
(2005) 08 GAU CK 0072
In the Gauhati High Court
Case No : Writ Petition (C) No. 448 of 2004

Girindra Chandra Banik

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

Date of Decision : 31-08-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 18, 18(1), 18(2), 30
Limitation Act, 1963 — Section 5

Citation : (2005) GLT 376 Supp

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Advocate : D.C. Roy, for the Appellant; U.B. Saha and B. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—By this writ petition the Petitioner has prayed for directing the Respondents, more particularly the Respondent No. 2, the Land Acquisition Collector, West Tripura, Agartala to make reference pursuant to the application filed u/s 18 of the Land Acquisition Act.

2. A land acquisition proceeding was initiated by the Land Acquisition Collector by issuing a notification u/s 4(1) of the Land Acquisition Act on 19.11.1997 in L.A. case No. 10/SS/97 acquiring land measuring 1.83 acres in Khatian No. 2388, Plot No. 8488 of Badharghat Mouza in the State of Tripura. Thereafter, Section 6 declaration was issued and an award was passed by the L.A. Collector on 9.5.1998. The notice u/s 12(2) of the L.A. Act was thereafter served on the Petitioner and others on 21.5.1998. Since there was a dispute regarding appointment of the amount of compensation so awarded by the Collector, the said dispute was referred to the learned L.A. Judge u/s 30 of the L.A. Act which was registered as Misc. (L.A.) No. 4 of 98 before the learned L.A. Judge, West Tripura, Agartala and the Petitioner receive the notice in the said proceeding, u/s 30 of the L.A. Act on 19.1.1999. The learned L.A. Judge vide order dated

1.4.1999 decided the said proceeding u/s 30 of the L.A. Act by apportioning the amount of compensation to the effect that the present writ Petitioner Girindra Chandra Bank shall get an amount of Rs. 1,60,000/-. The Petitioner, thereafter on 9.4.1999 filed an application u/s 18 of the L.A. Act before the L.A. Collector claiming that the market value has not been determined by the Collector properly and hence the dispute regarding determination of market value of the land should be referred to the learned L.A. Judge in terms of the provisions contained in u/s 18 of the L.A. Act. Since the prayer has not been considered by the Land Acquisition Collector, the Petitioner filed the present writ petition for directing the L.A. Collector to refer the matter to the learned L.A. Judge u/s 18 of the L.A. Act. However, during pendency of the writ petition, the Collector vide order dated 16.4.2005 rejected the application filed by the writ Petitioner praying for reference u/s 18 of the L.A. Act on the ground that the same is barred by time, in view of the provisions contained in Sub-section (2) of Section 18 of the L.A. Act.

3. I have heard Mr. D.C. Roy, learned Counsel to the Petitioner and Mr. U.B. Saha, learned Sr. G.A. assisted by Mr. B. Dutta, learned Advocate for the Respondents.

4. In the instant case, the date of issuance of notification u/s 4 of the L.A. Act, the fact of issuance of the declaration u/s 6 of the said Act and the date of passing of the award being 9.5.1998 by the L.A. Collector are not in dispute. It is also not in dispute that the Petitioner filed an application u/s 18 of the L.A. Act before the L.A. Collector on 9.4.1999. What has been disputed by the writ Petitioner is the date on which the notice u/s 12(2) of the L.A. Act was served on him, which according to the Respondents, was served on 21.5.1998.

5. The writ Petitioner by filing an additional affidavit, pursuant to the order dated 11.8.2005, has made a categorical statement to the effect that since there was a dispute regarding the apportionment of the award between him and two other persons, the matter was referred by L.A. Collector to the learned L.A. Judge u/s 30 of the L.A. Act, which was registered as Misc. (L.A.) 4 of 98 in the Court of learned L.A. Judge and in the said proceeding the Petitioner received a notice dated 30.12.1998 on 19.1.1999. The said proceeding u/s 30 was disposed of by the learned L.A. Judge on 1.4.1998. Therefore, it is evident that the writ Petitioner was at least aware of the award dated 9.5.1998 passed by the L.A. Collector on 19.1.1999 and even if 19.1.1999 is taken as the date of knowledge of passing of the award by the Collector, the application u/s 18 of the L.A. Act ought to have been filed within six weeks from that date, even assuming that no notice u/s 12(2) of the L.A. Act was served on the Petitioner. But the Petitioner has admittedly filed the application u/s 18 of the L.A. Act on 9.4.1999 i.e. much beyond the period of six weeks as stipulated in Clause (b) of Sub-section (2) of Section 18 of the L.A. Act.

6. Clause (b) of Sub-section (2) of Section 18 of the L.A. Act provides that the application u/s 18(1) of the L.A. Act has to be filed by any person interested,

who has not accepted the award, either within six weeks from the date of receipt of the notice from the Collector u/s 12(2) of the L.A. Act or within six months from the date of the Collector's award, whichever period shall first expire. In the instant case even if no notice u/s 12(2) has been served on the Petitioner, the application u/s 18(1) of the L.A. Act has to be filed within six months from the date of the award passed by the L.A. Collector. In the instant case, as observed above, the L.A. Collector passed the award on 9.5.1998 and, therefore, the application u/s 18(1) of the L.A. Act has to be filed 8.11.1998, in the case notice u/s 12(2) of the L.A. Act has not been served upon the Petitioner. The Petitioner's case being that no notice was served as required u/s 12(2) of the Act, he was required to file the application u/s 18(1) of the L.A. Act within aforesaid date i.e. 8.11.1999. But in the instant case, the application u/s 18(1) of the L.A. Act admittedly filed on 9.4.1998. Hence, the application filed by the Petitioner is beyond the time prescribed by Clause (b) of Sub-section (2) of Section 18 of the L.A. Act. The Apex Court in *Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others*, as well as in *Poshetty and Others Vs. State of A.P.*, has held that the Collector has no power to condone the delay, as application u/s 5 of the Limitation Act is not applicable and failure on the part of any interested person to file an application within the time allowed by Sub-section (2) of Section 18 of the L.A. Act shall put an end to the right of the claimant to seek reference.

7. In view of the above, I do not find any merit in the present writ petition and hence the same is dismissed. No cost.