

(2013) 05 DEL CK 0463
In the Delhi High Court
Case No : LA APP No. 383 of 2009

Kartar Singh

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 16-05-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 12, 12(2), 18, 18(2), 4
Post Office Act, 1898 — Section 28, 29

Citation : (2013) 3 ILR Delhi 2014

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Vijendra Mahndiyan and Ms. Fallavi Awasthi, for the Appellant;
Sanjay Kumar Pathak, for the Respondent

Judgement

V.K. Jain, J.—The land of the appellant was notified by way of notification dated 24.7.1998 issued u/s 4 of the Land Acquisition Act, followed by declaration dated 4.8.1998 u/s 6 of the aforesaid Act. The award number 06/LAC/CL/2000 came to be passed by the Land Acquisition Collector on 3.8.2000. The compensation was fixed by the Land Acquisition Collector @ Rs. 11.20 lac per acre. Being dissatisfied with the compensation awarded to him, the appellant sought a reference u/s 18 of the Land Acquisition Act. The reference was forwarded by the Land Acquisition Collector on 30.5.2001. However, while forwarding the reference, the Land Acquisition Collector, recorded that a notice u/s 12(2) of the Act dated 30.5.2001 was sent to the appellant which was received by him on 2.6.2001 and despite that he had submitted the reference on 12.9.2001, which was beyond three months, though it ought to have been within 42 days and, therefore, the reference petition was rejected on 17.3.2004. On the reference being made to the learned Additional District Judge, a written statement was filed by the respondent-Union of India and in the said written statement a preliminary objection was taken that the reference was barred by limitation and, therefore, was not maintainable. It was further stated in the written statement that despite issue of statutory notice on the petitioner, he failed to file the

reference petition within the prescribed period and, therefore, the petition was barred by limitation. No replication to the written statement was filed and no issue on the plea of limitation taken by the respondent was framed. The learned Additional District Judge vide impugned order dated 24.12.2008 rejected the reference as barred by limitation.

Section 18(2) of the Land Acquisition Act which prescribes the period of limitation for filing reference under sub section 1 of the said Section reads as under:

(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 u/s 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

2. It would thus be seen that if a person seeking reference was present either in person or through a counsel at the time the award was made, the reference is to be sought within six weeks from the date of the award and in other cases it can be sought within six weeks of receipt of notice from the Collector u/s 12(2) of the Act or within six months from the date of the award, whichever period expires first.

3. A perusal of award in question would show that it does not indicate that on 3.8.2000 the appellant or his counsel was present at the time it was announced. A perusal of notice dated 30.5.2001 issued by the Land Acquisition Collector to the appellant Kartar Singh would show that the said notice purports to have been received by one Ajit Singh on 2.6.2001. The report on the notice does not indicate the relationship of Mr. Ajit Singh with the appellant but, it is otherwise an admitted case as he is the son of the appellant.

4. Section 45 of the Land Acquisition Act prescribes the mode of service of notice and to the extent it is relevant, the said Section reads as under:

45. Service of notices.-

(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice section 4, by the officer therein mentioned, and, in the case of any notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member

can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired: Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and 6[registered under sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898), and service of it may be proved by the production of the addressee's receipt.

It would be seen from a perusal of the above section that ordinarily a notice issued under the provisions of the Act including notice u/s 12 thereof is required to be tendered to the person to whom the notice is addressed. It is only in case such a person cannot be found that the service can be made on an adult male of his family residing with him and if no such adult member can be found, the notice can be affixed on the outer door of the house in which the person named in the notice ordinarily resides or carries on business or it can be affixed in conspicuous place in the office of the concerned officer or of collector or on the Court house as also on conspicuous part of the acquired land. The report on the notice dated 30.5.2001 does not indicate that the appellant Kartar Singh was not found present when the notice was taken by the process server to his residence. One possibility is that the appellant was not available at his residence and, therefore, notice was served upon his son. The other possibility can be that though the appellant was present, his son of his own took the notice or was directed by the appellant to take the notice on his behalf.

5. As noted earlier, no replication was filed by the appellant to the written statement of the respondent before the Reference Court. No issue with respect to limitation was framed by the Reference Court. In my view, considering that the respondent had taken a preliminary objection that the reference was barred by limitation, it was necessary for the Reference Court to frame an issue on the point of limitation and thereafter given an opportunity to the parties to lead evidence on that issue.

If the plea of limitation can be decided without recording evidence, it may not be necessary to frame an issue before returning a finding on such a plea. If, however, the decision on a plea of limitation requires recording of evidence, it would not be appropriate to return a finding without framing an issue and giving an opportunity to the parties to lead evidence by disputing the factual aspect of the issue.

6. Had the learned Additional District Judge framed an issue on the point of limitation, the appellant would have got an opportunity to place his stand before the Court and lead evidence in support of the stand taken by him. Had the appellant filed replication and admitted receipt of notice by his son on 2.6.2001, probably evidence might not have been necessary but, considering the fact that

neither the appellant of his own filed any replication nor was he asked to do so despite plea of limitation taken by the respondent in its written statement, recording of evidence was necessary before returning a finding on the issue of limitation which the respondent had taken in its written statement. In fact the Reference Court did not at all go into the issue of service of notice and returned a finding on limitation merely on the basis of the endorsement made by the Land Acquisition Collector. Mr. Pathak, learned counsel for the respondent states that since the appellant did not contest the plea of limitation taken in the written statement by filing a replication and did not claim that the notice was not received by his son or that his son despite receiving the notice did not inform him and also did not take a plea that notice in accordance with Section 45 of the Act had not been served upon the appellant, there is no justification in remanding the matter back to the Reference Court and there was no necessity for the Reference Court to frame an issue on this aspect. However, I do not find any force in these submissions. In my view in the absence of admission of receipt of notice by the appellant, the learned Additional District Judge without framing an issue, and recording evidence, could not have returned a finding on the issue of limitation even if no replication was filed by the appellant for the simple reason that the issue of limitation having been raised by the respondent, it was for the respondent to prove the service of notice u/s 12 of the Act upon the son of the appellant.

For the reasons stated herein above, the learned order dated 24.12.2008 passed by the learned Additional District Judge is set aside and the matter is remanded back to him for framing an issue on the point of limitation, give opportunity to the parties to lead evidence on the said issue and thereafter pass an appropriate order in accordance with law. The parties shall appear before the learned District Judge on 8.7.2013. The fresh order in terms of the above directions shall be passed by the learned Additional District Judge within six months of the parties appearing before him. The appeal stands disposed of.

The trial court record be sent back forthwith along with a copy of this order.