

(1954) 01 BOM CK 0007

In the Bombay High Court

Case No : Special Civil Application No. 1755 of 1953

Jehangir Bomanji and Others

APPELLANT

Vs

C.D. Gaikwad

RESPONDENT

Date of Decision : 18-01-1954

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 12(2), 18, 18(1)

Citation : AIR 1954 Bom 419 : (1954) 56 BOMLR 478 : (1954) ILR (Bom) 1015

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Advocate : J.C. Bhat and Gagrath and Co, for the Appellant; M.P. Amin, General and Little and Co., for the Respondent

Judgement

Chagla, C.J.—The petitioners are the present trustees of a deed of trust dated 28-3-1928, and as such trustees they owned certain land at Goregaon admeasuring about 24 acres. In June 1948 Government issued a notification under the Land Acquisition Act in relation to this land and a notification u/s 6 was issued on 4-6-1949. In July 1949 notice to file the claim was given and pursuant to this notice the petitioners filed a claim in November 1949. They made a claim of about Rs. 28,00,000.

As far as the petitioners were concerned, nothing further happened till March 1953 and then they came to know that an award had been made by the Collector on 28-12-1951, by which award he had awarded to the petitioners a sum of Rs. 28,128-3-0. They then applied to the Collector for a reference u/s 18. The Collector declined to make a reference on the ground that the application was barred by limitation. and the petitioners have come before us for a writ to compel the Collector to make the reference, and the question that we have to consider on this petition is whether the application of the petitioners is barred by limitation.

2. Now, turning to the Act, a notification u/s 4 can be issued when it appears to the State Government that land in any locality is likely to be needed for any

public purpose. Then Section 6 provides for a declaration when the Government is satisfied that a particular land is needed for a public purpose. Section 9 then provides for a public notice to be given by the Collector to the effect that Government intends to take possession of the land and that claims to compensation for all interests in such land may be made to him, and it was pursuant to this notice that the petitioners filed their claim claiming Rs. 28,00,000.

Section 11 provides for the inquiry which the Collector has to make prior to the making of the award, and it is not disputed that this inquiry is an administrative inquiry and it is not incumbent upon the Collector to give any notice with regard to this inquiry to any claimant. In fact no notice of the inquiry was given to the petitioners and they were not present. Then Section 12 provides for the filing of the award which is made by the Collector after the holding of the inquiry u/s 11, and that section provides : "Such award shall be filed in the Collector's office and shall, except hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested." In this case the award was filed in the Collector's office on 28-12-1951, and the question that we have to consider is whether it has become final and conclusive. It would become final and conclusive unless the case of the petitioners, fell in the exceptions provided in the subsequent sections. Sub-section (2) of Section 12 provides that the Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made. Now, a notice was given by the Collector of the filing of the award, but it is not now disputed that the notice was not given to the petitioners. It was given to a person by the name of Rustomji Pestonji. It was sent to the Mamlatdar for being served.

As this Rustomji Pestonji could not be traced, the notice was never served and a copy of the notice was sent to the petitioners only some time in April 1953. It is the petitioners' case in the correspondence that when they filed their claim they gave to the Collector's office the names of the claimants and their addresses and therefore there should have been no difficulty on the part of the Collector in serving the notices upon the petitioners at their proper addresses, and we are satisfied in this case that there was gross negligence on the part of the Collector's office in not serving the notices upon the petitioners. It is futile for the opponent, the Assistant Collector, Thana, now to suggest that the reason why the notice was addressed to one Rustomji Pestonji is because he was the original trustee and in the Government records his name appeared. When a claim is made and the claimant's name and address are in the Collector's office, it seems difficult to understand why investigation should be made into other materials and other records when the Collector's office knows exactly the name of the claimant and his address as appears from the claim made by him.

3. Then we come to Section 18 and that section provides :

"(1) 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."

Therefore, the right to apply to make a reference is vested in a person who is interested, and the petitioners are persons interested, as they are the trustees of this land. It is also necessary that before a person can apply he must not have accepted the award.

It is well settled that the award made by the Collector in land acquisition proceedings, although it is termed an award and seems to suggest an adjudication binding between the parties, is only an offer which the Government makes to the claimant. It is open to the claimant to accept the offer, in which case the award would become final and conclusive and binding between the parties, or it is open to the claimant not to accept the offer, in which case he can proceed u/s 18(1) and apply for a reference to the Court.

There is a proviso to Section 18 and that proviso is: "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 u/s 12, Sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

4. Therefore, having given the right to apply to the Collector to make a reference u/s 18(1), the Legislature proceeded in this proviso to fix a period of limitation within which that application should be made, and Clauses (a) and (b) deal with two different sets of circumstances. Clause (a) deals with a case where a claimant is present or is represented before the Collector at the time when he makes his award, and in that case the application has got to be made within six weeks from the date of the Collector's award. Clause (b) deals with other cases which would presumably be cases where the person was not present or represented before the Collector at the time of the making of the award, and in such cases the period of limitation is within six weeks of the receipt of the notice from the Collector u/s 12(2) or within six months from the date of the Collector's award, whichever period shall first expire.

The case of the petitioners fell under Clause (b) as they were not present or represented before the Collector at the time when he made the award and the contention of the Collector is that the application having been made after six months from the date of the Collector's award, the application is barred by

limitation. No question with regard to the period fixed in the earlier part of Clause (b), viz. within six weeks of the receipt of the notice from the Collector arises inasmuch as what has got to be considered is which period expires first, and as in this case six months from the date of the award expired first, the receipt of the notice by the petitioners subsequently is irrelevant.

5. The contention of Mr. Bhat for the petitioners is that an award being an offer, no question of the petitioners not having accepted that offer can possibly arise till the offer is communicated to them. Mr. Bhat says that the Legislature contemplated two modes of communicating the offer. One mode was when the claimant was himself present before the Collector at the time when the award was made, in which case he would know, being present, as to what the offer was, and having known it it was open to him to accept it or not to accept it, but the Legislature fixed the period of limitation within six weeks, if he wanted to reject that offer and make an application for a reference.

The other mode of communicating the offer was by giving a notice and therefore the Legislature was at pains to provide in Section 12(2) that the Collector shall give immediate notice of his award to such of the persons interested as were not present personally or by their representatives when the award was made. Therefore, according to Mr. Bhat, it is only when an offer is communicated to the claimant in one of the two modes indicated by the Legislature that the question can arise of his not accepting that offer. It is further urged by Mr. Bhat that the right to make an application u/s 18 cannot arise till the offer has been communicated, and therefore according to him limitation can only run after the cause of action has accrued and the offer has been communicated.

In the present case, says Mr. Bhat, the petitioners did not know of the making of the award, they were not present when the award was made, and the notice was only communicated to them in April 1953. Therefore, no question of limitation running from six months from the date of the Collector's award can possibly arise in the present case. It is suggested that Clause (b) of the proviso to Section 18 can only apply provided a notice has been received by the claimant within six months from the date of the Collector's award. It is only then that these two periods contemplated by the Legislature can be taken into consideration.

But if the notice is received six months after the date of the Collector's award, Clause (b) can have no application because the Legislature cannot extinguish the right of the claimant to make an application by limitation before that right has arisen. Now, the petitioners' case presented in this fashion has undoubtedly considerable force. It is pointed out that in this particular case the petitioners did all that the law required of them. They filed their claim and they had every right to expect that the Collector will discharge his statutory obligations.

It is said that the Legislature could never have intended that the failure of the Collector to discharge his statutory obligation should result in the petitioners losing their valuable right, viz. the right to have a reference made to the Court.

and the compensation determined by the Court and not by the award of the Collector.

6. Now, the law of limitation is always a harsh law and it would be a mistake to look for ethical principles in that law. Meritorious claims have been barred because the law of limitation prescribes that such claims should be presented in Court within a particular period. Therefore, it would be a mistake to construe the law of limitation either from the point of view of the merits or demerits of the parties before the Court. Limitation in its very nature is a technical law and it has to be construed technically. and if the Court comes to the conclusion that the Legislature clearly intended that an application should be barred after the lapse of a particular time, the Court must give effect to that provision of the law, however unmeritorious the defence to the claim may be and however well deserved the claim may be.

There can be no doubt that the Legislature in the proviso to Section 18 provided for all cases of applications being made to the Collector for a reference. We must assume -- and that is the only assumption that is possible -- that in Clause (a) and Clause (b) of the proviso the Legislature has exhausted all cases in which an application can be made for a reference. Clause (a) as already pointed out deals with the case where the claimant was present or represented before the Collector, and Clause (b) is the residuary clause which deals with all other cases, and the main fallacy underlying Mr. Bhat's contention is that there is a case left out by the Legislature and that case is where a notice is not received within six months from the date of the Collector's award.

Unless there are very strong reasons to indicate that the Legislature has not provided for limitation in this particular case, we must hold that Clause (b) applies to all cases including the case suggested by Mr. Bhat, because if Mr. Bhat's contention were right this rather curious result would follow. Either that Clause (b) will not apply at all, in which case there will be no period of limitation for the petitioners, or only the first part would apply, viz., that he would have to make an application for a reference within six weeks of the receipt of the notice, in which case we must ignore the second part of Clause (b) which expressly provides "or within six months from the date of the Collector's award, whichever period shall first expire."

7. It may be pointed out that the award that the Collector makes u/s 11 is not the same as an offer understood under the Contract Act and it would be a mistake to apply to this award the incidents which may be applicable to an offer under the Contract Act. All that the authorities have laid down is that the award made by the Collector amounts to an offer and is not binding upon the claimant.

Therefore, when the Legislature provided for the filing of the award u/s 12, the Legislature may well have intended that the very filing of that award in the Collector's office should operate as an offer to the claimant which it was open to him to accept or reject, and therefore it does not seem to us in any way

anomalous if for the purpose of limitation the Legislature should have provided that limitation should be gin to run from the date of the award, irrespective of the question whether the claimant had received the notice or not.

8. With regard to the obligation cast upon the Collector to give immediate notice, the question that we have to consider is whether the failure to give such a notice confers upon the claimant any right. Now, looking to the scheme of the Land Acquisition Act, it is fairly clear that it was intended by the Legislature that land acquisition proceedings should be terminated with as much expedition as possible, and it is from that point of view that the Legislature gave a mandate to the Collector after he had filed the award to give notice immediately to the persons interested as were not present personally or by their representatives when the award was made.

It will be borne in mind that the one striking result of the giving of the notice by the Collector and the receipt of it by the claimant would be to accelerate the period of limitation. If the Collector gave no notice, the claimant would have six months" time from the date of the award to make his application for a reference. If the Collector gave immediate notice and the notice was received by the claimant, he had only six weeks" time to make an application for a reference. The only right which is suggested on the failure to give notice by the Collector u/ s 12(2) is the right to postpone the period of limitation fixed by the Act. It is contended that notice is essential to complete the cause of action of the claimant, and till the notice is given, there is no cause of action. Here again, the petitioners are confronted with a difficulty.

The mere fact of the Collector giving the notice does not help the petitioners to put forward the case which they have done in this petition, because a notice may be given by the Collector and it may not be received by the claimant. Therefore, the petitioners have got to go further and contend that in order to complete the cause of action it is not merely necessary that the Collector shall give notice, but further that the claimant must receive the notice before the cause of action is complete.

If the intention of the Legislature was that the material date for the purpose of the period of limitation was the receipt of the notice and not the date of the Collector's award, then it is difficult to understand why in Clause (b) of the proviso to Section 18 the Legislature expressly enacted the two periods and provided that limitation would run out when the first period expires. If the Legislature's intention was that limitation should not run in any case till the claimant had notice either by being present when the award was made or by receiving a notice, then one would have expected in Clause (b) a provision that limitation would run out in respect of one or the other period mentioned in Clause (b) whichever period should expire last.

9. We also do not think that any very great hardship would result from the view that we are taking. When a person interested files his claim u/s 9, he must be

presumed to have knowledge of the law and he must know that that claim will be investigated and will ultimately result in an award. He must also be presumed to know that limitation would begin to run as soon as the award was made, and that if no action was taken by him within six months, his claim to make an application for a reference would be barred.

An award made by the Collector is not a secret document. It is filed in the Collector's office and it is open to any one's inspection. It is difficult to understand why the petitioners having filed their claim in November 1949 took no action to find out whether any further proceedings had been taken with regard to the claim. On their own admission they did nothing at all till they came to know in March 1953 that an award had been made. Now, when there is a notification u/s 4 followed by a declaration u/s 6 of the Land Acquisition Act, where a public notice is given u/s 9 and where a claim is filed by the petitioners, surely the petitioners should have known that the intention of the Government was to acquire the land and to pay compensation for it.

As a matter of fact in this case Government have been in possession of the land and they put the land to the public use for which it was acquired. Therefore, there should be no insuperable difficulty in the way of a claimant keeping himself in touch with the Collector's office and trying to find out what is happening to his claim which he has preferred in these acquisition proceedings.

10. The only case to which reference was made is a decision of Mr. Justice Chandavarkar in --"In re Land Acquisition Act 7 Bom LB 697 (A)". On the facts of that case the judgment of the learned Judge is not of much assistance, but passages have been relied upon both by Mr. Bhat and by the Advocate General. Now, the dates are rather material. The award was made on 19-9-1904, and notice u/s 12(2) was received by the claimant on 24-9-1904, and the application for a reference was made on 9-11-1904, i.e. after six weeks from the date of the receipt of the notice from the Collector.

The Collector refused to make a reference and the claimant came to Court, and what was contended by the claimant was that inasmuch as an immediate notice was not given as required by Section 12(2), the period of limitation was not six weeks from the date of the receipt of the notice, but six months from the date of the award. The simple answer to that contention was as was given by the learned Judge that u/s 18 in Clause (b) of the proviso two periods were mentioned and what the Court has to consider was which period expired first, & as in this case the six weeks from the receipt of the notice expired first, the claimant was not entitled to rely on the second period mentioned in Clause (b) of the proviso to Section 18.

At p. 702 the learned Judge says this:

"If, on the part of the Collector, there has been failure to give immediate notice of his award, and, if the party interested in the award has suffered prejudice thereby, no doubt that party would be entitled to insist that the notice should

have been "immediate".

Now, in the case before him the learned Judge came to the conclusion that no prejudice was caused to the claimant by the notice being delayed by a few days. With respect to the learned Judge, it is difficult to understand how the party, when notice was not given immediately or no notice was given at all, was entitled to insist that the notice should have been immediate.

The only right that a claimant has is to apply for a reference, and if that reference is barred, the failure to give immediate notice can hardly confer any right upon the claimant. Then the learned Judge goes on to say on the same page:

"..... So far as the period of limitation, provided for in Clause (b) of the proviso to section 18, goes, it is made to run from the date of the receipt of the notice from the Collector, in which case it is six weeks, or from the date of the Collector's award, in which case it is six months, whichever period shall first expire. That means that in any case the proceedings shall be final after six months from the date of the award."

With respect, we agree with this opinion; and the learned Judge goes on to say (p. 702);

"..... this evidently contemplates that a party Interested should not sit quiet, waiting for the Collector's notice or plead want of it, but should in any case himself be vigilant. The longer period of six months from the date of the award is given him as an alternative, where the Collector has not been himself prompt. The lateness of the notice cannot, therefore, affect the question of limitation, and no prejudice can possibly arise to the claimant in respect thereof."

But at p. 703 the learned Judge says:

"..... the clause (and the learned Judge is considering Clause (b) in question) prescribes one of two periods of limitation for a party who has not accepted the Collector's award --either six weeks from the date of the receipt of the Collector's notice, whether immediate or not, or six months from the date of the award: "whichever period shall first expire" These last words, which I have italicized, show that the element of notice is an essential ingredient, so to say, of the two alternative periods, and such notice may be "immediate" or not."

With respect to the learned Judge it is difficult to understand how the element of notice is an essential ingredient as far as the second part of Clause (b) is concerned. The element of notice is only an essential ingredient of the first part because the period of limitation runs from the receipt of the notice. As far as the second part is concerned, limitation runs from the date of the award and the date of the award has nothing whatever to do with the notice which the collector has to give u/s 12(2).

11. We do feel in this case that there is a considerable prejudice and hardship

caused to the petitioners. A claim of Rs. 28,00,000 has not been adjudicated upon by the Court and the petitioners have been compelled to accept an award for Rs. 28,000. But as we said earlier in the judgment, an argument of hardship when dealing with a provision of limitation is a bad argument. Every case of limitation must entail some hardship. The question is more for the Legislature than for a Court of law.

12. The result is that the petition fails & must be dismissed with costs.

13. Petition dismissed.