the compensation amount had been accepted, by the petitioners without protest, waiving their right of filing reference petition u/s 18 of the Act.

4. Fateh Singh petitioner in para V of his petition alleges that he accepted the compensation under protest vide cheque No. OC15 632027 drawn on the State Bank of India Tis Hazari, Delhi on 28-3-69. In para 8 he avers that he having received, the compensation amount under protest, moved an application before the Collector on the same day, i.e. 28-3-69 stating that the acceptance of cheque was under protest. He further contends, that he deposited the cheque in the Bank after 4 days, i.e. on 1-4-69 and got the payment of cheque on 11-4-69. To the above averments, the Collector (Sh. G. Bahadur) in his reply affidavit contends that Fateh Singh petitioner accepted the cheque representing the amount of compensation due to him under the award, acknowledging the receipt of the cheque under his signatures in Form "CC" but he did not record any protest in the form at the time of receiving the cheque and that he moved application u/s 18 of the Act much later on 7-4-69.

5. Mohan Lal petitioner in writ petition 721/69 in para 7 has contended that he accepted the compensation under protest vide cheque No. OL/15 632037 drawn on the State Bank of India Tishazari Delhi on 7-4-69, further in para 8 he says that to show that he received the compensation amount under protest he moved an application before the Collector on the same day, further alleging in para 9 that he deposited the cheque in the Bank after 3 days, i.e. on 9-4-69 and got the payment on 10-4-69. The above said averments were controverted by the Collector (Sh. G. Bahadur) in his reply affidavit, alleging that petitioner received the cheque on 7-4-69 denying the assertion that petitioner received the cheque under protest. The Collector in his reply asserts that on the other hand petitioner moved an application for payment of the compensation money to him on 7-4-69 without mentioning anything regarding his request to receive the compensation amount under protest. The Collector has further averred that he accepted the said application of the petitioner and issued the cheque to him, receipt whereof petitioner acknowledged in form "CC" without any protest. He categorically denied that petitioner made application of protest on 7-4 -69 but made it on

16-4-69. To this specific averment that petitioner did not make any application on 7-4-69 stating that he was taking the amount awarded under protest but that he made the said application on 16-4-69, there is no traverse. Petitioner obviously appears to have shied away from denying the categorical assertion of the Collector that he made the, application on 16-4-69. If what is stated by the Collector is not correct, the petitioner would not have remained silent but would have controverted the allegation by filing a rejoinder affidavit.

6. The case of Dev Raj petitioner in C. W. No. 722/69 as stated in para 7 of the petition is that he received the

compensation under protest vide cheque No, CC/15 632038 drawn on the State Bank of India, Tishazari Delhi on 7-4-69. In para 8 of the petition he alleges that he received the compensation amount under protest and moved an application before the Collector to the said effect on the same day and that he deposited the cheque in the Bank after one day, i.e. on 8-4-69 getting the payment on 10-4-69. The Collector controverting the aforesaid allegations in para 5 of his counter had contended that petitioner Dev Raj received the cheque on 7-4-69 but denied that he received the same under protest, alleging that on the other hand Dev Raj petitioner had moved an application on 7-4-69 for payment of the compensation amount to him without making any mention regarding the receiving of compensation under protest. The Collector further says that the said application was accepted and the cheque aforementioned was issued to petitioner which he accepted by signing in Form "CC" without any protest. The Collector further stated in para 6 of his affidavit that Dev Raj petitioner did not make any application on 7-4-69 stating that he had received the compensation amount under protest but that he made application on 16-4-69. To this specific averment that petitioner did not make any application on 7-4-69 stating that he was taking the amount awarded to him under protest but that he made the said application on 16-4-69, there is no traverse. Petitioner Dev Raj too appears to have shied away from denying the categorical assertion of the Collector that he made the application on 16-4-69. If what is stated by the Collector is not correct, the petitioner would not have remained silent but would have controverted the allegations by filing as rejoinder affidavit.

7. The objections of Mohan Lal (C. W. No. 721/69) and Dev Raj (C. W. No. 722/69) accordingly on facts are distinguishable from the case of Fateh Singh (in C. S. No. 720/69). Mohan Lal and Dev Raj petitioners by filing a rejoinder affidavit having made an application that the amount of compensation assessed in respect of their share in the land be paid to them without registering any protest, their request was accepted and cheque for the requisite amount in favor of each of them was issued which they accepted on 7-4-69, without any protest in Form "CC". On their averments, Mohan Lal and Dev Raj both received the amount of the cheques on 10-4-69. For the first time they made an application to protest on 16-4-69 as stated by the Collector to which there is no traverse. It is only now that they aver that they had received the amount of compensation

under protest but it was too late in the day to take such stand. Having accepted the cheque and realised the payment of the same on 10-4-69 without any protest, their reference applications u/s 18 of the Act were clearly barred by virtue of Ii nd proviso to Section 31(2) of the Act and their effort to put in an application on 16-4-69 that they had received the amount of compensation under protest, was of no avail to them. In this view of the matter, C. Ws. Nos. 721 and 722 of 1969, are dismissed, leaving the parties to bear their own costs.

8. This brings me to the case of Fateh Singh petitioner in C. W. No. 720/ 69. On behalf of this petitioner, it was submitted that Section 31(1) of the Act does not prescribe the manner of lodging the protest and that the "CC" form does not contain any column where the petitioner could state that he was receiving the amount under protest. Petitioner accordingly on 28-3-69, the day when he received the cheque, moved an application Annexure "B" stating therein that the amount of compensation awarded was less and that he would prefer appeal/ revision/representation against the award and that he had received the compensation under protest. The said application having been filed on the same day, it was submitted, was borne out from the impugned order Annexure "A" of the Collector. In the circumstances, it was strenuously contended it could not be said, that the petitioner had waived his right to file reference application u/s 18 of the Act or that he had not received the compensation under protest. The contention which appears to be weighty on first blush, cannot be sustained on a closer scrutiny. There can be no doubt that the protest has got to be made to the Collector, who tenders payment of compensation at the time when the Collector so tenders the payment. In the instant case, the amount of the award was tendered to the petitioner by cheque which the petitioner accepted without a protest. It was subsequent thereto in the day that he filed application Annexure "B"; the amount of the compensation having already been received by him without protest by cheque, certainly amounted to having accepted the award and thereby disentitling himself to apply for the reference. Provisos I and Ii to subsection (2) of Section 31 of the Act contemplate that only a person interested in the land acquired shall be entitled to make any application u/s 18 of the Act who had received the payment under protest as to the sufficiency of the amount and that no person who has received the amount otherwise than under protest shall be entitled to make such an application. Shri Basaria however, submitted that the payment of the amount of the award having not been paid in cash but by a cheque, would not amount to receipt of the payment. The petitioner cannot be deemed to have received the payment, goes the argument, when the same was encased on 11-4-69. Petitioner having filed application Annexure "B" immediately after receiving the cheque on the same day stating that he received the cheque registering his protest qua the sufficiency of the amount awarded, it was urged would not be deemed to have waived his right to file reference petition, more so the amount of compensation was not paid to the petitioner in cash on that day as in fact the amount was received in cash by the petitioner on 11-4-69 when the cheque was encased from the Bank. I am unable to accept this

contention. A careful reading of Section 31(i) and (ii) shows that the protest ought to be made prior to the receipt of the amount. In the instant case, the petitioner at the time of receiving the cheque, did not state that he received it under protest. The question accordingly would be whether the receipt of the cheque would amount to receipt of the compensation amount or not?

9. Reference here may be made to a Division Bench decision of the Bombay High Court in *Kirloskar Bros. Ltd. Vs. Commissioner of Income Tax, Bombay*, . A contention was raised in that case that a cheque does not represent money's worth and it is only when the cheque is converted into money by its being encased by the Bank that it could be said that the income was received by the assessee, liable to tax. Dealing with the contention, Chagla, C. J., speaking for the Court on an exhaustive examination of the case law on the subject observed that the test of an article being money worth must be that the article is capable immediately of being realised into money and that particular quality is possessed by all negotiable instruments. It was further stated that a cheque is looked upon as a payment if a creditor accepts a cheque in place of the country's currency. It was further observed that it was immaterial when a cheque was cashed; what is material is when the cheque was given, and the payment is made when the cheque was given and not when the cheque was cashed. The position in law was stated by the Court, in the following words:-

"When a cheque is accepted a creditor as a conditional payment, the precedence by the creditor of accepting a cheque rather than cash operates as a payment to the creditor when the cheque is given, although the liability of the debtor may revive in the event of the cheque not being ultimately cashed." The cheque being a negotiable instrument unless dishonored is a payment. Petitioner could certainly have encased the cheque immediately on its receipt and taken cash against the cheque from any party without having recourse to the Bank for having the cheque encashed.

10. The view taken by a Division Bench of the Bombay High Court in *Kirloskar Bros. Ltd. v. Commr of Income tax, Bombay* was followed by a Division Bench of the Madras High Court in *Mohideen Bi and Others Vs. Khatoon Bi and Others*, , stating that the Bombay High Court summed up the law on the subject correctly and that there would be no obstacle in the way of receiving payment by cheque as quite the same thing as cash. Reference here may also be made to case, *Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah*, , wherein it was observed that it is the receipt of the money that is to be looked into for the purpose of seeing whether the payment was received under protest or not. In the instant case, as noted above, which also is the case of the petitioner, he did not note on the "CC". Form at the time of receiving the cheque that he was receiving the same under protest. Reference may also be made here to case, *S.M.A. Somasundaram Mudaliar Vs. District Collector Chittoor and Another*, . In that case, the petitioner's I and was acquired under the Act. The land acquisition officer awarded compensation to the petitioner. The petitioner received the bill

drawn on the treasury for the amount payable to him without protest in the day the award was announced. Later on in the evening, the petitioner appeared before the Land Acquisition Officer and filed a petition disputing the amount of compensation awarded to him and requiring the matter to be referred for determination by the Court. The Land Acquisition Officer rejected the application under the proviso to Section 31(2) of the Act holding that the petitioner having received the bill amount without protest, was not entitled to make an application for referring the case to the Court. The contention of the petitioner that the receipt of bill did not amount to receiving the amount was rejected holding that the receipt of bill representing the amount payable was tantamount to receiving the amount further observing that the protest must necessarily be made to the land acquisition officer who tenders payment of compensation and by necessary implication at the time when he so tenders the payment.

11. The learned counsel for the petitioner however placed strong reliance upon a D. B. decision of Mysore High Court in *K. Krishna Rao v. Land Acquisition Officer and Revenue Divisional Officer, Coondapur, South Kanara*, Air 1960 Kar 264. In that case because of the compensation awarded to the petitioner for his land acquired under the Act, intimation was given to him stating that Code Form "C" cheque for the compensation amount due to him would be sent to him through the Tehsildar, Mangalore within three days from the date of receipt of the cheque, failing which compensation amount was, to be transferred to "Revenue Deposit" earning no interest thereon. After intimation was given, "C" Form cheque was sent to the petitioner. Petitioner however, did not receive payment from the Treasury Office, and made an application to the Land Acquisition Officer to refer case u/s 18 of the Act to the court. The application was refused. It was contended that the receipt of the cheque without protest amounted to receiving the amount of the compensation, without protest. Negating the contention, the Bench observed that the cheque in question merely amounted to an authority issued upon the Treasury Office to pay the amount of compensation to the petitioner and could be nothing more than that. It appears from the judgment that no case law was brought to the notice of the Bench. The judgment proceeded on first impressions. The Bench did not consider the question that the cheque being a negotiable instrument could be encased and was capable of immediately being realised into money. With respects, I express my inability to accept the view taken by the Division Bench of Mysore High Court in *K. Krishna Rao v. Land Acquisition Officer and Revenue Divisional Officer, Coondapur South Kanara*, (supra) in view of the well settled position of law laid down by a Division Bench of the Bombay High Court in *Kirloskar's case* (supra).

12. Reliance was also placed upon a decision of V. S. Deshpande, J. in *Tara Chand Vs. The Land Acquisition Collector, (Delhi Shahdara), Delhi*, , No help can be drawn by the petitioner from the said case as prior to the receipt of the money, petitioner had filed in that case 2 applications expressly stating that the petitioner was accepting the payment of compensation under protest at the same time wanting the case to be referred to civil court for enhancement of the

compensation, which is not the position in the instant case. On the contrary, if the instant case petitioner accepted the amount of compensation without protest and it was subsequently that he filed application for reference.

13. In view of my discussion above, writ petition No. 720 of 1969, also fails and is dismissed, leaving the parties in the circumstances of the case, to bear their respective costs.

14. Petition dismissed.