

(2002) 08 BOM CK 0076

In the Bombay High Court

Case No : Civil Revision Application No's. 1334 to 1339, 1341 to 1357 and 1359 to 1364 of 2002

Manjiri Ranganath Kulkarni

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-08-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2003) 1 ALLMR 27 : (2003) 3 BomCR 158 : (2003) 2 BOMLR 118 : (2003) 1 MhLj 93

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : Uday Warunjikar, for the Appellant; K.K. Tetad, AGP, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—In all these matters, common questions of law and facts arise and therefore they were heard together, and are being disposed of by this common judgment.

2. Heard learned advocates for the parties. Rule. By consent, the rule is made returnable forthwith.

3. In all these matters, the Respondent-Collector has rejected the applications u/s 18 of Land Acquisition Act, 1894, hereinafter called as "the said Act". Such rejection has been on three grounds. Firstly, that the applicants had not produced materials in support of the claim for enhancement of compensation along with the said applications. Secondly, that the stamp duty on some of the applications was paid after the period of limitations prescribed u/s 18 for filing of the application. Thirdly, that the reference of the matters to the Civil Courts will result in waste of the valuable time of the Civil Courts.

4. Upon hearing the learned advocates and perusal of the record, it is seen that undisputedly the land of the applicants was acquired by the Government and

compensation was received by the applicants under protest and therefore they were entitled to seek reference of their claim for enhancement of the compensation to the reference court u/s 18 of the said Act. Accordingly, the applications were filed by the applicants. Some of the applications were filed with deficit court fee whereas some others were filed without any court fee therewith. All such applications were rejected by the Collector.

5. Section 18 of the said Act clearly provides that when the applicant accepts the compensation under protest and requests for reference of his claim for the enhancement of the compensation to the reference court, and in case the same is filed by the interested person within the limitations prescribed under the provision of Sub-section (2) of section 18, the Collector has to refer the same to the reference Court. The provisions of law contained therein do not authorise the Collector to reject such application on any ground other than that the application is beyond the period of limitation or that the application is not in relation to the claim for enhancement for compensation awarded for acquisition of land or that the application is not by an interested person. In fact, law in that regard is well settled. If the application is found to be within the period of limitation, then it is necessary to forward the same forthwith to the reference court. Once it is not disputed that the application is within the time, the collector after verifying that the applicant has paid proper court fees, has necessarily to forward such application to the reference court. It is not for the Collector to decide as to whether the applicant has sufficient evidence in support of his claim for enhancement of compensation or not. That is entirely for the reference court to decide. Therefore rejection of the application on the ground that the applicant failed to produce material in respect of the justification for enhancement of compensation is totally illegal and cannot be sustained.

6. As regards the ground pertaining to the deficit court fee entitling the Collector to reject the application, reliance is sought to be placed in the decision of the division bench of the Gujarat High Court in the case of Mohan Mulji Vs. Special Land Acquisition Officer, Rajpila and Another, and of the learned single judge in the case of Bhagwan Pandurang Patil v. Special Land Acquisition Officer reported in 1986 Mh.LJ. 181. The contention of the learned Government Advocate is that if the applicant fails to pay the court fees within the period of limitation during which the application for reference is required to be filed, in terms of the provisions of Section 18 of the said Act, the same is to be rejected. In Mohan Mulji case (supra), the division bench of the Gujarat High Court has held that "the Collector is a public officer entrusted with the duty to dispose of the applications made to him for a reference u/s 18 and if the application is properly stamped with requisite court fees stamp and complies with the requirement of section 18, there is statutory duty incumbent upon him to make a reference and equally if the application does not bear proper court fee stamps or the conditions specified in Section 18 are not satisfied, he cannot make a reference. The Collector is, therefore, not merely a conduit pipe but he has an important function to discharge u/s 18. This view which we are taking is wholly supported

by the decision of the Division Bench of the Bombay High Court in G.J. Desai Vs. Abdul Mazid Kadri and Others, .

7. The decision of the Bombay High Court in G.J. Desai Vs. Abdul Mazid Kadri and Others, was on the point as to whether the Collector can reject the application u/s 18 of the said Act, if it is totally beyond the period of limitation prescribed thereunder. It was held therein that :--

"Now, the power of the Collector to make a reference is circumscribed by the conditions laid down in section 18 and one important condition is the condition regarding limitation to be found in the proviso. That proviso lays down the period within which the application is made which is not within time, the Collector would not have power to make reference. In order to determine the limit of his own power, it is clear that the collector would have to decide whether the application prescribed by thp claimants is or is not within time and satisfies the conditions laid down by the proviso."

Apparently, the decision was not relating to the issue of court fee with such applications but it was confined to the issue of limitation.

8. In Balkrishna Daji Gupte Vs. The Collector Bombay Suburban, it was held that ".....Under Section 18, Clause (1), any person interested who has not accepted the award 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 measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of compensation among "the person interested". The Collector, provided he does not consider the application is time barred, is bound to make a reference."

9. In Mahadeo Krishna Parkar Vs. The Mamlatdar of Alibag, it was held that "The Collector has power to make a reference on certain specified 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."

10. In Bhagwan Pandurang Patil v. Special Land Acquisition Officer, reported in 1986 Mh.LJ. 181 it was held that ".....The only course open to the Collector is to ask the applicant to pay the requisite court fee before making a reference u/s 18 of the Land Acquisition Act."

11. It is to be noted that an application u/s 18 of the said Act is required to bear court fee stamps of one-half of ad valorem fee on the difference if any, between the amount awarded by the Collector and the amount claimed by the applicant, according to the scale prescribed under Article 1 of Schedule I, subject to a minimum specified court fee. This is clear from Article 15 of Schedule I of the Bombay Court Fees Act (36 of 1959). Undoubtedly, in terms of Section 5(1) of the said Court-Fees Act, no document of any of the kinds specified as chargeable

in the first or second Schedule thereto annexed shall be filed, exhibited or recorded in any court of justice, or shall be received or furnished by any public officer, unless, in respect of said document, there has been paid a fee of an amount not less than that indicated by either of the said schedules as the perfect fee for such document. At the same time, Section 40 of the said Court-Fees Act provides that no document which ought to bear a stamp under the said Court-Fees Act shall be of any validity, unless and until it is properly stamped. It provides that, if any such document is through mistake or inadvertence received, filed or used in any court or office without being properly stamped, the presiding judge or the head of the office, as the case may be, or, in the case of the High Court, any judge of such court, may if he thinks fit, order that such document be stamped as he may direct and as such document being stamped accordingly, the same and every proceeding relating thereto shall be as valid as if it had been properly stamped in the first instance. Apparently though in terms of Section 5 of the said Act, a document with insufficient court fee thereon is not to be received in any office, yet Section 40 of the said Act provides that in those cases, the court or the office must offer opportunity to the party to make up the deficiency. Section 40 of the Act, apparently gives enough discretion to the officer to allow time for payment of additional court fee. It is to be remembered that the statutes pertaining to the court fees are intended to get revenue for the state and not to harass the parties with the sole object to deny their valuable right or to use the same as weapon of technicality to avoid the adjudication of their claim on merits. Discretion bestowed upon the officer has to be exercised with the object and purpose of offering opportunity to the parties to make good any deficiency in the court fees. No doubt the word "document" has not been defined in the Court Fees Act but Schedule I as well II of the Act make reference to various documents and they include applications and petitions. Section 3(16) of the Bombay General Clauses Act, 1964 defines the word "document" to include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used or which maybe used, for the purpose of recording that matter. Apparently an application u/s 18 of the said Act, would be a document u/s 5 read with Section 40 of the said Court Fees Act.

12. Considering the provisions in Section 5 read with Section 40 of the Court Fees Act, though an application u/s 18 without sufficient court fees paid therefore would not be referable to the court, it is obligatory upon the Collector to bring to the notice of the applicant the fact of deficiency in the court fees on the application and therefore to give just and proper opportunity to the party to pay the deficit court fees and only in case of failure to pay the court fee within the period so granted, the application can be rejected. The provisions of law contained in Section 5 read with Section 40 of the said Court Fees Act, evidently disclose that the payment of insufficient court fee does not render the application u/s 18 to be inherently invalid. On the contrary, the defect therein is curable. In *Mohanlal Hochandra Doshi Vs. State of Maharashtra and Another*, , it has been

held that:

"It requires further to be noticed that insufficient stamp does not affect the application in its inception. An application for reference to Court may be totally defective if it is made by an incompetent person such as a lunatic. The defect of insufficient stamp does not render the application inherently invalid. u/s 40 of the Act the defect of insufficient stamp is curable by making further payment at a subsequent stage. The direct consequence is that the defect does not make the document entirely invalid."

13. Considering the provisions of law contained in the Section 18 of the said Act and the Sections 5 and 40 of the said court fees Act as well as the decisions referred to above, it is evident that in cases where there is deficit court fee paid or no court fee paid along with the application, the collector is not empowered to straightaway reject the application unless the fact of deficit court fee or non payment of court fee is brought to the notice of the applicant and the applicant is given reasonable time to make the payment of balance of court fees or required court fees for the application as the case may be. Undisputedly, in the cases at hand, the Collector had not intimated the applicants to pay of deficit court fees and without following the said procedure, had rejected the applications. Certainly such rejection of the applications u/s 18 of the said Act cannot be held to be in accordance with the provisions of law, nor justifiable and proper.

14. The third ground for rejection of the application is that on account of reference to the reference court, valuable time of the Court will be wasted. While appreciating the concern shown by the Collector as regards the valuable time of the Court, certainly the same cannot be a ground for rejection of the applications by the Collector and the reference court is not without jurisdiction to dispose of the matter in limine in appropriate cases. Being so, the rejection of the application on the said ground also cannot be sustained.

15. In the circumstances, while setting aside the impugned orders, it is necessary to permit the applicants to pay the deficit court fees or required court fees within a period of eight weeks from today and in case the payment of court fees is made within the said period, the Collector respondent shall forward the applications to the reference court, of course subject to the scrutiny as to whether the applications are within the period of limitation prescribed u/s 18 of the said Act. Needless to say that in case of failure on the part of the applicants to pay the required court fee within the specified period, the respondent-Collector would be entitled to reject the applications. Rule is made absolute in above terms with no order as to costs.

Parties to act on an ordinary copy of this order duly authenticated by the Sheristedar/Personal Assistant of this court.

Certified Copy expedited.