
(1973) 07 CAL CK 0017
In the Calcutta High Court
Case No : Appeal No. 111 of 1971

Kusumlata Khandelwal and Another	Vs	APPELLANT
Land Acquisition Collector and Another		RESPONDENT

Date of Decision : 23-07-1973

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 31(2)

Citation : AIR 1974 Cal 396

Hon'ble Judges : Amiya Kumar Mookerji, J; Amaresh Roy, J

Bench : Division Bench

Advocate : G.S. Rawat, for the Appellant; G.N. Roy, for the Respondent

Final Decision : Allowed

Judgement

Amaresh Roy, J.—This appeal is by a claimant under an award made under the Land Acquisition Act 1 of 1894. In favour of the said claimant an award of compensation for acquisition of a property was made by the Collector of Calcutta on the 20th of September, 1963. On receipt of that notice the claimant made an application for a reference u/s 18 of the said Act on the 11th of November, 1963, on the allegation that the amount of compensation granted under the award was arbitrary and inadequate and the petitioners were unable to accept the same. On the same day, that is, 11th November, 1963 the claimants also made another application to the Land Acquisition Collector, Calcutta, in which application they referred to the notice dated the 25th of September, 1963 and also to the application for reference to civil court u/s 18 of the Land Acquisition Act and then said in paragraph 2 of the application that the petitioners were agreeable to accept the same award under protest without any prejudice to their rights and contentions in the reference u/s 18 of the Land Acquisition Act. Pursuant to that protest contained in the said application made on the 11th of November, 1963, a payment order was made and on the 3rd January, 1964, the petitioners through their authorised Advocate received payment of Rupees 11,186.95 P. out of the awarded sum of Rupees 11,516.95 P. after deducting the amount payable to the

Commissioner of the Corporation of Calcutta for taxes is full satisfaction. For the sum received the said Advocate for the petitioners granted a receipt. In that receipt, however, there was no mention of the fact that the amount out of the awarded sum was received under protest.

2. Upon those facts the application made to the Land Acquisition Collector, Calcutta, for a reference u/s 18 of the Land Acquisition Act was rejected on the 27th June, 1965, obviously in view of the provision in the 2nd proviso under Sub-section (2) of Section 31 of the Land Acquisition Act, 1894. Against that order rejecting the application to make a reference u/s 18 the claimants moved this Court under Article 226 of the Constitution praying for a Writ in the nature of Certiorari for cancelling, quashing and setting aside the order D/- the 27th September, 1965 (?) and a Writ of Mandamus commanding the respondents to refer the matter to the civil court u/s 18 of the Land Acquisition Act, 1894. A rule nisi issued giving rise to Matter No. 186 of 1966 on the Original Side of this Court. At the hearing of the said matter affidavits were filed on behalf of both the parties, in which the facts appearing from the state of the record were recounted. In consideration of those facts our learned brother K. L. Roy, J. followed the view point in an unreported decision by Sinha, J. as his Lordship then was, in Civil Revn. No. 1925 of 1957 in the case of Atul Kumar Bhadra v. The State of West Bengal the judgment in which was delivered on the 19th December, 1960, by holding that the purported protest for acceptance of the money under the award not having been engrossed in the receipt that was granted, the reference u/s 18 is precluded. In that view of the matter by his judgment dated the 14th of January, 1970, K. L. Roy, J. discharged the Rule. Against that order of the learned trial Judge the present appeal has been preferred.

3. In support of the appeal learned Counsel appearing for the appellants Mr. Rawat has contended that the view of the law that was taken by the learned Judge Sinha, J. as his Lordship then was, in the unreported decision mentioned above, which the learned trial Judge K. L. Roy, J. rightly felt was binding on him, is an erroneous view. The learned Counsel has relied on a decision of the Division Bench of this Court (P. N. Mookerjee and A. K. Dutt, JJ.) in the case of Md. Golam Ali Mina and Another Vs. Land Acquisition Collector and Another, . That decision was pronounced on the 2nd of May, 1968 and it says that not only the judgment in the unreported case delivered by Sinha, J., as his Lordship then was, but also another reported decision of a single Judge Banerjee. J. reported in Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah, in the case of Suresh Chandra Roy v. The Land Acquisition Collector, Chinsurah, relying on that earlier decision of Sinha, J., were considered. But both those decisions were overruled by the Division Bench above-mentioned. Regarding the judgment in the case of Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah, the Division Bench observed as follows:

"It is true that there is an observation in the judgment of Banerjee, J. that the

protest should be endorsed on the receipt itself, but that observation, in the facts of that case, would be clearly obiter and the said case would, obviously, be distinguishable on its facts. It is unnecessary to say more, so far as this case is concerned, but we would like to add that, if it was intended to hold, in that case that, unless the protest actually appears in the body of the receipt, the receipt must be taken to be a receipt without protest, we are, with respect, unable to agree with the said decision, as such statement of the law would be too wide for our acceptance."

The latter portion in the above quotation which we have underlined is a clear decision on the question of law regarding interpretation of Section 31, particularly in that part which is the 2nd proviso under Sub-section (2) of that section. Not only so, the judgment of Division Bench proceeded to observe as follows :--

"Mr. Banerjee also relied on the earlier unreported decision of Sinha, J. (as he then was), in Civil Revn. Case No. 1925 of 1957 (Cal) Atul Kumar Bhadra v. State of West Bengal, where, also, some observations were made that, unless the protest was embodied in the receipt, the claimant would be disentitled to a reference on the ground that he had accepted payment without protest. It is to be pointed out, in this connection, that Sinha J. (as he then was), in his above decision, relied inter alia--and, in our opinion mainly -- on affidavits before him and came to a finding upon the same that there was, in the case before him, receipt of payment without protest. Upon that finding, the decision of Sinha J. (as he then was), in the above case, may be supported. But, if it was meant to lay down the law in the form that, unless the protest was embodied in or endorsed on the receipt itself, the claimant would be out of Court, so far as his prayer for reference is concerned we respectfully differ from the same. Law only requires that the claimant has not accepted payment without protest. If the claimant actually makes an application for receiving the amount or payment under protest and in pursuance of or following that application, payment is made, and the claimant, as in the instant cases, endorses his receipt of payment on the back of the said application, it would hardly be reasonable to say that the claimant waived his protest and accepted the payment without protest."

Taking that view of the law the said Division Bench while disposing of the Rule that appears to have been issued in that case under Article 227 of the Constitution made the Rule absolute by saying--

"In the above view, we would hold that we have jurisdiction to interfere with the order of the learned Collector, refusing to make references in the instant cases, and to correct his error of jurisdiction, which he exercised, in the instant cases, illegally and with material irregularity, upon an erroneous view of the nature of the receipts, given by the claimants as aforesaid, and we direct that the claimants' applications for references be allowed and the references in question be made by the Collector."

4. The learned Advocate for the respondents before us has sought to distinguish the facts of the present case from those that were available in the case before the Division Bench above referred to by pointing out that in that case the receipt for the amount withdrawn was endorsed on the back of the petition in which the protest against the award was ventilated; but in the present case although in the application made on the 11th of November, 1963, the protest was clearly put on record, a separate receipt was granted by the lawyer for the claimants who withdrew the money without adding in that receipt itself any word to convey that the amount was withdrawn under protest. Furthermore Mr. Roy, learned Advocate for the respondents emphasized what had been said by Banerjee, J., in the case reported in Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah, that where the person receiving compensation money stated only in the application u/s 18 that he would receive the money under protest the amount was not received under a properly recorded protest and the application would be barred u/s 31(2) second proviso. Having heard the learned Advocates of both the sides we are of the view that the decision of the Division Bench reported in Md. Golam Ali Mina and Another Vs. Land Acquisition Collector and Another, in the case of Md. Golam Ali v. L. A. Collector is a binding authority which we should follow, more so because we find ourselves in complete agreement with respect to what the learned Judges of the Division Bench have said in that judgment. We need only to add that whether a clear receipt is appended on the back of the protest application or whether a clear receipt is granted as in the present case by the lawyer for the party in a separate document does not make any difference at all in the view of law regarding the effect of the second proviso under Sub-section (2) of Section 31, so long the protest against the quantum of award is appearing on the record in fact in the application made by the claimant. The second proviso reads 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".

The law there clearly refers to an existence of non-performance of a protest as a fact. We cannot find any other words that would justify us to think that it was insisting either on a "recorded protest" or a "properly recorded protest" as was being thought of by Banerjee, J., in the case of Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah, . In our view the legal right of a claimant to insist on a reference u/s 18 of the Act to be made by the Collector to the Civil Court can be said to have thrown away only when the claimant is shown to have "received the amount otherwise than under protest". So long as there is a protest in fact appearing neither the form of the protest nor the particularity of any document in which that protest may be contained is any disability. In the present case there is no denial of the fact that there was a protest by an application to the Land Acquisition Collector. Not only in the application praying for a reference u/s 18. but also there was another independent application on the same day, i.e.. 11th of November, 1963, by signifying that protest and conveyed that the claimant was agreeable to withdraw the money under protest without

prejudice to his right regarding the reference u/s 18. Therefore, the amount that was withdrawn was in fact under protest and we comprehend that the Land Acquisition Collector had authorised payment of that amount only in pursuance of the petition in which the claimant had clearly stated that he is agreeable to withdraw the amount under protest. In these circumstances second proviso under Sub-section (2) of Section 31 of the Land Acquisition Act, 1894 has no application and it was the duty of the land acquisition Collector to make a reference u/s 18 of the Act to the Civil Court. By omitting to do so that public officer has failed to discharge this legal duty. Upon an error of jurisdiction order that was impugned by Article 226 of the Constitution in the present case is also illegal and has been made with material irregularity upon an erroneous view of the jurisdiction of the Land Acquisition collector. In that view of the matter we allow the appeal, set aside the order of the learned Trial Judge discharging the rule and direct that a writ be issued in the nature of Certiorari quashing and cancelling the order of the Land Acquisition Collector refusing to make a reference u/s 18 of the Land Acquisition Act, 1894 and directing him to make a reference under that section to the proper Civil Court in accordance with law.

5. There will be no order as to costs.

Amiya Kumar Mookerji, J.

6. I agree.