

(2011) 10 BOM CK 0004

In the Bombay High Court

Case No : F. A. No's. 1536, 1538 to 1540, 1542 to 1547 of 2002

Krishnabai Padu Govari Since Deceased Through Her LRs.
Smt. Sharadabai Krishna Patil and others

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12(2), 18(1)(2), 28, 28

Citation : (2012) 4 ALLMR 830 : (2012) 3 MhLj 32

Hon'ble Judges : A. S. Oka, J

Bench : Single Bench

Advocate : R. V. Pai along with B. R. Pai and M. Chetiwal instructed by S. M. Kamble, for the Appellant; A. R. Patil, AGP For respondent No. 1- State and G. S. Hegde instructed by M/s. G S. Hegde and Associates, for the Respondent

Final Decision : Dismissed

Judgement

A. S. Oka, J.—These Appeals can be disposed of by a common Judgment as the same arise out of a common Judgment delivered by the Reference Court in References u/s 28-A(3) of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act"). By the impugned Judgment, the Reference Court held that the References u/s 28-A(3) made at the instance of the Appellants were barred by limitation and, therefore, the said References have been dismissed. It is an admitted position that in case of these 10 Appeals, Awards u/s 28-A(2) were made on 5th April, 1994 and notices u/s 12(2) of the said Act in respect of the Awards were served on the appellants on 5th April, 1994. On applications made by the Appellants, certified copies of the awards were received by them on 15th April 1994. The Reference Applications u/s 28-A(3) were admittedly filed on 21st May, 1992. The admitted position is that if the period of limitation for filling Applications for References u/s 28-A(3) is to be computed from the date of service of notices u/s 12(2) i.e. from 5th April, 1994, and if it is assumed that the period of limitation is of six weeks from the date of service of notices of Award under sub-section (2) of section 28, the Reference Applications were

barred by limitation. The learned counsel appearing for the appellants has made two submissions. The first submission is on interpretation of section 28A of the said Act. He submitted that sub-section (1) of section 28A confers the power on the Collector to redetermine the compensation on the basis of an Award made by the Reference Court u/s 18 of the said Act in respect of a land acquired under the same notification u/s 4(1). He submitted that proviso to subsection (1) specifically extends the period of limitation for filing an application for redetermination by providing that the time required for obtaining the certified copy of the Award of the Reference Court is required to be excluded while computing the period of limitation of three months provided in sub-section (1) of section 28A. He submitted that though a decision contemplated by sub-section (2) of section 28A is referred to as an Award, it is not an offer on par with an Award u/s 11 of the said Act and in fact it is an Award made after adjudication as contemplated by sub-section (1) of section 28A. It is submitted that on plain reading of sub-section (1) of section 28A, the Award under sub-section (2) thereof cannot be an offer, but it is a decision on adjudication made for redetermination of the compensation on the basis of the Award of the Reference Court. He submitted that there is no provision made on par with subsection (2) of section 12 requiring notice of the Award under sub-section (2) of section 28A to be served to the persons interested. He invited the attention of the Court to sub-section (3) of section 28A. He submitted that though the provisions of sections 18 to 28 of the said Act, so far as may be, apply to Reference Applications u/s 28-A (3), he submitted that all provisions incorporated u/s 18 will not apply to a Reference Application under sub-section (3) of section 28A. He invited the attention of the Court to section 18 of the said Act and in particular proviso (a) and proviso (b) to sub-section (2) thereof. He submitted that the first part of proviso (b) provides a limitation of six weeks from the date of receipt of the notice under sub-section (2) of section 12. He submitted that as an Award under sub-section (2) of section 28A does not contemplate service of any notice on par with a notice under sub-section (2) of section 12, the first part of proviso (b) providing limitation will have no Application. He urged that in a case where the person making an Application u/s 28-A(1) was not present before the Collector at the time of passing the Award under subsection (2), the period of limitation will be six months from the date of the Award. He stated that in the cases in hands, the period of limitation will be of six months from the date of Award and the Applications for References have filed within the said period of six months.

2. He submitted that the period of limitation provided for an Application u/s 18 cannot be mechanically applied to a Reference Application under sub-section (3) of section 28A as all the provisions of section 18 are not applicable to a Reference under sub-section (3) of section 28A. He submitted that the remedies under sections 18 and 28A are distinct remedies and, therefore, the same may provide for different periods of limitation. He placed reliance on the decision of the Apex Court in the case of The Bihar State Co-operative Societies Marketing

Union Ltd. vs. Uma Shankar Sharan and another, AIR 1993 SC 1222. In short, the submission is that in case of Reference Application under sub-section (3) of section 28A, when the claimant is not present at the time of making an Award, the period of limitation will be six months from the date of the Award and the period of limitation will start from the date of Award under subsection (2) of section 28A.

3. The second limb of argument is based on the decision of the Apex Court in the case of State of Punjab vs. Mst. Qaisar Jehan Begum and another, AIR 1963 SC 1604. He submitted that the limitation will start running only from the date on which the contents of the Award u/s 28-A(2) are effectively communicated to a claimant. He states that the essential and material contents of the Award u/s 28-A(2) were made known to the appellants-claimants in these cases on 15th April, 1994 when certified copies of the Awards were made available to the appellants. He submitted that if the period of limitation is computed from 15th April, 1994, the Reference Applications were filed during the stipulated time of six weeks. He relied upon a decision of the Apex Court in the case of Ambya Kalya Mhatre (Deceased through LR's) vs. The State of Maharashtra decided on 12th September, 2011 in Civil Appeal No. 7784 of 2011 [since reported in 2012(1) Mh.L.J. (S.C.) 9], Relying upon the said decision, he submitted in a Reference Application, it is not necessary to make any specific prayer for claiming any specific market value.

4. The learned AGP appearing for the State has supported the impugned Judgment and he submitted that the Award under sub-section (2) of section 28A is an offer made by the Collector. He relied upon a decision of the Apex Court in the case of Babua Ram and Others Vs. State of U.P. and Another, . The learned AGP submitted that no interference is called for. The learned counsel appearing for the City and Industrial Development Corporation of Maharashtra Limited supported the impugned Judgment and Award.

5. I have given careful consideration to the submissions. It will be necessary to make a Reference to the provisions of sections 12, 18 and 28A of the said Act which read thus :

12. Award of Collector when to be final. - (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

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

18, Reference to Court. - (1) Any person interested who has not accepted the award may, by written Application to the Collector, requires that the matter be

referred by the Collector for the 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 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.

28-A. Redetermination of the amount of compensation on the basis of the award of the Court. - (1) Where in an award under this Part, the Court allows to the Application any amount of compensation in excess of the amount awarded by the Collector u/s 11, the persons interested in all the other land covered by the same notification u/s 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an Application to the Collector u/s 18, by written Application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be redetermined on the basis of the amount of the compensation awarded by the Court:

Provided that in computing the period of three months within which an Application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an Application under subsection (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the Application.

(3) Any person who has not accepted the award under sub-section (2) may, by written Application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such Reference as they apply to a Reference u/s 18.

6. It is well settled that an Award made u/s 11 of the said Act is an offer. Sub-section (2) of section 12 requires the Collector to give immediate notice of the Award to the persons interested who are not present when the Award is made, sub-section (2) of section 18 provides for the period of limitation for making an

Application for Reference u/s 18. Clauses (a) and (b) of proviso 2 of sub-section (18) provide for different periods of limitation in different contingencies. In the case of Bhagwan Das and Others Vs. State of UP and Others, of the Judgment, the Apex Court has summarized the position as under :

28. The following position therefore emerges from the interpretation of the proviso to section 18 of the Act :

(i) If the award is made in the presence of the person interested (or his authorised representative), he has to make the application within six weeks from the date of the Collector's award itself.

(ii) If the award is not made in the presence of the person interested (or his authorised representative), he has to make the application seeking reference within six weeks of the receipt of the notice from the Collector u/s 12(2).

(iii) If the person interested (or his representative) was not present when the award is made, and if he does not receive the notice u/s 12(2) from the Collector, he has to make the application within six months of the date on which he actually or constructively came to know about the contents of the award.

(iv) If a person interested receives a notice u/s 12(2) of the Act, after the expiry of six weeks from the date of receipt of such notice, he cannot claim the benefit of the provision for six months for making the application on the ground that the date of receipt of notice u/s 12(2) of the Act was the date of knowledge of the contents of the award.

7. As far as the section 28A is concerned, it is true that sub-section (1) thereof provides for redetermination of amount of compensation on the basis of an Award by a Reference Court in a Reference u/s 18 in respect of another land acquired under the same notification u/s 4(1) of the said Act. However, sub-section (2) of section 28A makes a clear provision that after conducting an inquiry and after giving a reasonable opportunity of being heard to the persons interested, the Collector is required to make an Award determining the amount of compensation payable to the Applicant. The argument of the learned counsel appearing for the appellants is that the Award contemplated by sub-section (2) of section 28A is not an offer on par with an Award u/s 11, but it is an order based on adjudication made for redetermination of compensation. However, the said issue is no longer *res integra*. In the decision of the Apex Court in the case of Babua Ram vs. State of U.P., 1995(1) Mh.L.J. (S.C.) 930 = 1995(2) SCC 689, the Apex Court has held thus :

42....

The award of the Collector under sub-section (2) of section 28A though as (sic at) a post-section 11 stage, nonetheless, the award u/s 28-A(2) is award and partakes the same character as an offer and not a decision. Therefore, if the Application accepts the award, the award becomes complete and acceptance brings the proceedings u/s 28-A(3). the award made u/s 28-A(2) is at large

subject to the decision by the Court by Application u/s 18 to 26 as is envisaged in section 28-A(3). (Underline added)

8. Thus, as held by the Apex Court, there is no difference between an Award under sub-section (2) of section 28A and an Award under sub-section (1) of section 11 to which section 12 is applicable. It must be noted here that even sub-section (1) of section 11 contemplates an inquiry by the Collector into the objections of any person interested. Thus, the submission that the Award under sub-section (2) of section 28A is not an offer will have to be rejected. It is an Award on par with an Award u/s 11 of the said Act.

9. As provided in sub-section (3) of section 28A, the provisions of sections 18 to 28 are applicable to a Reference Application made under subsection (3) of section 28A as far as the same may apply. As the Award under sub-section (2) of section 28A is on par with an Award u/s 11, the Reference in section 18 to the Award will have to be also read as a Reference to an Award under sub-section (2) of section 28A. Therefore, the period of limitation provided in section 18 will apply to an Application for Reference under sub-section (3) of section 28.

10. As pointed out earlier, clause (b) of proviso of sub-section (2) of section 18 provides that if the Applicant in the Reference is not present and is not represented before the Collector at the time of making an Award u/s 11, the period of limitation is six weeks from the date of service of notice under sub-section (2) of section 12 or a period of six months from the date of the Award, whichever is earlier. The argument is that there is no provision u/s 28A which requires that a notice of the Award under sub-section (2) of section 28A should be issued to the persons interested as contemplated by sub section 2 of section 12 of the said Act. As held by the Apex Court, the Award under sub-section (2) of section 28A partakes the character of an Award u/s 11. The effect of sub-section (2) of section 28A is that a fresh Award is required to be made after taking into consideration an Award of the Reference Court u/s 18 of the said Act. Thus, on the basis of an Application under sub-section (1) of section 28A, an inquiry is required to be held as contemplated by sub-section (2) of section 28A which is on par with an inquiry under sub-section (1) of section 11 and an Award which is in the nature of an offer is required to be made. Thus, it follows that the requirement of sub-section (2) of section 12 of the said Act of immediately issuing notice of the Award will also apply to an Award under sub-section (2) of section 28A. Therefore, as far as the limitation for filing Application under sub-section (3) of section 28A is concerned, the period of limitation will be six weeks from the date of receipt of the notice from the Collector under sub-section (2) of section 12 or six months from the date of Collector's Award, whichever period shall expire earlier.

11. The decision of the Apex Court in the case of Bihar State Co-operative Marketing Union Ltd. (Supra) will not help the appellants as in the present case, there is no difference between the period of limitation for making an Application under sub-section (1) of section 18 and an Application under sub-section (3) of

section 28A.

12. Now coming to the second limb of the argument canvassed by the learned counsel appearing for the appellant, it must be noted that the learned counsel relied upon the decision of the Apex Court in the case of the State of Punjab (supra) which is a decision of the Bench of three Hon"ble Judges. The said decision has been considered in the case of Bhagwan Das and ors. vs. State of Uttar Pradesh and others (supra) wherein the Apex Court interpreted section 18 with reference to the period of limitation for filing a reference application. Paragraph No. 28 of the said decision has been already quoted above. The said decision holds that when the notice under sub-section (2) of section 12 is served, the limitation starts running from the said date and the same is of six weeks. In the case of State of Punjab and Another Vs. Satinder Bir Singh, , the Apex Court held thus:

8. The question then is whether the notice u/s 12(2) is a valid notice. From a conjoint reading of sections 11 and 12, it is clear that notice is only an intimation of making of the award requiring the owner or person interested to receive compensation awarded u/s 11. On receipt of the notice, if the person interested receives compensation without protest, obviously no reference need be made. The determination of compensation becomes final and binds the parties. When he receives the compensation under protest as contemplated u/s 31 of the Act, the need to make the application for reference u/s 18(1) would arise. At that juncture it will be open to the person interested either to make an inspection of the award which was conclusive between him and the Collector by operation of sub-section (1) of section 12, or seek a certified copy of the award from the Collector and the contents. Thereon he could make necessary objection for the determination inter alia, of compensation for the land. It is not necessary that the notice should contain all the details of the award including his consideration and its manner of determination of the compensation as opined by the learned Judge of the High Court. It is not incumbent that the person interested should immediately make the reference application on his receiving compensation u/s 31. In other words receipt of the amount and making the reference application are not simultaneous. The statutory operation of limitation mentioned by section 18(2) does not depend on the ministerial act of communication of notice in any particular form when the Act or Rules has not prescribed any form. The limitation begins to operate from the moment the notice u/s 12(2) is received or as envisaged by section 18(2)." (Emphasis added)

In the case of Mahadeo Bajirao Patil Vs. State of Maharashtra and Others, , the Apex Court reiterated the position as under:

11. It is by now well settled that notice u/s 12(2) of the Act is a clear intimation of making of the award requiring the owner or person interested to receive the compensation awarded u/s 11 of the Act. It is not necessary that the notice should contain all the details of the award including the consideration by the Land Acquisition Collector and its manner of determination of the compensation.

No particular form is prescribed by the Act or the Rules.

13. Hence in the present case, the starting point of limitation will be the date of receipt of notice of making an award and it cannot be postponed till the date on which a copy of the award is received by the claimants. In the circumstances, it is not possible to find fault with the view taken by the Reference Court. The starting point of limitation in these cases will be 5th April, 1994. The Reference application were admittedly filed after the expiry of a period of six weeks from the said date. Hence, there is no merit in the Appeals and the same are dismissed. There will be no order as costs.