

(1970) 11 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2524 of 1970

Kailash Devi and Another

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 10-11-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 18, 31(2)

Citation : AIR 1971 P&H 353

Hon'ble Judges : C.G. Suri, J

Bench : Single Bench

Advocate : Pitam Singh Jain, for the Appellant; Gurmukh Singh Chawla, for Advocate General, for the Respondent

Judgement

1. In this civil writ petition under Arts. 226 and 227 of the Constitution of India the only question for decision is whether the petitioner landowners have lost the right to have their case referred to a Civil court u/s 18 of the Land Acquisition Act, 1894 (hereinafter to be referred to as "the Act"), because of their having accepted a voucher for the compensation amount, without registering their protest, when they had already made an application earlier for a reference under that section.

2. The land belonging to the petitioners and described in paragraph 1 of the writ petition was acquired by the State of Haryana, respondent No. 1, through the Land Acquisition Collector, respondent No. 2, for the public purpose of development of Sector No. 17 of Faridabad town in District Gurgaon. The Collector had given his award on 20th of January, 1968. The petitioners had made an application, dated 27th of February 1968 (copy Annexure "A" to the writ petition) well within time, alleging that the award was not acceptable to them, that they felt aggrieved by the rate and quantum of compensation determined by respondent No. 2, and that their case may, therefore, be referred to a Civil Court for enhancement of the compensation amount. No action was

taken on this application for about a year, but a voucher for the compensation amount already determined for the land was sent by post to the petitioners and was received by them on 14th of February 1969. No fresh protest was, however, registered at the time of acceptance of this compensation voucher.

The petitioners then received an intimation on 11th of May 1970 (copy Annexure "B" to the petition) that their application, dated 27th of February 1968, u/s 18 of the Act had been filed on the ground that the compensation amount had been received by them without protest.

3. A preliminary objection was raised by Shri G. S. Chawla, appearing on behalf of the State of Haryana, that the proper remedy to be followed by the petitioners was to file a revision petition u/s 18(3) of the Act, as amended in 1954 and that a writ petition under Art. 226 of the Constitution is not competent. But the petitioners have invoked this Court's power of superintendence under Art. 227 of the Constitution as well and the writ petition can be treated as an application for revision of the impugned order. It was so held in *Kako Bai Vs. The Land Acquisition Collector, Hissar and Others*, .

4. As regards the other objection, Shri Chawla has cited before me the case of *Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah*, , in which the Hon'ble Judge relying on an earlier unreported case *Atul Kumar Bhadra v. State of West Bengal*, Civil Rule No. 1925 of 1957 (Cal) held that an application for reference u/s 18 of the Act is not the proper document wherein to record a protest. A protest ought to be made, firstly, in the application for receiving any disputed amount of compensation, if any, such application is to be at all made and must be recorded in the receipt granted showing that the disputed amount of compensation money was accepted under protest. Where the person receiving compensation money stated only in the application u/s 18 that he would receive the money under protest, the amount is not received under a properly recorded protest and the application will be barred u/s 31(2), second proviso.

5. In *Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah*, also an application u/s 18 of the Act praying for a reference to the Civil Court had been made before the payment was received. While dealing with the argument of the petitioner's counsel that the unreported case was distinguishable, the Hon'ble Judge was pleased to observe as follows:

"Mr. Shyama Charan Mitter, learned Advocate for the petitioner, contended that in the unreported decision above referred to *Sinha, J.*, mainly proceeded since the statement in the affidavit-in-opposition to the effect that the compensation money had not been accepted under protest was not controverted by an affidavit-in-reply, his Lordships arrived at the finding that the compensation had been accepted without protest. Mr. Mitter pointed out that in the instant case the statement that the protest by the petitioner had been waived was very much controverted in the affidavit-in-reply and that made the present case

distinguishable from the unreported decision by Sinha J. In my opinion, Mr. Mitter is not correct in his reading of the judgment of Sinha, J., in the unreported case. His Lordship referred to the affidavits as an additional ground in support of his conclusion that the money had not been received under protest. He relied principally on the receipt for payment of money which was an unconditional receipt. I therefore, hold that the present case is not in any way distinguishable from the unreported decision above referred to."

6. According to the return filed by the respondents in the present case, the voucher for the compensation amount had been sent in February 1969 on the request of the petitioners and the payment had been received without any protest. This conduct of the petitioners could be evidence of their intention to forego or waive or withdraw the prayer for a reference to the Civil Court u/s 18 of the Act. Mr. P. S. Jain, learned counsel for the petitioners, has tried to distinguish the rulings cited above by Mr. Chawla, but I do not find any material points of distinction.

7. It was then argued by Mr. Jain that the rulings cited by Mr. Chawla do not lay down good law. To appreciate his argument it would be necessary to reproduce the second proviso to Section 31(2) of the Act which runs as follows:-

"Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18."

Mr. Jain's argument is that the receipt of the compensation amount without any protest would only bar the making of a fresh application and would not invalidate an application that had already been made earlier before the receipt of the compensation amount or a voucher therefor. An objection raised can also be waived or withdrawn by conduct and this argument fails to convince me that the ratio laid down in Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah, is not correct.

8. Another argument raised by Mr. Jain was that the petitioners are illiterate ladies who had received the letter sent to them by registered post without knowing the contents of the envelope and that they could not have been alive to the necessity of registering a protest when they received the voucher by post. This is given as an explanation why no protest had been recorded on the postal or acknowledgement receipts at the time of acceptance of the registered letter. This argument could have meaning only if the petitioners had failed to cash the compensation voucher. The acceptance of the voucher sent by post and its subsequent encashment can be taken as evidence of the petitioners' intention not to pursue the prayer for a reference to the Civil Court u/s 18 of the Act. If the registered letter was received without knowing the contents, the circumstances could be explained in a prompt reply and a protest could be made therein.

9. I, therefore, dismiss the writ petition, but make no order as to costs.

10. Petition dismissed.