
(1975) 07 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ No's. 107 and 200 of 1972

Gian Chand Dhawan and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-07-1975

Acts Referred:

Citation : AIR 1976 Delhi 83

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : S.N. Chopra and R.N. Tikku, for the Appellant; R.N. Dixit, for the Respondent

Judgement

1. These two Petitions under Articles 226 and 227 of the Constitution of India assail an order of the Land Acquisition. Collector declining to make a reference u/s 18 of the land Acquisition Act, 1894, hereinafter to be referred as "the Act" on the ground that the applications of the petitioners seeking a reference were barred by the Provisions contained in the second proviso to Section 31(2) of the Act.

2. The facts leading to the two Petitions are identical although they arise out of the claim for a reference for compensation in respect of two different parcels of land. The land in dispute belonging to the petitioners was acquired under the Provisions of the Act pursuant to which the Land Acquisition Collector made a common Award, being No. 1928, on February 17, 1966. Apparently no notice of the aforesaid Award was sent to either of the Petitioners as required by sub-section (2) of Section 12 of the Act. The Petitioners in both the Petitions came to know of the Award on October 9, 1967 and on the same day, the Petitioners made applications to the Land Acquisition Collector for payment of compensation under protest. It is not in dispute that in all the applications it was mentioned that the Payment of compensation was being sought under protest on the ground that the Petitioners were entitled to higher compensation. These applications are Annexures "B" and "C" in one Petition and "B", "C" and "D" in the other.

Pursuant to the aforesaid applications, the petitioners were Paid and received compensation on or about May 14, 1968. It is a common case of the parties that the receipts executed by the petitioners did not mention that the payment was being received under Protest. On February 9, 1969 the petitioners sought reference of the matter u/s 18(1) of the Act for determination. The applications were turned down by the Land Acquisition Collector by the order now sought to be impugned, on the ground that in as much as the receipts executed by the petitioners. While receiving the amount of compensation, did not mention that the payment was being accepted under protest, the Petitioners would be deemed to have waived their right to seek a reference by virtue of the provisions contained in the second Proviso to sub-section (2) of Section 31 of the Act thereby disentitling the petitioners to the reference. The Land Acquisition Collector sought support for this conclusion from a decision of the Calcutta High Court Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah, .

3. Shri S. N. Chopra who appears for the petitioners in both the petitions, contends that in determining if the petitioners had waived their right to seek an enhancement of compensation and had become disentitled to seek a reference by virtue of the second Proviso to sub-section (2) of Section 31, the Land Acquisition Collector ignored the applications made by the petitioners on October 9, 1967 in which the petitioners specifically reserved their right to seek an enhancement of the compensation and made it clear that they were asking for Payment of compensation offered by the Award under protest. Learned counsel further contends that the second proviso to Section 31(2) merely incorporates a principle of waiver and that waiver was a matter of intention of the parties and that in determining as to what the intention of the parties at the time of receiving payment was the conduct of the party both at the- time the amount is received as indeed prior thereto ought to be considered and that it the receipt of payment by the petitioners was considered in the context of the applications by which payment was sought. There was no room for doubt that the petitioners had sought and were receiving Payment under protest. Learned counsel further contends that the petitioners having lodged their protest by the said applications, waiver could have been inferred from the act of receipt of Payment only if there was any positive indication that the petitioners had given up the protest or had otherwise waived their right to seek a reference. Learned counsel sought to distinguish the decision of the Calcutta High Court which was relied upon by the Land Acquisition Collector and instead relied on Tara Chand Vs. The Land Acquisition Collector, (Delhi Shahdara), Delhi, ; Md. Golam Ali Mina and Another Vs. Land Acquisition Collector and Another, and a recent unreported judgment of Rangarajan. J., of this Court in C. W. 145-D/64, Rup Ram etc. v. The Land Acquisition Collector decided on March 30, 1971. Learned counsel also drew my attention to some of the other decisions in which the question had been considered notably Mrs. Thomas V. the Collector of Madras. Air 1958 Mad 186: Jaswant Singh Vs. State of Punjab, ; Smt. Kailash Devi v. State of Haryana. Air 1971 Pun 353 and K. Krishna Rao v. Land Acquisition Officer and Revenue

Divisional Officer. Coondapur, South Kanara. Air 1960 Kar 264 and argued that the aforesaid decisions were distinguishable and in any event in so far as they appeared to have taken a contrary view, did not appear to, be good law.

4. Shri Dixit, who appears for the respondents in both the petitions, on the other hand, raised two preliminary objections besides justifying the impugned order on the ground that unless it was specifically mentioned in the receipts or otherwise at the time of receipt of payment that the Payment was being received under protest, the claimants would be deemed to have waived the right to seek a reference in terms of second proviso to sub-section (2) of Section 31. Learned counsel strongly relied on the decision of the Calcutta High Court in Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah, , the decision of Mysore High Court in K. Krishna Rao (supra) and the two decisions of the Punjab High Court referred to above. By way of Preliminary objections, learned counsel contended that in the first instance. The petition under Articles 226 and 227 of the Constitution of India was not maintainable by virtue of the fact that u/s 18(2) of the Act, the order could be challenged by a revision and in the second instance, that the application seeking a reference was in any event barred by time inasmuch as the Award was made on February 17, 1966 and the applications were made on October 9, 1967 more than six months after the date of the Award.

5. As for the preliminary objections, after hearing learned counsel for the Parties. It appears to me that none of these is sustainable. It is true that under sub-section (2) of Section 18 any Party aggrieved by an order refusing to make a reference is entitled to assail it by a revision u/s 115 of the Code of Civil Procedure. But I see no bar in treating the present petitions, in which the Petitioners have specifically invoked Article 227 of the Constitution of India as well, either as a revision u/s 115 of the CPC or to invoke this Court's power under Article 227. This objection is, Therefore, overruled.

6. On the question of limitation, learned counsel for the respondent is correct when he says that in terms of Proviso to Section 18 the applications seeking a reference must be made in case the person making it was present or represented before the Collector within six weeks from the date of the Collector's Award or in other cases within six weeks of the receipt of the notice from the Collector u/s 12 or within six months from the date of the award whichever period shall first expire. It is not in dispute that none of the petitioners was present at the time the Award was made because the Award makes no mention of it. It is also not in dispute that no notice was issued by the Collector to any of the Petitioners u/s 12(2) of the Act. It is also not in dispute that the applications were made long after the expiry of six months from the date of the Collector's Award. Shri Chopra however contends that the period of six months will have to be computed, in case where the petitioners were not aware of the Award, from the date on which the petitioners came to know of the Award. There is nothing on the record to indicate that the petitioners were aware of the Award before

October 9, 1967 when the various applications for Payment were made. Shri Chopra, however, contends that the last portion of clause (b) of proviso to Section 18(2) must be reasonably construed so as to mean that the period of six months would commence, in case there was no notice of the making of the Award from the date on which the petitioners came to know of the making of the Award and seeks support from two decisions of the Supreme Court in the case of State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, and Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, . Shri Dixit, however, contends that in as much as there was Public notice both under Sections 4 and 6 of the Act besides the two notifications and the petitioners had throughout been aware of the proceedings, it should be inferred that they had knowledge of the Award even earlier than the date on which they claim to have come to know of it.

7. This contention of Shri Chopra must prevail. In Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, , the Supreme Court was concerned with the construction of clause (b) of proviso to, Section 18 and it was held that where the rights of the person were affected by any order and Period is Prescribed for the enforcement of the remedy by the person aggrieved against the order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. That being so, the period of six months should commence either from the actual or constructive knowledge of the making of the Award. Mere knowledge of the pendency of proceedings for the acquisition of the land or of the notification under Sections 4 and 6 of the Act or any public notice with regard to acquisition would not constitute either actual or constructive notice of the making of the Award. The proceedings for the acquisition are distinct from the knowledge as to the actual Award and the date on which it is made. This preliminary objection is accordingly overruled.

8. That leaves for consideration the question as to when could a Party be said to have waived the right to seek enhancement u/s 18 of the Act by virtue of the provisions contained in second proviso to sub-section (2) of Section 31 of the Act.

9. The second Proviso to sub-section (2) of Section 31 provides that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18 and incorporates the well-known Principle that the Party would not be entitled to take advantage to enforce a right if by his conduct he has waived the right.

10. There has been some controversy as to the true meaning and scope of the Proviso Particularly the stage at which and the manner in which protest should be recorded by the claimant so as to avoid the mischief of the proviso and Preserve the right to seek enhancement under S. 18. In Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah, , a single Judge of that Court held that an application for a reference u/s 18 was not the proper document wherein to record a Protest under which the compensation amount is to be received and

that the Protest ought to be made in the application for receiving the disputed amount of compensation and in the receipt granted showing that the disputed amount of compensation money was accepted under Protest. In *Mrs. S. Thomas v. The Collector of Madras*, Air 1958 Mad 186, it was held that when the owner received the compensation awarded without protest, it must be taken that he accepted the Award. In this case, the protest was not recorded at all and there was no indication that the amount was being either sought or accepted under protest. In *Md. Golam Ali Mina and Another Vs. Land Acquisition Collector and Another*, , the application seeking Payment recorded the protest but the endorsement on the reverse by which the payment was received did not contain any word of Protest. It was held that the receipts must be related to the applications and must be linked with it and it could not be held to be the receipt without protest so as to disentitle the applicants to apply for a reference u/s 18 of the Act. The observations made by the Calcutta High Court. In the earlier case reported as *Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah*, to the effect that the protest should be endorsed on the receipt itself was held to be an obiter. The aforesaid case was also held to be distinguishable on its facts. Their Lordships, however, further held that although, their Lordships were not concerned with the earlier case but hastened to add that

"if it was intended to hold, in that case that, unless the protest actually appears in the body of the receipt, the receipt must be taken to be a receipt without protest. We are with respect, unable to agree with the said decision, as such statement of the law would be too wide for our acceptance."

The later Calcutta decision is by a Division Bench of that court while the earlier one by a learned single Judge of that court. To the extent, Therefore, of the inconsistency in the two decisions, the earlier decision would appear to me to stand overruled. In *K. Krishna Rao v. Land Acquisition Officer and Revenue Divisional Officer. Coondapur, South Kanara*, Air 1960 Kar 264, the petitioner made an application for a reference after having accepted the voucher but before getting the Payment, and it was held that the receipt of a voucher did not amount to a "receipt" of compensation within the meaning of the proviso and that, the application having been made before the actual payment, the claimant was entitled to seek a reference u/s 18 and had not waived his right to seek enhancement of compensation. In *Smt. Kailash Devi v. State of Haryana*. AIR 1971 Pun 353 , a learned single Judge of that Court was concerned with a situation in which the claimant accepted the compensation without protest even though he had earlier filed an application u/s 18 Protesting against the Award and seeking enhancement. It was held that a Protest against the award of compensation must be recorded in the application, if any, for the amount as well as in the receipt for the sum and that if the application u/s 18 contained a protest but subsequently the amount was accepted without any Protest, that application will become barred by proviso 2 to Section 31(2) of the Act. The learned Judge relied on *Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah*, but unfortunately the later decision of the Calcutta High Court in

which the rather widely worded observations of the earlier decision were specifically dissented from was not brought to the notice of the learned Judge. In a later decision of the Punjab High Court reported as *Jaswant Singh v. State of Punjab*- Aur 1972 Pun 31. Another learned single Judge of that court was concerned with a case in which an application for reference was made after the claimant had accepted the compensation without protest. In that case no protest was recorded at any stage whatever. The learned Judge rightly distinguished with respect the decision of the Mysore High Court referred to above. In *Tara Chand Vs. The Land Acquisition Collector, (Delhi Shahdara), Delhi, , Deshpande. J.,* of this court was concerned with a case in which an application for reference for enhancement had been made prior to the acceptance of the amount and it was held that the application having been made by a date when the claimant had not received compensation, subsequent receipt of compensation would not constitute any waiver so as to disentitle the claimant to take advantage of the application. The learned Judge noticed all the earlier decisions referred to above except the decisions of the Punjab High Court. It was further observed that all that was required to be decided in such a case was whether a person had waived his right to seek a reference u/s 18 expressly or impliedly by such acceptance considering the facts of the case. The learned Judge followed *Md. Golam Ali Mina and Another Vs. Land Acquisition Collector and Another*, and distinguished the Madras case and the earlier judgment of the Calcutta High Court in *Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah, .* More recently, *Rangarajan, J.,* of this Court was also concerned with a situation in the case of *Rut Ram etc. v. The Land Acquisition Collector, C. W. 145-D/64*, decided on 30-3-1971 (Delhi) in which the amount was received subsequent to the application seeking a reference and it was held that it could not be said that in all cases where payment was received without protest after an application seeking a reference had been made. The claimant had waived the right or was debarred from prosecuting the application already filed by him.

11. As has been pointed out above, the question that must be, determined in such cases is as to the intention with which the Party receives the amount of compensation and this must be decided having regard to the conduct of the party not only at the time of actual payment but the conduct antecedent to it and where the claimant has either made an application for enhancement on the ground that the compensation awarded is insufficient or as in the present case, seeks payment by a formal application in which he records his willingness to accept the compensation under protest reserving his right to seek enhancement, the mere omission to repeat the word of protest in the receipt or at the time payment of compensation is in fact received would not disentitle the claimant either to prosecute the application for enhancement, if he has already made one, or to make one subsequent thereto. The receipt in such a case could not be divorced from the application to seek enhanced compensation which may immediately precede the receipt or the application seeking Payment pursuant to which the Payment is made. Both have to be taken into account in determining if

by accepting the payment the right to seek enhancement was being waived or not. Once the claimant has lodged his protest either by an application seeking a reference or in the application asking for payment, there must be some positive act on the part of the claimant subsequent to it so as to infer that the claimant had changed his mind or had waived the right of redress. Mere act of unconditional payment cannot by itself be considered such a positive act. The payment in such cases would ordinarily be subject to the protest already recorded and without prejudice to it. The earlier decision of the Calcutta High Court would be of no avail to the respondents because in view of the observations made in the later Division Bench judgment of that Court, that decision would appear to me to stand overruled. The observations made by the Punjab High Court in Air 1971 Punj 353 appear to me to have been rather widely worded as in the earlier Calcutta case and do not appear to me with respect to represent the true legal position. The other decision referred to above by and large support the view that I have taken of the matter.

12. I have, Therefore, no hesitation in holding that by virtue of the protest recorded by the Petitioners in their applications seeking payment, the Petitioners had specifically reserved their right to seek enhancement and had not waived their right notwithstanding the unqualified language in which the receipt was executed.

13. In the result, the Petitions succeed, the impugned orders are quashed and I direct that the Land Acquisition Collector will deal with the applications of the Petitioners u/s 18(1) of the Act in accordance with law after notice to the Petitioners.

14. The Petitioners would also have their costs. Counsel's fee in each petition is fixed at Rs. 350/ -

15. Petitions allowed.