
(1982) 03 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Writ Petition No. 597 of 1976

Lal Deen

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 24-03-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Rajasthan Land Acquisition Act, 1953 — Section 18, 18(3)

Citation : AIR 1983 Raj 225 : (1983) RLW 683 : (1982) WLN 217

Hon'ble Judges : S.K. Mal Lodha, J

Bench : Single Bench

Advocate : H.C. Jain, for the Appellant; M.D. Purohit, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mal Lodha, J.—This is a petition under Arts. 226 and 227 of the Constitution of India by Lal Deen for quashing the order (Ex. 101 dated Jan. 24, 1976. by which, the Land Acquisition Officer, Jaisalmer declined to make a reference under S 18 of the Rajasthan Land Acquisition Act (No. XXIV of 1953) (for short the Act" hereinafter),

2. A few facts leading to this writ petition may briefly be recounted here.

3. The award (Ex. 8) dated Mar. 20, 1975 was made by the Land Acquisition Officer. Jaisalmer in respect of the well situate in Khasra No. 77 of village Nawatala, which was acquired and handed over to military authorities- for the purpose of establishing of Field Firing Range. The amount determined was Rs. 10,930.70 P. as detailed in the award (Ex. 8). A direction was made by the Land Acquisition Officer that as the compensation relates to the public property it should be placed at the disposal of the Collector. Jaisalmer for "public utilities".

4. An application (Ex. 9) u/s 18 of the Act was made by the petitioner before the Land Acquisition Officer (Collector), Jaisalmer for making a reference to the court

concerned. The Land Acquisition Officer declined to make the reference and rejected the application vide order (Ex. 10) dt. Jan. 24, 1976 on the ground that the petitioner has not shown any new ground regarding Ms title to the property acquired and the proof had already been completely examined at the time of award. The petitioner filed this writ petition on Mar. 31. 1976, inter alia, praying that the order (Ex. 10) dt Jan. 24. 1976 may be quashed and the non-petitioners may be compelled to make a reference to the District Judge, Jodhpur u/s 18 of the Act.

5. On behalf of the State of Rajasthan, a reply was "filed on Sept. 1, 1976 opposing the writ petition on various grounds. One of the preliminary objections raised was regarding the maintainability of the writ petition. It was contended that the petitioner had an alternative remedy by way of revision u/s 18 (3) of the Act which he failed to avail of and, therefore, this Court should not invoke its extraordinary jurisdiction under Article 226 of the Constitution of India.

6. I have heard Mr. H.C. Jain, learned counsel for the petitioner and Mr. M.D. purohit. learned Additional Government Advocate.

7. Mr. H.C. Jain, learned counsel for the petitioner contended that the Land Acquisition Officer has failed to exercise jurisdiction vested in him by law when he refused to make a reference u/s 18 of the Act and rejected the petitioner's application, for, on fulfilment of the conditions laid down in Section 18 of the Act, he was bound to make the reference to the Court concerned. In support of his argument. Mr. H.C. Jain, learned counsel for the petitioner has invited my attention to Jagarnath Lall Vs. Land Acquisition Deputy Collector, : Ram Pratap Vs. Revenue Minister to the State of Rajasthan, ; Smt. Kako Bai v. L.A. Collector. AIR 1956 Punj, 231: Chintada Kasiviswanadham Vs. Sub-Collector and Another, Peace Memorial Association, Anantapur by its Secy. P. Lakshminarayana Reddy Vs. Collector, Anantapur and Another, and Smt. Sugandhi widow of Dammulal and Others Vs. Collector, Raipur and Others,

8. Section 18 of the Act is as under:

"18. Reference to Court.-- (1) The Government Department on whose behalf (or the Company for which) acquisition is being made or any person interested who has not accepted the award or the amendment thereof may, by written application to the Collector require 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 amount of costs allowed, 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 or the amendment thereof 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 or the amendment thereof, within six weeks from the date of the Collector's award or the amendment thereof, and

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12. Sub-section (2), within six months from the date of Collector's award or the amendment thereof whichever period shall first expire,

(3) Any order made by the Collector on an application made under this section shall be subject to revision by the High Court as if the Collector were a Court subordinate to the High Court within the meaning of Section 115 of the Code."

Sub-section (1) of 3. 18 of the Act corresponds to Section 18 (1) Of the Land Acquisition Act, (No. I of 1894).

9. No useful purpose will be served by examining the aforesaid authorities in detail, for, there is an authoritative pronouncement of the Supreme Court in Mohammed Hasnuddin Vs. State of Maharashtra, where Section 14 (1) of the Hyderabad Land Acquisition Act (1309F) in pari materia with the provisions of Section 18 of the Land Acquisition Act (No. 1 of 1984) came up for consideration. His Lordship A.P. Sen. J., with whom their Lordships Jaswant Singh and R.S. Pathak. JJ., agreed observed as under (Para 24) :

The word "require" in Section 18 of the Act implies compulsion. It carries with it the idea that the written application makes it incumbent on the Collector to make a reference. The Collector is required to make a reference u/s 18 on the fulfilment of certain conditions. The first condition is that there shall be a written application by a person interested who has not accepted the award. The second condition is as to the nature of the objections which may be taken, and the third condition is as to the time within which the application shall be made. The power of the collector to make a reference u/s 18 is thus circumscribed by the conditions laid down therein and one condition is the condition regarding limitation to be found in the proviso.

The conditions laid down in Section 18 are "Matters of substance and their observance is a condition precedent to the Collector's power of reference as rightly observed by Chandavarkar J. In Re: Land Acquisition Act (supra) We are inclined to the view that the fulfilment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of the Collector to make the reference exists. It must accordingly be held that the making of an application for reference within the time prescribed by proviso to S 18, sub-section (2) is a sine qua an for a valid reference by the Collector."

It is, thus, clear from the aforesaid observations that it is the duty of the Collector to see that the application made to him u/s 18 complies with the conditions laid down therein and on fulfilment of the conditions, it is incumbent upon him to make a reference. It may be stated that the view taken in G.J. Desai Vs. Abdul Mazid Kadri and Others, Ananta Ram Banerjee Vs. Secretary of State, Kana Navanna Navanna Narayanappa Naidu Vs. Revenue Divisional Officer,

Sivakasi, State of Rajasthan Vs. L.D. Silva and Others, Sheikh Mohammad v. Director of Agriculture. Madhya Pradesh, 1966 MP LJ 433. Ramdeyal Singh Vs. State of Bihar, Anthony D'Silva and Others Vs. Kerala State, (FBI. Swatantra L. & F. pvt. Ltd. v. State of Haryana, AIR 1975 Punj & Hry 52 (FB) and Swami Sukhanand v. Samaj Sudhar Samiti, AIR 1962 J. & K. 59 were overruled.

10. Keeping in view the principles laid down in Mohammed Hasnuddin Vs. State of Maharashtra, let me now proceed to examine the order (Ex. 10) dated Jan. 24. 1976 by which the land Acquisition Officer refused to make the reference u/s 18 (1) and rejected the application of the petitioner. The reasons mentioned by the Land Acquisition Officer in the impugned order are that the reference pertains to a public property and that the petitioner (claimant) has not shown any new ground in support of his claim and the proof given by him has already been completely examined at the time of making the award. To quote the Land Acquisition Officer :

^^;g lkoZtfud laefr dk jsQsUI gS A mtjnkjus vius gksus dk dksbZ u;k vk/kkj ugh crk;k gS rFkk lcwr ,okMZ nsrs le; iw.kZr;k ns[k fy;k x;k gS**

What the Land Acquisition Officer was required to examine was whether the petitioner (claimant) has properly complied with the provisions of Section 18 of the Act. In other words, the Collector is required to decide whether the application presented by the claimant is or is not within time and satisfies the conditions laid down in Section 18 While considering the application u/s 18 of the Act. the Collector should not ex-amine the merits of the application. It is not open to the Collector to decide an application u/s 18 on merits of the objections raised therein and then refuse to refer the matter to the civil Court. There is no discretion of the Collector in the matter, if the conditions u/s 18 are fulfilled The Land Acquisition Officer had. thus, acted illegally in rejecting the application on the grounds on which he did. It was incumbent on the Land Acquisition Officer to have made a reference u/s 18 of the Act, if the conditions laid down therein were properly complied with. He could not refuse to make a reference on his own finding which was arrived at by him at the time of award.

11. Mr. M.D. Purohit, learned Additional Government Advocate pressed that the petitioner had an alternative remedy by way of revision u/s 18 (3) of the Act which was not availed of and, therefore. the extraordinary jurisdiction under Articles 226 and 227 of the Constitution, should not be invoked. The learned Additional Government Advocate has placed reliance on State v. L.A Collector, Kapurthala, AIR 1973 Punj & Har 29 wherein the learned Judge observed that when a specific remedy has been provided by the Statute itself that should have been availed of by the petitioner and that simply because the petitioner was negligent in not doing so. it cannot be permitted to bypass the Statute by moving a petition under Article 227 of the Constitution at the belated stage. It may be stated here that in that case, the limitation for filing a revision against the order passed u/s 18 (1) had expired and finding the difficulty regarding limitation, the State of Punjab thought of moving the High Court under Article

227 of the Constitution. In those facts the learned Judge declined to interfere with the order under challenge in exercise of his writ jurisdiction. It is well settled by a catena of cases of the Supreme Court that the rule that when there is an adequate alternative remedy, the High Court will not interfere under Article 226 of the Constitution is only a rule of discretion and expediency and not one of jurisdiction or limitation on the powers of the High Court. It is not an absolute rule that in all cases where there is an alternative remedy available, the High Court will not exercise its powers under Article 227 of the Constitution. The High Court may in exceptional cases issue a writ notwithstanding the fact that the statutory remedies have not been exhausted. This will depend on the facts of each case and the wrong and illegality alleged.

12. It was observed by their Lordships of the Supreme Court in *Collector of Customs, Cochin v. A.S. Bava*, ATR 1968 SC 13 as under:

"It is settled that the existence of a remedy by way of revision does not bar the jurisdiction of the High Court to entertain a petition under Article 226 of the Constitution.

A somewhat similar question with which I am concerned in this writ petition also arose before a learned Judicial Commissioner in *Smt. Sampuran Kaur v. Collector, Land Acquisition, Solan*. AIR 1963 Him Pra 1 wherein he opined that even if it be assumed that an application in revision lies against an order of the Land Acquisition Collector rejecting a petition u/s 18 of the Land Acquisition Act for reference made by a claimant a petition challenging the order under Articles 226 and 227 of the Constitution of India would lie in the High Court, it will be relevant to quote the following observations of the Judicial Commissioner;

"..... and -jurisdiction exercised by a High Court under Articles. 226 and 227 is more or less akin to the jurisdiction exercised by it on the revisional side and the existence of the power of revision cannot be put a bar to the exercise of powers under Articles. 226 and 227 of the Constitution of India."

I respectfully agree with the view taken in *Smt. Sampuran Kaur's* case (AIR 1963 Him Pra 1). Apart from the fact that *State's* case (AIR 197a Punj & Har. 29) is distinguishable on facts, it may be stated that if it is taken to lay down that a petition under Articles 226 and 227 of the Constitution cannot be entertained challenging the order of refusal of a reference application u/s 18 (1) of the Land Acquisition Act, I regret, I have not been able to persuade myself to subscribe to that view. In the case on hand, the exceptional circumstances are (1) that the writ petition was filed within the prescribed time for revision, (2) that the revision against the impugned order also lay to this Court, (3), that the writ petition was admitted on April 5, 1976 and (4) that the illegality committed by the Land Acquisition Officer in rejecting the application, has resulted in miscarriage of justice. For all these reasons. I am disposed to think that bar of alternative remedy should not come in the way of the petitioner. The argument of the learned Additional Advocate that because of an alternate remedy of revision,

the writ petition should not be entertained is. therefore, repelled.

13. No other point Was pressed by any of the learned counsel for the parties

14. The upshot of the above discussion made hereinabove is that the Land Acquisition Officer while passing the order (Ex. 10) dated Jan. 24, 1976 has acted illegally in rejecting the application u/s 18 of the Act, for if the conditions u/s 18 of the Act were properly complied with he was bound to make the reference to the court concerned. ...

15. The, result is that the writ petition is allowed and the Order (Ex. 10) dated Jan. 24, 1976 declined to make the reference u/s 18 (1) of the Act and dismissing the application (Ex. 9) filed by the petitioner is set aside and the Land Acquisition Officer, Jaisalmer/Col-lector. Jaisalmer is directed to deter--mine whether the application (Ex. 9) complies with the statutory conditions laid down in Section 18 inclusive of the one regarding limitation and if he comes to the conclusion that the application (Ex. 9) was within time and also fulfils the conditions laid down therein, he will make a reference u/s 18 of the Act.

16. In the circumstances of the case, the parties shall bear their own costs.