

(2002) 02 AHC CK 0092
In the Allahabad High Court
Case No : C.M.W.P. No. 16930 of 1998

Gauri Shanker

APPELLANT

Vs

District Judge, Maharajganj and Others

RESPONDENT

Date of Decision : 13-02-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2002) 2 AWC 988(2) : (2002) 2 UPLBEC 1135

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : P.K. Mishra, Bajrangi Mishra and Adeel Ahamad Khan, for the Appellant;

Final Decision : Allowed

Judgement

Anjani Kumar, J.—The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner with the following reliefs :

"(i) to issue a writ, order or direction in the nature of certiorari quashing the orders passed by the respondent Nos. 1 and 4 dated 18.3.1998 and 6.4.1988, respectively ;

(ii) to Issue a writ, order or direction in the nature of mandamus commanding the respondent Nos. 1 to 5 to make reference of petitioner's claim u/s 18 of Land Acquisition Act ;

(iii) to issue any other suitable writ, order or direction, as this Hon''ble Court may deem fit and proper to meet the ends of justice ;

(iv) to award cost of the writ petition to the petitioner."

2. The facts leading to the filing of present writ petition are that in the year 1983, petitioner's land as well as the lands belonging to other persons were acquired by the State Government for the purposes of construction of the office of Sub-Divisional Officer, Maharajganj. The Land Acquisition Officer/District

Magistrate, Gorakhpur, has given an award on 16.4.1985 by which the amount pertaining to the said land of petitioner was determined to the extent of Rs. 11,426.44. It is submitted by petitioner's counsel that petitioner has received a notice on 8.5.1985 pertaining to the aforesaid compensation award and immediately on 9.5.1985, he filed his objection as contemplated u/s 18 of the Land Acquisition Act, which was served in the office of respondent No. 4 on the same day. It is stated that the said objection of the petitioner has not been decided, nor any reference has been made by the Collector. Being aggrieved with the same, petitioner filed writ petition numbered as Writ Petition No. 20511 of 1989 before this Court, in which this Court while disposing of the said writ petition has passed the following order, the operative portion thereof reads as follows :

"In view of the above, we direct the Collector, Gorakhpur/ Land Acquisition Officer to consider the objection, if any, filed by the petitioner on 9.5.1985 (Annexure-1 to the supplementary-affidavit) filed today, a receipt thereof has been filed as Annexure-1 to the supplementary-affidavit. In case, any such objection has been filed, the same will be dealt with in accordance with law within a period of two months from the date of receipt of a certified copy of this order.

With these observations, the writ petition is disposed of."

3. In spite of the aforesaid mandamus being communicated to the respondents, it is alleged by the petitioner that his application u/s 18 has not been disposed of. Thereafter petitioner filed another writ petition numbered as Writ Petition No. 28100 of 1995, in which this Court vide its order dated passed the following final order, the operative portion thereof reads as follows :

"Having heard learned counsel for the parties, we. In the Interest of justice, dispose of this writ petition with this direction that if the aforementioned application is still pending, then the Land Acquisition Officer respondent No. 2 shall dispose It of. We also clarify that this order shall not be construed to mean that we are expressing any merit in the aforementioned application, which is required to be adjudicated by the respondent No. 2. We also clarify that if there is any other staying further proceedings in that event our order shall not be given effect to and that if the records have not been despatched to District MaharaJganJ, after bifurcation of district Gorakhpur, in that event the records will be sent to the corresponding Land Acquisition Officer, for doing the needful in accordance with law."

4. In spite of this order again being communicated to the respondents, it is alleged by the petitioner that since his application u/s 18 of the Act has not been decided, nor any reference has been made in this regard, he, therefore, filed fresh application on 28.1.1998 as stated in the impugned order. By the Impugned order dated 18.3.1998, the said application dated 28.1.1998 has been rejected, though the same was supported by an affidavit along with an

application u/s 5 of the Limitation Act. The petitioner has stated that for the first time, the information of rejection of his objection dated 9.5.1985 was communicated to the petitioner on 3.12.1997. Thereafter he was searching out the papers from 4.12.1997 to 4.1.1998 and when the papers were not traced in the office, he filed an application on 5.1.1998, pursuance whereof the file was made available for Inspection on 23.1.1998. The petitioner has applied for the copy of the said documents on the same day, which were made available to him on 24.1.1998. Since 25.1.1998 was Sunday and 26.1.1998 was a holiday on account of Republic Day, he came on 27.1.1998 and filed a reference on 28.1.1998. The application filed by the petitioner has been rejected by the District Judge vide its order dated 18.3.1998 relying upon the decision in the case of Kako Bai Vs. The Land Acquisition Collector, Hissar and Others, which says that where the applicant knew it that if the Collector is not sending the reference to the District Court as contemplated u/s 18 of the Act, he should have presented the petition before this Court or before Hon'ble High Court but the same has not been done by the petitioner, nor he has taken any steps before the reference becomes barred by time. In this view of the matter, since now the matter has been more than 13 years old, the same cannot now be accepted and reference be made. The petitioner has given in detail with meticulous accuracy of the dates and a perusal thereof makes it clear that the petitioner cannot be said to be slept over in pursuing his application or reference and in fact it is admitted by the respondents that against the award dated 8.5.1985, petitioner's objection was filed on 9.5.1985. In this view of the matter, it cannot be said that the application u/s 18 of the Act was filed beyond time. The petitioner has filed two writ petitions, as stated above, first in the year 1989 and second in the year 1995 with the prayer that his application u/s 18 of the Act may be disposed of. However, in the present impugned order it has been stated that the objection of the petitioner has been disposed of much earlier than the filing of the first writ petition before this Court. The order dated 6.4.1988 rejecting the objection filed by the petitioner on 9.5.1985 has been annexed as Annexure-2 to the writ petition, a perusal whereof would clearly demonstrate that the same cannot be said to be an order on merits as the respondents have refused to refer the matter to the District Judge concerned while dealing with the objection raised by the petitioner. In this view of the matter, in my opinion, the petitioner has made out a case for getting his objection u/s 18 of the Act decided on merits by the respondent/Collector, which has not been done in spite of the long history stated hereinbefore.

5. Apart from the reasons stated above, the order dated 18.3.1998 also suffers from the manifest error of law, inasmuch as the petitioner having satisfactorily explained the reasons in the second application could have been referred or in case the Collector wanted to refuse it, he should have dealt with it in accordance with law in the light of the objection raised by the petitioner. Even the order dated 6.4.1988 is a laconic order which has been passed without application of mind.

6. In this view of the matter, the writ petition succeeds and is allowed. The orders dated 18.3.1998 and 6.4.1988. Annexures-1 and 2 to the writ petition, are hereby quashed. The Collector. Maharajganj is directed to dispose of the petitioner's objection dated 9.5.1985 u/s 18 of the Land Acquisition Act on merits by a reasoned order after affording opportunity to the petitioner within a period of three months from the date of presentation of a certified copy of this order before him. However, there will be no order as to costs.