
(2012) 04 MP CK 0014
In the Madhya Pradesh High Court
Case No : C.R. No. 122 of 2011

Kashi Bai (Smt.) and ors

APPELLANT

Vs

State of M.P. and ors

RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Limitation Act, 1963 — Section 24, 4

Citation : (2012) ILR (MP) 1414 : (2012) 3 MPHT 125

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : R.P. Khare, for the Appellant; Pratibha Mishra, P.L., for the Respondent

Judgement

K.K. Trivedi, J.—By this revision u/s 115 of the Code of Civil Procedure, the petitioners have assailed the order dated 22.3.2010, passed in Reference Case No. 10-A/1982/2005-06, by the Collector, Bhopal. The petitioners have contended that they made an application for making a reference to the Civil Court u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act for brevity) before the Collector, categorically stating the fact that the award as calculated of the land, said to be acquired by the Notification dated 3.11.2006 and with respect to which, the award was passed on 28.11.2007, was not proper. In fact, the assessment of compensation should have been done in appropriate manner and, therefore, the matter was required to be referred to the Civil Court for deciding such an objection. Since the application u/s 18 of the Act aforesaid was not made within time, explaining the delay, an application u/s 5 of the Limitation Act was filed by the petitioners categorically contending that the petitioners could know about the award effectively when certain persons have made an application for making the reference. They also moved the applications on 13.10.2008 and 1.11.2008. The reference itself was made on 22.3.2010 in respect of certain other applications, but the application of the petitioners was rejected saying that the same was not filed within the time. It is contended by the petitioners that if the reference could have been made with respect to some

of the applicants, who too were aggrieved by the very same award, condoning the delay, the reference in respect of the claim of the petitioners could have also been made. It is contended that since this was not done, the District Court where the reference has already been registered as M.J.C. No. 357/2010 is not considering the claim of the petitioner. Learned Panel Lawyer, appearing for the respondents/State, has contended that provisions of Section 18 of the Act specifically prescribes a limitation and, if, an application is not made within the time prescribed, the Collector cannot make a reference under the provisions of the Act aforesaid. Since the petitioners have not made the application for reference u/s 18 of the Act within time, the Collector was right in rejecting the application of the petitioners holding that the same was barred by limitation. The provisions of Section 5 of the Limitation Act are not attracted in such a case. Therefore, it is contended that the revision is devoid of any merit and deserves dismissal.

2. Considered the arguments of Learned Counsel for the parties.

3. It is not disputed that there is a provision of making an application for reference to the Civil Court under the Act in Section 18, and a limitation is also prescribed for the said purposes. It is to be seen that a limited enquiry is required to be conducted by the Collector to the effect whether there is prima facie material available to make a reference to the Civil Court for determination of the quantum of compensation in the award, for the purposes of acquisition of the land of any person or not. The said enquiry cannot be said to be an enquiry as is required to be conducted by the Civil Court where the reference is to be made. Thus, it is to be seen that for the said purposes if certain applications were received within time and some sort of enquiry was being conducted, the Collector could have conducted an enquiry with respect to the claim made by the petitioners also. Apart from that it was the case of the petitioners that they have come to know about the award or the essential contents of the award and from the date of knowledge within time they have applied for making a reference to the Civil Court. The Apex Court in the case of Bhagwan Das and others Vs. State of U.P. And others [2010(3) MPLJ 251] has categorically held that in view of the specific provisions made u/s 18 of the Act, Section 29(2) of the Limitation Act cannot be applied to the provisions of the aforesaid Section 18 of the Act and, therefore, the benefit of Section 4 to 24 of the Limitation Act, 1963, would not be applicable in regard to the application u/s 18(1) of the Act. It is also held by the Apex Court that the Collector is not a Court when he discharges his function as a statutory authority u/s 18(1) of the Act and, therefore, Section 5 of the Limitation Act, 1963 cannot be invoked for extension of the period of limitation prescribed under the proviso to Section 18(2) of the Act. As Limitation Act itself is not applicable to the proceedings before the Collector, in the considered opinion of this Court if the application u/s 5 of the Limitation Act filed by the petitioners was dismissed by the Collector, no wrong was committed.

4. However, the fact remains that the effective date of knowledge of the essential

contents of the award is to be treated to be the date from which the limitation prescribed u/s 18 of the Act would start running. It was categorically stated by the petitioners that they were not present when the award was passed. It is not the case of the respondents also that any of the petitioners was present when the award was made. Now it is to be considered whether the petitioners came to know about the award and the essential contents of the award on what particular time and from that date whether the application was made within the limitation or not ? This particular aspect was required to be examined by the Collector. However, this was not done. The claim of the petitioners as was stated in the application for condonation of delay in filing the application for making the reference was that the proceedings of acquisition were initiated by issuance of a Notification u/s 4 of the Act and the moment the Notification was issued, the claim was made for grant of appropriate compensation for the land sought to be acquired. It is stated in the application that the petitioners and other villagers were going to the office of the Land Acquisition Officer and they were intimated that such objections are being considered and necessary orders would be passed. It is stated that the petitioners were never intimated about passing of the award nor any information/notice u/s 12(2) of the Act was served on them. It is stated by them in their application that when they went to the office of the Land Acquisition Officer on 4.4.2008, they could know that some award was passed and immediately an application for grant of certified copy of the award was made. The certified copy of the award was made available on 19.9.2008 and from that day they are making the application for making a reference within the limitation.

5. As has been pointed out in the case of Bhagwan Das (supra), the Apex Court has categorically held that the limitation would start running from the date of knowledge of the essential contents of the award and not from the date of award as is required because in a case the notice is not served or the award is not made in the presence, the date of award cannot be construed to be the date mentioned by the Land Acquisition Officer in the award the date from which limitation for filing application would start, but it should be construed from the date, the essential contents of the award came to the notice of the person concerned or the claimants. At length considering all such aspects, the Apex Court has held in case of Bhagwan Das (supra) that in case such an assertion is made by the person interested making an application for reference, the Collector is required to take into consideration such facts and then make a reference to the Civil Court in exercise of his power u/s 18 of the Act.

6. In the case in hand, a unique thing has been done. There were other claimants who have made the application for making the reference before the Collector u/s 18 of the Act. The award was the same and passed in their respect also on the same date. Their applications were considered and reference has been made to the Civil Court. However, without conducting any enquiry with respect to the assertion of the date of knowledge of award, the Collector has refused to make reference of the claim of the petitioners to the Civil Court. This

unique fact is proved from the certified copy of the note sheet produced before this Court in this revision. The application with respect to these petitioners along with eight more has been said to be rejected by the impugned order.

7. In the considered opinion of this Court, such proceedings done by the Collector in exercise of his power u/s 18 of the Act cannot be said to be just and proper. In view of the law laid down by the Apex Court in Bhagwan Das (supra), such course was not open to the Collector. Consequently, the revision is allowed. The impugned order dated 22.3.2010 in so far as it relates to rejection of the application of petitioners for making a reference of their claim to the Civil Court, is hereby set aside. It is directed that the reference with respect to the claim of petitioners u/s 18 of the Act be made to the Civil Court immediately. Since the Civil Court has already registered MJC No. 357/2010 with respect to the reference of the claim made by certain more persons and the proceedings have been initiated in this respect, if the said proceedings are pending consideration before the Civil Court, the claim of the petitioners be also considered along with the said proceedings. If the proceedings in the earlier reference have come to an end, the District Court will proceed in accordance to law to answer the reference made to it by the Collector with respect to the petitioners. The Collector to pass the appropriate orders in the application of the petitioners within a month from the date of receipt of certified copy of the order passed today. The revision stands allowed to the extent indicated herein above. There shall be no order as to costs.