
(2012) 07 MP CK 0094

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 193 of 2011 with W.A. No's. 194 to 197, 199, 201 to 203 and 205 of 2011

Kabul Singh and Others

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 80, 9
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 10, 11, 12, 12(1), 12(2)
Limitation Act, 1963 — Section 5
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(i)

Citation : (2012) 5 MPHT 486

Hon'ble Judges : J.K. Maheshwari, J;G.D. Saxena, J

Bench : Division Bench

Advocate : Diksha Mishra, for the Appellant; Vivek Khedkar, Dy. Advocate General, for the Respondent

Final Decision : Allowed

Judgement

G.D. Saxena, J.—Since all these ten appeals, preferred u/s 2(i) of the M.P. Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, are directed against the order dated 23-2-2011 passed by the learned Single Judge of this Court in W.P. No. 1025/11, and as the controversy to be resolved in these appeals, is the same and between the same parties, therefore, for the sake of convenience, they are being decided by this common order. By the aforesaid order dated 23-2-2011, all the petitions preferred by the petitioners/appellants, are dismissed in the light of the following observations:--

There are disputed questions of law, involved in these bunch of writ petitions and, therefore, the same cannot be entertained in this writ proceeding filed under Article 226 of the Constitution of India.

The writ petition filed by the petitioner has no merit and is accordingly, dismissed.

2. Shorn of unnecessary details, the facts available on record, make it clear that the lands of the appellants were acquired by the State Govt. for extension of Madhav National Park at Shivpuri, way back in the year 1983, after following the procedure prescribed under the Land Acquisition Act and Wild Life Act. During the process of the acquisition, the petitioners could not get any information with respect to passing of the award u/s 12 of the Land Acquisition Act. Consequently, the petitioners alongwith other land owners, filed the petition bearing No. 3165/2007 before this Court, which was decided by an order dated 25th July, 2007, operative Para of the same was reproduced below:--

The respondents are directed to examine the matter as directed in W.P. No. 4425/2006 (supra), and take action in the case of petitioners also on identical terms. It is clarified that the respondents are free to scrutinise the case of each of the petitioners independently, and in case, it is found that they are similarly situated and their land is found to be acquisitioned each of the petitioner and their land is found to be acquisitioned, each of the petitioners are entitled to the benefits on identical terms. In case any of the petitioner is not entitled to the same, the respondents are at liberty to pass appropriate orders, indicating the reasons after following due procedure of law. Petition stands disposed of with the aforesaid.

3. In Writ Petition No. 4425/2006, Darshan Singh and others Vs. State of M.P. and others, reference of which has been made to the order dated 25th July, 2007, the learned Single Judge of this Court was pleased to issue the following directions:--

Considering the fact that the land is acquired by the State Government and the State Government has taken possession thereof, now question of returning the land does not arise. The petitioner is only entitled to compensation.

Hence, this petition is disposed of with a direction to the Land Acquisition Officer, Shivpuri, to ascertain whether the compensation is determined in respect of the land in question and same is paid to the petitioners and in case the same is not done then the Land Acquisition Officer shall determine and pay the compensation to the petitioners. This exercise shall be done within a period of four months from the date of filing of certified copy of this order by the petitioner before the Land Acquisition Officer.

With this direction, this petition stands disposed off.

4. It is submitted that on 2nd July, 2008, the petitioner Kabul Singh and his other associates by addressing the letter to SDO (Revenue), brought to his notice that the incumbents under the protest are receiving the compensation so awarded and shall file the objections regarding insufficiency of the award. They also expressed their inability to handover the possession to Madhav National Park, Shivpuri. The appellants/petitioners, also moved an application on 30th August, 2010, submitting that despite directions of this Court on 25th July, 2007 in W.P. No. 3165/07, no notice about passing of the award u/s 12 of the Act was

sent/served on them by the Collector concerned. On 11th August, 2009, only after obtaining certified copy of the award passed by the Collector, they could get the knowledge of passing the award by the Collector in the matter of acquisition of their lands. Then, they prayed that their claim for getting adequate compensation be referred on reference to the Court of the District Judge, Shivpuri. The Collector, Shivpuri (respondent No. 2) by the impugned order dated 30th August, 2008, marked as Annexure P-1, held that the applicants instead of filing an application earlier for reference praying for forwarding their claim to the Court of District Judge, Shivpuri, straightway filed a civil suit before the Civil Court, which was dismissed on 23rd November, 2009, which fact was suppressed by them. Since, the application filed by the petitioners was beyond limitation as mentioned in Section 18(2) of the Act, the Collector u/s 18 of the Act was bound to forward the claim of the petitioners on reference to the Court of District Judge, Shivpuri, but instead of doing so, he rejected the application, vide impugned order (Annexure P-1).

5. On perusal of the notice u/s 80 of CPC (Annexure P-2), filed alongwith writ petition, it appears that the petitioners through notice dated 2nd March, 2009 addressing to the Chief Secretary of the State, Collector Shivpuri, the Land Acquisition Officer Shivpuri and the SDO Shivpuri made their protest against the distribution of the compensation by the SDO, Shivpuri. After expiry of stipulated period, the civil suit was filed before the Civil Court, Shivpuri. The learned Civil Judge by an order dated 23rd November, 2009 (Annexure P-4) dismissed the civil suit under Order 7 Rule 11 of CPC, because u/s 18 of the Act and Section 9 read with Order 7 Rule 11 of CPC, the civil suit preferred against the award was time barred.

6. The respondents/State were neither before the Writ Court nor before this Court by submitting the counter affidavit controverted the averments made in the writ petition/writ appeal. In other sense, in rebuttal, no document for controverting the claim of the petitioners was filed.

7. The submission of the learned Counsel appearing for the appellants before this Court is that by the impugned order dated 30th August, 2010 (Annexure P-1), the Collector, Shivpuri/Land Acquisition Officer erred in not mentioning the date on which the award was passed in the presence/absence of petitioners or their representatives. It is submitted that the authority also did not mention the date on which the notice was sent as required u/s 12(2) of the Act. It is further not clear that on which date the notices from the Collector were received by the petitioners. The Collector again committed wrong to hold that the application was hit by time ignoring the fact that the compensation was received under protest by the petitioners. Under such circumstances, it is submitted that the impugned order passed by the Collector (Annexure P-1) is against the mandatory provisions of the law. It is, therefore, requested that by allowing the writ appeals, the impugned order passed by the learned Single Judge be set aside including one dated 12th October, 2010 passed by the Collector, Shivpuri marked

as Annexure P-1.

8. Per contra, the learned Deputy Advocate General, appearing on behalf of the respondents/State submitted that prior to preferring civil suit, on 2nd March, 2009, the petitioners sent the notice u/s 80 of CPC to the State and thereafter, filed the suit against the respondents/State before the Civil Court at Shivpuri. The said civil suit was dismissed holding as not maintainable under the provisions of the Land Acquisition Act as well as Civil Procedure Code. It is submitted that thereafter on 2nd July, 2007, the petitioners also received the claim amount from SDO, Shivpuri, however under protest. It is further pointed out that application u/s 18 of the Act for referring the claim to the District Judge, Shivpuri was filed on 15th September, 2009, hence, the decision taken by the Collector that the application for referral filed by the petitioners was beyond limitation as per provisions of Section 18(2) of the Act, cannot be said to be illegal. Under the circumstances, it prayed that the appeals preferred by the appellants may be dismissed having found no substance.

9. Heard the learned Counsel appearing for the appellants as well as the learned Deputy Advocate General appearing on behalf of the respondents/State. Also, perused the records of the case.

10. Before considering the sweep and effect of the relevant provisions contemplated under the Act, it would be profitable to advert to the scheme of compensation awardable to a land acquired pursuant to the Notification published u/s 4(1) and declaration made u/s 6 thereof. By issuing notices under Sections 9 and 10 to persons interested in the acquired land, they are required to put forth their claims for compensation payable therefor. The Collector defined u/s 3 (c), who issues such notices, is enjoined by Section 11 of the Act to hold an enquiry on the claims for making an award of the compensation, which in his opinion should be allowed for the land. In determining the amount of compensation, the Collector shall be guided by the provisions of Sections 23 and 24, as is enjoined by Section 15. However, such award cannot be made by the Collector without the prescribed approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf, because of the proviso. However, sub-section (2) of Section 11 empowers the Collector, without any further enquiry, to make an award in terms of an agreement, where such agreement is made by writing by persons interested in the land on appearing before him. When the award is made, the Collector gives immediate notice to such of the interested persons as are not present personally or by their representatives.

Sections 12 and 18 of the Act provide as under:--

Section 12(1) Such award shall be filed in the Collector office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment

among the persons interested. (2) The Collector shall give immediately notice of his award to such of the person interested as are not present personally or by their representatives when the award is made.

Section 18(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 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 presented or represented before the Collector at the time when he made his award within six weeks from the date of the 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.

11. Considering the above, following two of the questions arise for consideration in the writ appeals:--

(1) Whether, the awardees those received the awarded amount distributed under protest can file the reference applications before the Collector?

(2) Whether, limitation would apply to filing reference applications against the award passed by the Collector in the land acquisition proceeding in relation to the lands/properties of the land owners ?

Question No. 1:

In the present case, as appears from the application dated 2nd July, 2008 (Annexure P-5) filed alongwith writ appeal, the appellants were receiving the award under protest being dissatisfied with the apportionment of the amount. In this respect, Section 31 of the Act with proviso speaks as under:--

Section 31(1) On making an award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference u/s 18 would be submitted:

Provided that no person, who has received the amount otherwise than under protest as to the sufficiency of the amount.

12. Apparently, Section 31 mandates the Collector to tender payment of the compensation awarded by him to the persons interested thereto, according to the award and to pay to them unless prevented by one or more of the contingencies enumerated in sub-sections (2) and (3) or the latter sub-section or by reason of a reference made u/s 30. By operation of second proviso to sub-section (2) "provided also that no person, who has received the amount otherwise, then under protest shall be entitled to make any application u/s 18". On making such payment u/s 18, when the application has been made within 6 weeks from the date of the Collector's award by the interested person present or represented before the Collector when the award was made and, in other cases, within 6 weeks from the date of the receipt of the notice from the Collector under sub-section (2) of Section 12 or within 6 weeks from the date of the Collector's award, whichever period shall first expire. u/s 16, unless possession of the acquired land was taken u/s 17, the Collector shall take its possession and such land thereafter vests in the State absolutely free from all encumbrances. The person receiving compensation under protest because of the first proviso to Section 31(2), gets right u/s 18(1) to make an application in writing to the Collector requiring him to refer the matter to the Court for determination of his claim for compensation and the Collector/LAO in such an event, is enjoined to refer the matter with the required particulars.

13. In *Bhagwati Bai and Others Vs. State of M.P. and Others*, , this Court held:--

Reference u/s 18 of the Land Acquisition Act, 1894, is a right of a person in case, he has not accepted the award. There is no prescribed mode u/s 18 in which, method of protest should be lodged. Intention has to be gathered from the conduct, even if the application has been filed for seeking reference is enough to show the protest.

14. On going through the document (Annexure P-5), dated 2nd July, 2008 written by the petitioners/appellants to the SDO (Revenue), Shivpuri, it comes to know that the petitioners were receiving the compensation under protest. Thus, in the light of the provisions of Section 31 of the Act, they have right u/s 18 (1) to make an application in writing to the Collector, requiring him to refer the matter to the Court for determination of their claim for compensation and the Collector/LAO in such an event, is enjoined to refer the matter with the required particulars and they cannot be debarred from applying reference to the Court of District Judge, by the Collector as has been done in the present case. Therefore, the protest against the award of the Collector is implied expressly notwithstanding the acceptance of compensation amount.

Question No. 2:

On coming to the second question, whether reference made beyond the period prescribed by the proviso to sub-section (2) of Section 18 of the Act is valid and

whether the Court can go behind the reference made, by the Collector and the application, on which the reference has been made is beyond the period of limitation prescribed therein, it may be profitable to refer the decision of Hon''ble the Apex Court in the case of Steel Authority of India Ltd. Vs. S.U.T.N.I Sangam and Others, , which elaborately discussed the point of limitation prescribed u/s 18 proviso read with Section 12 (2) of the Act for reference to Court by the Collector. In the said case, the Hon''ble Apex Court has held as under:--

45. When the statute provides for a law of limitation, compliance therewith is mandatory. For the purpose of applying the statute of limitation, the Courts should, however, be liberal in their approach. Section 18(2)(b) of the Act provides for the maximum period of six months from the date of the Collector''s award. It was, therefore, impermissible to direct references to be made after a long period particularly, when the provisions of Section 5 of the Limitation Act, 1963, cannot be said to have any application.

46. In Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others,

8. The right to make application in writing is provided u/s 18(1). The proviso to sub-section (2) prescribes the limitation within which the said right would be exercised by the claimant or dissatisfied owner. In Mohd. Hasnuddin Vs. State of Maharashtra, this Court was called upon to decide in a reference u/s 18 made by the Collector to the Court beyond the period of limitation, whether the Court can go behind the reference and determine the compensation. though the application for reference u/s 18 was barred by limitation ? This Court had held that the Collector is required u/s 18 to make a reference on the fulfillment of certain conditions. namely, (i) written application by interested person, who has not accepted the award; (ii) nature of the objections taken for not accepting the award; and (iii) time within which the application shall be made. In Para 22 after elaborating those conditions as conditions precedent to be fulfilled, it held that the power to make a reference u/s 18 is circumscribed by the conditions laid down therein, and one such condition is a condition regarding limitation to be found in the proviso. The Collector acts as a Statutory Authority. If the application is not made within time, the Collector will not have the power to make reference. In order to determine the limitation on his own power, the Collector will have to decide whether the application presented by the claimant is or is not within time and specify the conditions laid down u/s 18. Even if, the reference is wrongly made by the Collector, the Court will have to determine the validity of the reference because the very jurisdiction of the Court to hear a reference depends upon a proper reference being made under Section. 18. If the reference is not proper, there is no jurisdiction in the Court to hear the reference. It was, therefore, held that it is the duty of the Court to see that the statutory conditions, laid down in Section 18 including the one relating to limitation, have been complied with and the application is not time-barred. It is not debarred from satisfying itself that the reference, which it is called upon to hear is a valid

reference. It has to proceed to determine compensation and, if it is time-barred, it is not called upon to hear the same. It is only a valid reference, which gives jurisdiction to the Court. Therefore, the Court has to ask itself the question, whether it has jurisdiction to entertain the reference. If the reference is beyond the prescribed period by the proviso to sub-section (2) of Section 18 of the Act, and if it finds that it was not so made, the Court would decline to answer the reference. Accordingly, it was held that since the reference was made beyond the limitation, the Court was justified in refusing to answer the reference.

9. It would, thus, be clear that one of the conditions precedent to make a valid reference to the Court is that the application u/s 18 (1) shall be in writing and made within six weeks from the date of the award, when the applicant was present either in person or through Counsel, at the time of making of the award by the Collector under clause (a) of proviso to sub-section (2). The Collector, when he makes the reference, acts as a Statutory Authority.

47. It was further held in Shah Mangilal case (SCC p. 421, Paras 17-18):--

17. ***

18. Though hard it may be, in view of the specific limitation provided under proviso to Section 18(2) of the Act, we are of the considered view that sub-section (2) of Section 29 cannot be applied to the proviso to sub-section (2) of Section 18. The Collector/LAO, therefore, is not a Court when he acts as a Statutory Authority u/s 18(1). Therefore, Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to subsection (2) of Section 18. The High Court, therefore, was not right in its finding that the Collector is a Court u/s 5 of the Limitation Act.

52. The Collector is a Statutory Authority. He, therefore, ordinarily, must exercise his statutory jurisdiction within the four corners of the statute, although this would not mean that a Superior Court in exercise of its power of judicial review would be denuded of its power to interfere with an order of reference or issue a direction when the same has unjustly been withheld in appropriate cases, but, such a power as is well known should be exercised only in exceptional situations and subject to the condition that adequate grounds exist therefor.

55. An owner of a land has a right to receive just compensation. He, having regard to his human right of access to justice as has been declared by the International Covenant on Economic, Social and Cultural Rights on 10-12-2008 should be given an opportunity to make a reference. A person may get an opportunity to get a reference, only when he is informed about the making of an award.

56. We may notice that before the High Court, it was conceded that in the cases, where the award of the Collector was served on the claimant and yet reference was not made within time, prayer for reference was not maintainable.

57. The High Court, in its judgment had divided the claimants in four categories.

So far as the first category of claimants is concerned, there cannot be any doubt that their applications for reference would be maintainable. So far as the second category of claimants is concerned, their applications being barred by limitation, the same could not have been entertained by the Collector, being beyond his jurisdiction. So far as the third category of claimants is concerned, the time for making application would indisputably run from the date of communication thereof. As far as the landholders belonging to the fourth category of claimants are concerned, the question being of some importance would be discussed a little later.

58. We may notice a few precedents operating in the field. In *Raja Harish Chandra Raj Singh Vs. Land Acquisition Officer*, this Court referring to Section 12 of the Act held:-- (*Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*,

7. This Court, therefore, held that the limitation under the latter part of Section 18(2)(b) of the Act has to be computed having regard to the date on which the claimants got knowledge of the declaration of the award, either actual or constructive. This principle, however, will apply only to cases, where the applicant was not present or represented when the award was made, or where no notice u/s 12(2) was served upon him. It will also apply to a case, where the date for the pronouncement of the award is communicated to the parties and it is, accordingly, pronounced on the date previously announced by the Court, even if, the parties are not actually present on the date of its pronouncement.

59. Similar observations have been made in *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*,

5.... Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party u/s 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award, whether he reads it or not. Similarly, when a party is present in Court either personally or through his representative, when the award is made by the Collector, it must be presumed that he knows the contents of the award, Having regard to the Scheme of the Act, we think that knowledge of the award must mean knowledge of the essential contents of the award. Looked at from that point of view, we do not think that it can be inferred from the petition dated 24-12-1954 that the respondents had knowledge of the award.

15. Prior to above, the Hon"ble Supreme Court in *Ajit Singh and Others Vs. State of Punjab and Others*, has observed thus:--

...inasmuch as the appellants have filed an application for reference u/s 18 of the Act that will manifest their intention, and therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation.

16. In view of the law laid down by Hon"ble Supreme Court, there is no gain-saying that since no specific procedure or form is provided for recording the protest, the fact of filing an application u/s 18 of the Act will lead to an inference of fact that the appellants never accepted the compensation without protest and the protest is very much inherent. This is the only protection granted to the owner of a land. On the hyper-technical reasons of an express protest not being made, the State cannot deny the land owner the right to seek reference to the Civil Court for a reasonable compensation. Fair administration of the State demands that they bestow objective approach to such a situation and that they shall not deprive the citizens of their property just for hyper-technical reasons. The question, whether the protest was express or implied did not fall for consideration before this Court. Section 31(2) of the Act envisages no particular form of protest. Protest has to be implied in the facts and circumstances of each case and as we have observed earlier, the Act does not prescribe a particular mode of protest. Mere acceptance of the compensation does not deprive the appellants to lodge a protest by way of seeking a reference. Even, oral protest by itself is sufficient.

17. In that view of the matter, a finding can be returned in this case as of fact that protest was raised in time by the land owners/appellants, when the amount was tendered.

18. Having thus, heard the learned Counsel for the parties and having perused the material placed on record, this Court finds that the application as made by the petitioners to the Collector for making reference in relation to the award was rejected in a wholly cursory manner by the impugned order. We are of the view that the appellants are right in their contention. Award u/s 11 is only an offer made by the Collector on behalf of the State and the State is bound by the offer. If the offer is accepted without protest and the claimant receives the compensation u/s 31, the proceedings get concluded and no further steps need be taken under the Act. The claimant, if receives the compensation under protest and makes an application u/s 18 in the prescribed manner, the Collector is enjoined to refer the objection u/s 18 to the Court and the controversy would be at large, subject to determination by the Court. Thus, on the examining the present case in the light of the observations made above by the Apex Court, it appears that the learned Single Judge, while reaching on a conclusion has not considered the aforesaid facts. Moreover, the effect of notice u/s 80 of CPC, which was sent to the respondents/State showing acceptance of the amount of compensation under protest by the aggrieved persons appears to be totally ignored.

19. Hence, we are of the considered view that the conclusion as arrived at by the Collector in his order dated 30th August, 2010 (Annexure P-1) as well as the order passed by the learned Single Judge dated 23rd February, 2011 marked as (Annexure A-1) in Writ Petition No. 1025/2011 is not sustainable in law. Therefore, by allowing writ appeals, we set aside both the orders as mentioned

above and remand the case back to the Collector, Shivpuri to decide the application after following the procedure indicated hereinbefore, within a period of six months from the date of communication of the order of this Court. The Registry of this Court is directed to send the copy of this order, within a week, to the Collector, Shivpuri for necessary compliance. Accordingly, the appeals are allowed. A copy of this order may be placed on the record of connected writ appeals.