
(2014) 09 KL CK 0061
In the High Court Of Kerala
Case No : WP(C). No. 24698 of 2014 (J)

Jose Santy

APPELLANT

Vs

Land Acquisition Officer and Tahsildar

RESPONDENT

Date of Decision : 30-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 11, 12, 12(2), 17, 17(3A)(a)

Citation : (2014) 4 ILR 876 : (2014) 4 KHC 264 : (2014) 4 KLJ 226 : (2014) 4 KLT 215

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : Philip Mathew, Advocate for the Appellant; Sanjeetha. K.A., Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner in the writ petition has approached this Court challenging Ext. P8 order of the 1st respondent whereby the 1st respondent intimated him that his application for reference in terms of Section 18(2) of the Land Acquisition Act, 1894 (hereinafter referred to as "LA Act", for short) could not be acted upon in view of the fact that it had been preferred beyond the period of limitation prescribed under the Section. The facts would disclose that an extent of 16.85 cents of land in Survey No. 1030/4-A-4 of Kothamangalam village in Kothamangalam Taluk was acquired from the petitioner under the LA Act for the purposes of construction of Thankalam-Kozhippilly new Bye-pass road crossing NH 49. The petitioner was served with a notice under Rule 11(2) of the Land Acquisition (Kerala Rules), 1990, as per Section 9(3) of the Land Acquisition Act, 1894, requiring him to give a statement showing the nature of interest in the land and the particulars of the claim for compensation and of the objections, if any, as to the measurement under Section 18 of the LA Act. In the claim statement filed by the petitioner before the 1st respondent, the petitioner raised objections and claimed compensation at the rate of Rs. 6 Lakhs per cent. The acquisition proceedings were proceeded with by

invoking the special powers under Section 17 of the LA Act and the petitioner was informed that 80% of the compensation proposed to be awarded was sanctioned as per Section 17(3A)(a) of the LA Act. The 1st respondent eventually passed an award on 30.12.2013 fixing the compensation at Rs. 15,66,094/-. Thereafter, a notice under Section 12(2) dated 06.01.2014 was sent to the petitioner which the petitioner received only on 21.02.2014. It is the case of the petitioner that the payment of compensation was not effected till 24.03.2014 and hence his reference application under section 18 was made only on 19.04.2014, after receiving the payment of compensation under protest. It is this reference application, that he preferred on 19.04.2014, that was rejected by Ext. P8 order of the 1st respondent as being time barred.

2. I have heard Sri. Philip Mathew, the learned counsel appearing for the petitioner as also the learned Government Pleader appearing on behalf of the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that the sole issue to be decided in this case is with regard to the period of limitation that would apply for the purposes of preferring a reference application in terms of Section 18(2) of the LA Act. Section 18(2) reads as under.:

"18. Reference to Court,- (1).....

(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, Sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

4. It is not in dispute that the case of the petitioner falls under Section 18(2)(b). Accordingly, going by the express provisions of the Act, the application of the petitioner under Section 18 should be preferred within six weeks of receipt of the notice from the Collector under Section 12(2) or within six months from the date of the Collectors award, whichever period shall first expire. In the instant case, the award was passed on 30.12.2013 and the six months period from that date would expire on 30.06.2004. The petitioner however was served with a notice under Section 12(2) of the LAA At on 21.02.2014 and hence the six weeks period from the date of receipt of the notice under Section 12(2) would expire by 04.04.2014. Going by the express provisions of Section 18(2)(b) therefore, barring any special circumstances under which the period of limitation could be extended, the reference application ought necessarily to have been filed on or

before 04.04.2014. The petitioner would contend that in his case the payment of compensation was received only on 24.03.2014 and hence the six weeks period contemplated in Section 18(2)(b) would have to be reckoned from that date. The petitioner bases this contention on the premise that, in terms of Section 31 of the LA Act the Collector had to tender payment of the compensation awarded by him immediately after making the award under Section 11, unless prevented by any of the contingencies mentioned under that Section. The second proviso to Section 31(2) indicates that no person who has received the compensation amount, otherwise than under protest, shall be entitled to make an application under Section 18 of the Act. It is the contention of the petitioner therefore, that unless and until he had received the compensation amount from the Collector and he had, at the time of receipt of the compensation, lodged his protest to the amount of compensation, he could not prefer an application for reference under Section 18 of the Act. If that be so, the petitioner contends, there was no way by which he could file an application for reference under Section 18 before actually receiving the compensation amount and lodging his protest thereto. It is therefore, that he contends that on the facts of the instant case, the six weeks period contemplated in Section 18(2)(b) should be reckoned from 24.03.2014, the date on which he received the compensation payment. Alternatively, the petitioner would also contend that the notice under Section 12(2) that was received by him on 21.02.2014, did not enclose the award dated 30.12.2013 that was passed by the Collector. He does not dispute however, that the notice issued to him contained the relevant details regarding the contents of the award such as the survey number of the land, the extent thereof as also the amount of compensation awarded to him in respect of the said land. The petitioner contends that insofar as a reference under section 18 of the Act presupposes an application of mind and the taking of a conscious decision by the petitioner, as regards whether or not to prefer the reference application in terms of Section 18, the period for filing the reference application could be reckoned only from the date on which a copy of the award was made available to him. In support of his contentions the petitioner would also rely on a Full Bench Decision of this Court in *Joseph v. Special Tahsildar* (2001 (1) KLT 958).

5. I am not persuaded by the contentions of the petitioner, to hold that the period stipulated under Section 18 of the Act for filing the application for reference could be extended in the manner contended by the petitioner. It is trite that a period of limitation prescribed in the statute has to be strictly construed and there is no scope for the extension of the said period save in the manner prescribed under the statute. This Court exercising powers under Article 226 of the Constitution cannot extend the express period of limitation prescribed in the statute. I must however, advert to the contentions of the petitioner, which proceed on the basis that the period of limitation prescribed in Section 18 must commence only from a later date on account of situations which made the preferring of an application in terms of Section 18 impossible for the petitioner. As already noted, it is the contention of the petitioner that, on account of the

payment of compensation having been made only on 24.03.2014, he could not have received the same, much less under protest, before that date. In the application for reference under Section 18 of the Act, there are places where one has to indicate the date of receipt of the compensation and whether or not the compensation amount was received under protest. The contention of the petitioner, therefore, is that without actually receiving the compensation amount, he could not have preferred an application for reference under Section 18. This contention of the petitioner goes against the express provisions of Section 18. In terms of Section 18(2)(b), the period of six weeks is to be reckoned from the date of receipt of the notice from the Collector under Section 12(2) or within six months from the date of the Collector's award, whichever period shall first expire. Since in this case, the earlier of the two dates was one that expired six weeks from the date of receipt of the notice under section 12(2), the application of the petitioner under Section 18 had necessarily to be filed on or before 04.04.2014. There is no indication in the statute that the receipt of compensation amount is a precondition for the filing of an application under Section 18. As a matter of fact, even in the decision of the Full bench of this Court that is relied upon by the petitioner it is clearly stated as follows:

"26. Question No. (ii).

What is the stage at which the protest contemplated by the first two provisos to S. 31(2) has to be lodged? Can such a protest be lodged subsequently, after receiving the payment without protest? The opening words of S. 18(1) of the Act are, "any person interested who has not accepted who has not accepted the award may, by written application to the Collector require that....". The first proviso to S. 31(2) reads, provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount". The second proviso to S. 31(2) of the Act says, "Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under S. 18". Reading the above provisions together, it appears to us that, the protest must be lodged at the time of receiving the payment. If a person receives the payment without protest and then subsequently lodges the protest, it would not satisfy the requirement of the opening words of S. 18(1) or the scheme of the two provisos to S. 31(2). However, making a written application for referring the matter to the Court under S. 18(1) of the Act even before receipt of the compensation amount would be indicative of the fact that the applicant had protest with regard to the sufficiency of the amount. In that event, even though the amount was received without protest, the prior filing of the reference application would be sufficient to infer protest within the meaning of the second proviso to S. 31(2). Hence, in our view, lodging a protest even before the receipt of payment followed by the filing of the application for reference would undoubtedly be sufficient compliance with the mandate of S. 18 r/w S. 31 of the Act. We will refer to a few decisions on this point."

The question was ultimately answered at paragraph 36 as follows:

"36. In view of the above discussion, our answer to the second question is as under:

The protest contemplated by the first two provisos to S. 31(2) of the Act must be lodged at the time of receiving the payment. Undoubtedly, such a protest as to the sufficiency of the amount can be lodged prior to the receipt of the payment. If, however, a protest is lodged for the first time after receiving the payment, or for the first time in the application seeking reference under S. 18 of the Act, it would not be a valid protest as contemplated by the first two provisos to S. 31(2) of the Act."

6. It is clear therefore that an application under Section 18 can be preferred even without receiving the compensation amount for the protest that is contemplated is essentially against the award of the Collector, to the extent it determines the compensation at a figure which is less than what is expected by the person whose land is acquired. In that sense, it is sufficient for the person, seeking to make an application under Section 18, to record his protest against the compensation amount that has been sanctioned in his favour, and which has been indicated in the notice issued to him under Section 12(2) of the Act. Merely because there is an entry in the application form, which requires the petitioner to state whether he received the compensation amount under protest or not, it does not follow that the compensation amount should actually have been received by the petitioner, before preferring an application under Section 18. It is also relevant to note, in this connection, that the provisions of the Act indicate only that the person seeking enhancement of compensation should not take contrary stands with regard to his acceptance of the compensation amount. Consequently, when he is informed of the compensation amount awarded to him, he has to necessarily indicate his protest to the said amount awarded to him, either through the preferring of an application under Section 18 or by lodging his protest at the time of receiving the payment of compensation, if the latter is before his making the application under section 18 of the Act. What is frowned upon by the legislation is the inconsistent stand of an applicant who, after receipt of compensation without protest, attempts to prefer an application in terms of Section 18. In such cases, it has been held that the petition under Section 18 would not be entertained insofar as the applicant has not demonstrated that he had accepted the award of the Collector only under protest. I am not therefore inclined to accept the contention of counsel for the petitioner that the six weeks period contemplated in Section 18(2)(b) should be reckoned from the date of receipt of compensation amount. The six weeks period must necessarily be computed from the date of receipt of the notice from the Collector under Section 12(2) as provided in the said Section.

7. I must also deal with the alternate contention of counsel for the petitioner namely, that the copy of the award was not enclosed along with the notice under Section 12(2) that was served on him. It must be noted in this connection that

the petitioner has not been able to demonstrate that, immediately on receipt of the notice under section 12(2), he had taken any steps to get a copy of the award from the Collector, expeditiously, so as to maintain an application under Section 18 within the time that was available to him. I am of the opinion that, even if the copy of the award was not annexed to the notice under section 12(2), the petitioner had necessarily to take some steps to get the copy of the award from the Collector, keeping in mind the fact that his application under Section 18 had to be preferred within six weeks from the date of receipt of the notice under Section 12(2). I do not think it will be open to a person, who does nothing to obtain a copy of the award despite having notice of the existence of the award, to claim an extension in the period of limitation prescribed under the statute by taking advantage of the delay in getting a copy of the award. I am therefore not inclined to accept the said contention advanced by counsel for the petitioner.

Resultantly, I find no reason to interfere with Ext. P8 order of the 1st respondent, the writ petition fails and hence is dismissed.