

(1989) 08 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No. 2249 of 1987

Ishwarbhai Motibhai Bhatt

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 28-08-1989

Acts Referred:

Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Section 5

Citation : AIR 1990 Guj 64 : (1990) 1 GLR 47

Hon'ble Judges : P.R. Gokulakrishnan, C.J; R.A. Mehta, J

Bench : Division Bench

Advocate : P.G. Desai, for the Appellant; Chhaya, for the Respondent

Judgement

Gokulakrishnan, C. J.

1. Rule. Mr. Chhaya waives service of rule on behalf of the respondents.
2. This Special Civil Application is for issue of a writ of mandamus or any other appropriate writ or direction, directing the respondent No. 2 to refer the matter under S. 18 of the Land Acquisition Act to the District Court. As per Annexure "D" to the Special Civil Application, the Land Acquisition Officer has rejected the application filed under S. 18 of the Land Acquisition Act as time barred. In view of the rejection of the application, the present Special Civil Application has been filed.
3. The award in this case was made as early as on 15th April, 1985. Immediately thereafter the petitioner has filed an application under S. 18 of the Land Acquisition Act before the District Court, Narol. This was filed on 1-7-1985. The Narol Court, by its order dated 20th September, 1985 directed the petitioner to file an application before the Land Acquisition Officer, stating therein that under the provisions of the Act, such an application must be filed before the Land Acquisition Officer. On 19-10-1985, the petitioner filed application for reference u/s 18 of the Land Acquisition Act before the Land Acquisition Officer and that

came to be rejected on 21-10-1985 as time barred. Section 18(2) proviso (a) clearly states that if the person making the application was present or represented before the Collector at the time when he made his award, the application has to be made within six weeks from the date of the Collector's award. Even taking into consideration that the filing of the petition u/s 18 before the Narol Court can be taken as a valid filing, there is a delay of more than a month. It is also clear from the submission made by Mr. Desai that the acquisition proceedings in respect of the very same Notification for other lands, are being questioned as regards the award, by filing applications for reference u/s 18 of the Land Acquisition Act before the Land Acquisition Officer and they have been referred to the District Court. It is unfortunate that this application came to be rejected since it is time-barred. In the decision in the case of Mohan Vasta Vs. State of Gujarat, and the decision in the case of Gopalbliai Becharbhai Vs. State of Gujarat and Another, , it has been held that the Land Acquisition Officer has power u/s 5 of the Limitation Act to condone any delay for the purpose of referring the matter u/s 18 of the Land Acquisition Act. The order passed by the Land Acquisition Officer, which is impugned in this Special Civil Application, simply states that the application filed u/s 18 of the Land Acquisition Act is barred in view of the provisions contained in Section 18 of the Act. The Land Acquisition Officer ought to have applied his mind and used his discretion since he has powers to condone the delay by applying Section 5 of the Limitation Act. He has proceeded on the basis that he has no power since Section 18(2) proviso (a) states that such an application has to be filed within six weeks from the date of the Collector's Award. In this case, the party was present before the Collector. Such an order, without adverting to S. 5 of the Limitation Act and without looking into the principles laid down in Mohan Vasta Vs. State of Gujarat, and Gopalbliai Becharbhai Vs. State of Gujarat and Another, , in our opinion, has to be set aside. Accordingly, the order, which is Annexure "D" to the Special Civil Application is set aside and the matter is remanded to the Land Acquisition Officer for the purpose of deciding the question of limitation and condonation of delay, bearing in mind the observations we have made above. We direct the petitioner to make an application under S. 5 of the Limitation Act along with application under S. 18 of the Land Acquisition Act within two weeks from this date and the Land Acquisition Officer will consider such an application and dispose of the same within two weeks thereafter. Rule is made absolute to the above said extent, with no order as to costs.

4. Order accordingly.