
(1927) 05 PAT CK 0012
In the Patna High Court

Kristo Singh Sardar

APPELLANT

Vs

Secretary of State

RESPONDENT

Date of Decision : 25-05-1927

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 9(3)
Limitation Act, 1963 — Section 5

Citation : AIR 1927 Patna 333

Hon'ble Judges : Das, J

Bench : Division Bench

Judgement

Das, J.—These applications are directed against the orders of the learned Collector, declining to make a reference to the civil Court u/s 18, Land Acquisition Act.

2. The petitioner is the mukarraridar of a mauza a portion of which has been acquired by the Government under the Land Acquisition Act, He was served with a notice u/s 9, Clause (3) of the Land Acquisition Act, and he appeared and preferred a claim.

3. One Gopinath Laya opposed the claim of the applicant and put forward a claim on his behalf on the 8th June 1926. The learned District Collector took up the matter, dismissed the claim of Gopinath Laya and made an award, awarding Rs. 1,710 to the petitioner. This order was made in one of the cases before him. In the other case the award was made on the 9th June 1926. The order sheet shows that the petitioner was present and was informed of the award and that he did not accept the sum awarded. On the 9th June 1926, notices u/s 12, Clause (2) were ordered to be served upon the petitioner and he was asked to make an application to the Collector in accordance with law if he did not accept the award of the Collector. On the 16th July the petitioner was actually present in Ghandil camp from which the notices were issued to him with a petition praying that the matter should be referred to the civil court u/s 18. The Court, however, was no longer sitting in Chandil and the petitioner was informed that the Court would be

sitting in Thulin on the 27th July 1926. The petitioner actually presented his application u/s 18 on the 27th July 1926, asking the collector to make a reference to the civil Court. The Collector has refused the application on the ground that it is barred by limitation.

4. Now Section 12, Clause (2) Land Acquisition Act provides as follows:

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.

5. Section 18 deals with the question of reference to a civil Court and it provides that.

every 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; and (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.

6. The petitioner before me relies upon Clause (b) and upon the fact that notices were actually served upon him u/s 12, Clause (2), Land Acquisition Act. He has also sworn to an affidavit, stating that he was not present when the award was made. In support of his statement on oath, he relies upon the fact that the Court undoubtedly proceeded on the hypothesis that he was not present when, the award was made because the Collector acted u/s 12, Clause (2) and gave notice of the award to the petitioner.

7. He, undoubtedly, makes a strong case in favour of the view that he was not present when the award was made; and if it was possible for him to accept this, case, the Collector should have acceded to the application made to him u/s 18, Land Acquisition Act. But it is impossible for me to ignore the order-sheet of the Collector which shows that the petitioner was present and was informed of the award. The learned vakil appearing for the petitioner, states, that the order sheet is not correct and that there is some misapprehension which, he is in a position to remove.

8. Now this question has not really been considered by the Collector who has proceeded on his order sheet. In my opinion the question of fact as to whether the petitioner was present when the award was made should be investigated by the learned Collector and he should take evidence on this point. If he is satisfied, upon the evidence, that the petitioner was present when the award was made then, of course, he will refuse to make a reference to the civil Court. But if, on the other hand, he comes to the conclusion that the petitioner was not present when the award was made, he must accede to the application of the petitioner and make a reference to the civil court.

9. It was contended before me that the petitioner was misled by the notice

served upon him requiring him to make is objection to the award in chandil camp on the 16th, July 1926. The learned vakil contends that on receipt of that notice he got his petition ready and was actually present in Chandil camp on the 16th July, was he learnt that the Collector was no longer in chandil but had gone away to Hazairibagh.

10. There is no doubt that the petitioner has some grievance in the matter, But we are dealing with a statute which gives exceptional powers to the Collector, and in my view Section 5, Limitation Act has no application to proceedings under the Land Acquisition Act. This being so, it is impossible for me to interfere with the order on any other ground.

11. I would, however, allow these applications and remand the cases to the learned Collector for disposal of the question of fact raised in the affidavit before me, namely whether the petitioner was actually present when the award was made. If the learned Collector answers this question in the affirmative, then he will reject the application of the petitioner. If, on the other hand, ha answers the question in the negative then I direct him to make a reference to the civil Court.