
(2016) 07 JH CK 0030
In the Jharkhand High Court
Case No : Writ Petition (C) No. 4681 of 2014

Gulu @ Gul Mohd. Mian

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2017) 171 AIC 319 : (2017) 1 AIRJharR 145 : (2016) 4 JCR 542

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Arbind Kumar Sinha, Advocate, for the Petitioners; M/s. Atanu Banerjee, G.A Kaustav Panda, J.C to G.A, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Aparesh Kumar Singh, J. - Heard learned counsel for the parties.

2. Petitioners sought a direction upon the respondent no. 2, District Land Acquisition Officer, Jamtara for referring their application filed under Section 18 of Land Acquisition Act, 1894 for reference before Land Acquisition Judge/Special Judge. Petitioners have also stated that Land Reference Case No. 24 of 2013-14 is already registered.

3. Respondent-State has in its counter affidavit dealt with the contention of the petitioner on merits in relation to acquisition made on land being AKJ No. 35, Plot No. 306 BII, Area 31 decimals of village-Dharampur, P.O. Manjhladih, P.S. Narayanpur, District-Jamtara stating that the said land appertaining to AKJ No. 35 was recorded in the names of Somai Mian, Yadah Mian and Amir Mian in Separate Dakhil Kiari during the last Survey Settlement operation which took place during the year 1932-35 in Santhal Pargana. Petitioners are the grandsons and great grandsons of recorded tenants Somai Mian, Yadah Mian and Amir Mian. Whereas Plot No. 50 appertaining to AKJ No. 13 of Mouza-Harlatanr Contiguous Village of Dharampur, P.S. Narayanpur Sub Division Jamtara, District-Jamtara is

recorded in the name of Majir Mian and others during the Last Survey Settlement Operation, Majir Mian was the grand father of respondent no. 3. It is also stated that recorded tenants of Plot No. 306 and 50 Mouza Dharampur and Halratn exchanged their plots as per provisions of Santhal Pargana Tenancy Act, 1949 long ago and were possessing their respective exchanged land. Respondent no. 3 is in possession of constructed house there on by grandfather, Majir Mian. He has got his name mutated in respect of Plot No. 306 of Mouza Dharampur in Mutation Case No. 1 of 1980-81 as per the orders of Sub Divisional Officer and rent has been fixed for the said land separately. Petitioners have preferred revision against the mutation order dated 19th May, 1982 before Deputy Commissioner, Jamtara being R.M.R. Case no. 11 of 2010-11, which was dismissed by Deputy Commissioner, Jamtara on 12th January, 2011. Thereafter, petitioners filed Title Suit in the Court of Sub-Judge No.1 at Jamtara bearing no. 24 of 2011, which was withdrawn later on. Petitioners have thereafter filed application before respondent no. 2, District Land Acquisition Officer, Jamtara for reference which is therefore not in accordance with law and stipulated period as per Section 18(2) of the Act.

4. On being asked, learned counsel for the petitioners has not been able to categorically state the date on which the Award was made nor is the notice under Section 12(2) of the Act, 1894 annexed.

5. Counsel for the private respondent has also objected to the prayer stating that reference is to be made within the time specified and is not condonable.

6. The relevant facts evident on record therefore do not make out a clear case on the part of the petitioners to seek issuance of a direction for reference of their application under Section 18 of the Act, 1894. Reliance may be placed upon the judgment rendered by Apex Court in the case of State of Karnataka v. Laxuman reported in (2005) 8 SCC 709 on the question of time limit prescribed under the Act of 1894 for making an application for reference. Section 18 of the Act of 1894 reads as under:

"Section 18 Reference to Court: Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, subsection (2), or within six months from the date of the Collector's award, whichever period shall first expire."

7. The Apex Court has clearly held that a statute can, even while conferring a right, provide also for a repose. The right undoubtedly available to a litigant becomes unenforceable if the litigant does not approach the court within the time prescribed. Section 5 of Limitation Act cannot be resorted to while making an application under Section 18(1) of the Act and the application has to be made within the period fixed by Section 18(2) of the Act. Paras 15, 26 & 27 of the report containing the opinion of the Court is quoted hereunder:

"15. This Court has also held that in proceedings under the Land Acquisition Act before the authorities under that Act, Section 5 of the Limitation Act has no application. [See Officer on Special Duty (Land acquisition) v. Shah Manilal Chandulal. Therefore, Section 5 of the Limitation Act cannot be resorted to while making an application under Section 18(1) of the Act and the application has to be made within the period fixed by Section 18(2) of the Act.

26. Then the question is, whether in the context of Section 18 of the Karnataka amendment, the decision of this Court in Thakoredas and our discussion as above, Section 5 of the Limitation Act could be invoked or would apply to an application under Section 18(3)(b) of the Act. This Court has held that Section 5 of the Limitation Act has no application to proceedings before the Collector or Deputy Commissioner here, while entertaining an application for reference. We see no reason not to accept that position. Then arises the question whether Section 5 could be invoked before the Land Acquisition Court while making an application under Section 18(3)(b) of the Act. We have held in agreement with the earlier Division Bench of the Karnataka High Court, that the right to have a reference enforced through court or through the Deputy Commissioner becomes extinguished on the expiry of three years and 90 days from the date of the application for reference made in time. Consistent with this position it has necessarily to be held that Section 5 of the Limitation Act would not be available since the consequence of not enforcing the right to have a reference made on the scheme of Section 18 of the Act, as obtaining in Karnataka, is to put an end to the right to have a reference at all. Since in that sense it is an extinguishment of the right, the right cannot be revived by resorting to Section 5 of the Limitation Act. We may incidentally notice that in Thakoredas this Court rejected the application under Section 18(3)(b) of the Act which was beyond time, though, of course, there was no specific discussion on this aspect.

27. An application under Section 18(3)(b) of the Act is to compel a reference by the Deputy Commissioner. We have held that on the expiry of three years and 90 days from the date of the application for reference seeking enhancement the right of the Deputy Commissioner to make the reference comes to an end. In that context, and in the context of the fact that the claimant himself loses his right to move the court for compelling a reference, it is not possible to hold that

by invoking Section 5 of the Limitation Act before the Land Acquisition Court the claimant can get over the bar to the remedy created by Section 18 of the Act. We are, therefore, of the view that Section 5 of the Limitation Act would have no application while approaching the court under Section 18(3)(b) of the Act and if the application is not within the time as indicated above, the same has only to be dismissed as was done in Thakoredas case."

8. Having regard to the position in law and the absence of relevant material particulars relating to claim of the petitioners, this Court is not in a position to return any finding whether the petitioners have made an application within time of Award in terms of provisions of the Act of 1894 for seeking reference before Special Land Acquisition Judge.

9. Accordingly, the writ petition is dismissed.