

(1989) 02 KL CK 0076
In the High Court Of Kerala
Case No : O. P. No. 7283 of 1988

Mahalakshmi Jayanthi and another

APPELLANT

Vs

State of Kerala and another

RESPONDENT

Date of Decision : 14-02-1989

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 20, 32, 33(2)
Land Acquisition Act, 1894 — Section 12, 18, 23, 23(1A), 34

Citation : (1989) 1 KLJ 335

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : K.L. Narashmhan and Shaji P. Chaly, for the Appellant; Vanaja Madhavan, Government Pleader, for the Respondent

Judgement

K. Sreedharan, J.—Lands belonging to the petitioner and her sister were acquired under the provisions of Kerala Land Acquisition Act for a public purpose. An amount of Rs. 20, 28,911 60 was fixed as compensation as per Award 2/84 dated 11-6-1984. The entire amount was deposited before the Subordinate Judge's Court, Trivandrum u/s 32 and 33 (2) of the Kerala Land Acquisition Act. The land and the buildings thereon were taken possession of by the Government on 22-6-1984. Petitioner claimed the benefits under Land Acquisition Act, 1894 as amended by Act 68 of 1984. As per the Central Act, petitioner was entitled to interest u/s 23(1-A) and thirty per centum of the market value as solatium under clause (2) of section 23. In the award no interest was paid as contemplated by section 23 (1-A). "The solatium that was awarded was only at the rate of 15% When interest and solatium were calculated as provided by clauses (1-A) and (2) of section 23. the total amount of compensation payable to the petitioner came to Rs 27,87,727 34. This shows that the petitioner and her minor sister were entitled to get a sum of Rs. 7,58,815.74 more than that covered by the award as compensation. That amount was paid in two equal instalments. One half of it was paid to the petitioner on 8-1-1986. The remaining half due to the minor sister of the petitioner was deposited in court on 9-4-1986. Petitioner now claims interest

on those amounts as provided by section 34 of the Central Act. Section 34 provides for payment of interest on the amount of compensation for the period from the date of taking possession of the property till the date of payment. If the payment is effected within one year, the interest payable is nine per centum. As per the proviso to the said section if the compensation amount or any part thereof is not paid or deposited within a period of one year, interest has to be calculated at the rate of fifteen per centum per annum for the period after the expiry of the period of one year. As stated earlier, award was passed on 11-6-1984 and possession was taken on 22-6-1984. The compensation calculated in accordance with the provisions contained in clauses (1-A) and (2) of section 23 of Act 1 of 1894 ought to have been paid or deposited on the date of award or the date of taking possession of the property, whichever is earlier. In the instant case as per the above provision a sum of Rs. 7,58,815.75 ought to have been paid or deposited on 11-6-1984. This having not been done, the amount of Rs.7,58,815.75 must carry interest in terms of section 34 of Act 1 of 1894. This means, for the period from 11-6-1984 to 10-6-1985 the said amount should carry interest at the rate of 9 per centum per annum. From 11-6-1985 to 8-1-1986 one half of Rs. 7,58,815.75 which is due to the petitioner must carry interest at the rate of 15 per centum per annum. The other half due to the petitioner's sister must carry interest at the rate of 15 per centum from 11-6-1985 to 9-4-1986, the date on which that amount was deposited in court. The interest calculated as above, must be paid to the petitioner and her minor sister as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment.

2. The petitioner had sent Exts. P5 and P6 letters to the second respondent, who was exercising the powers of Collector under the Land Acquisition Act, Ext. P5 is dated 30-7-1984. It is stated to have been sent by registered post acknowledgement due on 3-8-1984. Ext. P6 is another letter sent by the petitioner on her own behalf and on behalf of her sister to the second respondent from Madras on 6-8-1984. Both letters reached the second respondent on 8-8-1984. According to the learned counsel appearing for the petitioner, these letters are requests made to the second respondent to refer the case to the "civil court for deciding the correct amount of compensation. In pursuance to these applications requesting for reference, the second respondent should have referred the matter to civil "court u/s 18 of Act 1 of 1894. The refusal on the part of the second respondent to refer the matter to the civil court is under challenge.

3. For a proper understanding of Ext. P5, I will read the same:

I wish to bring to your notice that the award noted above has been made without giving me and my minor sister an opportunity to represent our case and is therefore not binding on us.

I also do not accept the amount awarded. The market value of the property will be more than Rupees Fifty Lakhs.

From this letter it cannot be spelled out that the petitioner wanted an adjudication on the correct amount of compensation due to her. It, at best, goes to show that the petitioner was not satisfied with the amount of compensation. It can be on account of her having been denied an opportunity to represent her case. A reading of this letter does not spell out her intention to have the matter referred to a civil court for adjudication. Viewed in that light, Ext. P5 cannot be considered as an application for reference as contemplated by section 18 of Act 1 of 1894, Even if for argument Ext P5 is treated as an application for reference, it will not go to help the petitioner because it did not reach the second respondent within the time fixed by section 18 of Act 1 of 1894. That letter reached second respondent only on 8-8-1984, after the expiry of the period. By Ext P6 letter dated 6-8-1984 the petitioner had prayed that the matter relating to the award be referred for] the determination of the court. Ext.P6 can no doubt be treated as an application u/s 18 of Act 1 of 1894.

4. The second respondent rightly treated Ext. P6 as an application for reference to court But he declined reference on the ground that: the application was time barred. The petitioner challenges this decision of the second respondent.

5. The petitioner was served with notice of award enquiry scheduled to be held at 11 a.m. on 8-6-1984. The receipt of that notice is admitted by the petitioner. Ext. P1 is the copy of that notice. The petitioner asked for an adjournment of that enquiry by Ext. P2 application which was sent by registered post. It is not known whether Ext P2 was received by the second respondent on or before 8-6-1984. If it was received by the second respondent prior to 8-6-1984, he ought to have passed some order on that adjournment application. There is nothing on record to show that adjournment prayed for was granted. Nor there any document to show that the petitioner was informed about the refusal of her request for adjournment. In these circumstances, it cannot be held that the petitioner was present or represented before the Collector at the time when he made the award. Consequently, the application for reference need not be made within six weeks from the date of the Collector's award.

6. The petitioner was given notice of the award. Ext P4 is the copy of the notice of award in Form 10, sent by registered post with acknowledgement due. That notice dated 11-6-1984. according to the petitioner, was received by her on 26-6-1984. The statement of the petitioner is not disputed. So, a valid reference application should be filed within six weeks of the receipt of the notice of award. In the instant case, the petitioner should have filed the reference application within six weeks from 26-6-1984. Ext. P6 reference application is dated 6-8-1984. It is well within the period of six weeks Six weeks from 26-6-1984 is to expire on 7-8-1984. Ext. P6 was not handed over to the Collector on 6-8-1984. The petitioner claims to have posted that application on 6-8-1984. That letter reached the Collector, the second respondent, on 8-8-1984. This fact is not in dispute. Can that letter be taken as a valid reference application in conformity with the provisions contained in section 18 of Act 1 of 1894?

7. As per section 18 of Act 1 of 1894, any person interested who has not accepted the award may, by a written application to the Collector, require that the matter be referred by the Collector for determination of the Court. It contemplates a written application to the Collector. Clause (2) of that section together with the proviso makes it clear that the said application to the Collector should be within six weeks from the date of receipt of the notice u/s 12. A reading of the above provisions proves beyond doubt that the written application should be to the Collector and it must be within the period prescribed in the section. This means that the application should reach the Collector within the period fixed therein. Can an application entrusted with the postal authorities for being delivered to the Collector within the period prescribed by the Act 1 of 1894 but delivered to the Collector after the expiry of the period be taken as a reference application contemplated by the section? Learned counsel appearing for the petitioner brought to my notice the decision in *Achuthan v State of Kerala* (1982 K. L. T. 466) in support of his " argument that the reference application posted before the expiry of the period is a valid reference application even if it reaches the Collector beyond the said period. Since a different view has been taken by a Division Bench of this Court in *State of Kerala v. C. R Viran* (1984 K. L. T 837), the above decision cannot help the petitioner. The Division Bench after analysing the provisions of section 20 of the Kerala Land Acquisition Act which is on identical terms as section 18 of Act 1 of 1894, laid down the following requirements to satisfy a valid reference application: (1) a person interested in the award, but who has not accepted it; (2) a written application by such a person to the Collector; (3) a prayer in that application that the matter be referred to court; (4) specification in the application of the grounds of objection and (5) making of it within the time prescribed. As regards requirements (1), (2), (4) and (5) Their Lordships took the view that the law is practically settled that no reference at all could be made to civil court in their absence. It means that the person interested in the award should file a written application to the Collector, specifying his ground of objection, within the time prescribed by the Statute. From this it is clear that the reference application should be to the Collector within the time prescribed by the statute. It cannot be to the post office, as contended by the petitioner. This aspect can be examined in another angle. Take a case where the petition is lost in transit. Can that petition be treated as a proper petition? The applicant has done whatever is possible by him. Can he be made to suffer for the laches" of the postal - authorities? The answer is quite evident. Such an application is not one coming under the purview of Section 18. If the application is not made to the Collector there cannot be a reference to court. For a valid reference the application to Collector must be within the period prescribed. In these circumstances I have no hesitation in holding that the reference application u/s 18 of Act 1 of 1894 should be to the Collector, within the period prescribed by the provisos to clause (2) of that Section. Since the reference application, Ext. P6 was received by the second respondent on 8-8-1984 only, it was beyond the period fixed by the Section. Consequently, the second respondent was justified in refusing to refer the matter

to the civil court. Ext.P7 order of the second respondent calls for no interference. The last contention advanced by the learned counsel appearing for the petitioner is that articles mentioned in paragraphs 5 and 6 of Ext. P8 statement dated 8th January, 1986 which were in the building acquired by the State, have not been valued and compensation paid. Therefore, those articles are to be valued and amount of compensation paid to the petitioner or in the alternative the second respondent be directed to return those articles. On going through Ext. P8 statement, it is seen that except two life size photos of late Sankaran Thampi all other articles are fixtures attached to the building which was acquired by the State. The building was valued and compensation was paid to the petitioner. The building must be taken to have been valued with those fixtures. The petitioner cannot therefore have the articles enumerated in Ext. P8 valued a second time. Not can she claim those articles back. T direct the second respondent to return the two life size photos of late Sankaran Thampi, if available, to the petitioner.

No other point arises for consideration. The Original Petition is disposed of in the above terms. Issue photo copy of the judgment to the counsel appearing for the petitioner on usual terms.