(1996) 04 GUJ CK 0029

In the Gujarat High Court

Mohammad Kasam Bailim — APPELLANT

Vs

Officer on Special Duty, Land Acquisition and Another — RESPONDENT

Date of Decision : 02-04-1996

Acts Referred:

Constitution of India, 1950 — Article 136
Land Acquisition Act, 1894 — Section 11(1), 12, 18, 18(1), 18(2)

Citation : (1997) 3 GLR 2199

Hon'ble Judges : R.M. Doshit, J;B.C. Patel, J

Bench : Division Bench

Judgement

B.C. Patel, J.—Rule in Special Civil Application Nos. 10722, 10762, 13299, 1330. 13301, 13302, 10761 of 1994. Mr. Amit Panchal, learned A.G.P. waives service of Rule on behalf of Officer on Special Duty and Mr. Nanavati waives service of Rule on behalf of Gujarat Industrial Development Corporation Ltd. At the request of the learned Advocates for the parties, all the matters are heard today and are disposed of by this common judgment as the question involved in the matter is the same. The facts are taken from Special Civil Application No. 7126 of 1995.

2. Facts: For establishment of an industrial estate in Bharuch district, respondent No. 1 (hereinafter referred to as the Collector or Special Land Acquisition Officer) issued a notification on 15-1-1982 u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), for acquiring large area of land. After following the procedure laid down under the Act, the Collector declared an award u/s 11(1) of the Act on 13-11-1987 and awarded a sum of Rs. 22,000/- per hectare. The petitioners in all these petitions, accepted the award under protest claiming higher amount for compensation. In Special Court Application No. 7126 of 1995, the petitioner forwarded an application u/s 18 for reference to the Court. Said Application was prepared and signed on 19-12-1987 and was posted on 19-12-1987 forwarding the same to the Officer on Special Duty, Ahmedabad by a registered letter. In para 22 of the application, the petitioner has indicated the figures as to what amount should have been actually paid and his claim for the remaining amount. Vide reply Annexure "B", the petitioner was informed to

remain present on 24-5-1993 to show cause as to why his application should not be filed as the same is beyond the period prescribed u/s 18(2) of the Act. Vide Annexure "C", the petitioner pointed out that he has posted the application within prescribed period and if for some reason, the same has not been received within the period of limitation, the date on which the letter was posted, should be taken into consideration for calculating the period of limitation as prescribed u/s 18(2) of the Act. It was contended that as the letter was posted within the time prescribed, it should be deemed to have been received by the Officer on Special Duty on the date on which it was posted. However, by an order, forwarded by a registered post dated 23-7-1993, the Officer on Special Duty rejected the application and against the said order, the petitioner has filed the petition in this Court on 13th December, 1993.

3. Mr. Vin, learned Advocate appearing for the petitioners has contended that looking to the language of Section 18 of the Act, the date of posting of an application u/s 18 of the Act should be construed as the date on which the same is received by Officer on Special Duty or the Collector as the case may be. Section 18 of the Act reads as under:

18. Reference to Court: (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 tor determination of the Court whether his objection be to the measurement of the land, the amount of the compensation, 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 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, within six weeks from the date of Collector''s award;

(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, which ever period shall first expire.

4. The words used are "provided that every such application shall be made" and relying on the decision of Chuhroo Ram Vs. The State, , learned Advocate contended that the applicant is not required to present the application in person to the Officer concerned and is justified in sending the same by post. The date of posting is the date of making the application. If for some reasons, it reaches late, or after prescribed period, it cannot be said that the application is made after due date and the application posted within time must be held to be in time. It appears that the Court has taken the date of posting as the date of making the application, but the Court has not dealt with the question as to under what

principle, the forwarding of an application on a particular date should be considered as making of an application on that date. The Officer on Special Duty has also considered the decision rendered by the Court in the case of Bishan Dass Vs. Land Acquisition Officer, Beas Dam Project, Talwara, . It is held therein that:

The date of making an application for reference u/s 18, in cases where the application is sent by post would be the date on which the application is actually received by the Collector and not the date on which the application is actually posted. An application u/s 18 is required to be made in writing and to the Collector. In the absence of any provision in the Act entitling the petitioner to make such an application by post, the petitioner if he chooses to adopt this mode of making this application, is deemed to have appointed the Post Office as his agent for the purpose of making the application to the Collector. Any delay on the part of the postal authority in delivering the application to the Collector would, therefore, be considered as delay on the part of the petitioner himself. It is for the petitioner to ensure that his application made u/s 18 is received by the Collector within the prescribed period.

Thus, the Court has held that it is permissible for the party to forward his application by post and that position is not disputed. If the application is forwarded by post and is received within the prescribed period then the Collector cannot say that because it is forwarded by post, the same shall not be considered. It is the duty of the Collector to consider the application, if received within the time stipulated u/s 18(2) of the Act. Mr. Vin submitted that in the latter decision of Himachal Pradesh High Court, its earlier decision is not considered and therefore, the same should not be accepted. We feel that in the latter decision, Court has considered the principles of agency and is in consonance with the provisions of law.

5. Mr. Nanavati for respondent No. 2 submitted that if the post office would have been the agent of the State Government for the purpose of receiving an application, it could have been safely stated that the date on which the application was received by the post office is the date on which the application is also received by the Officer on Special Duty. On the other hand, if the post office is not the agent of the State appointed for receiving the application specifically for this purpose, then the post office acts as an agent of the petitioner. It is quite obvious, therefore, letter is delivered to his own agent for delivering to the Officer on Special Duty and unless and until that agent has delivered the letter to the Officer on Special Duty, it cannot be said that the same is received by the Officer on Special Duty.

6. Section 3 of the Indian Post Office Act, 1893 is the relevant section as it indicates course of transmission by the post and delivery. Section 3 reads as under:

3. Meaning of "in course of transmission by post" and "delivery":

For the purpose of this Act -

(a) a postal article shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the addressee or of its being returned to the sender or otherwise disposed of under Chapter VII;

(b) the delivery of a postal article of any description to a postman or other person authorised to receive postal articles of that description for the post shall be deemed to be a delivery to a post office; and

(c) the delivery of a postal article at the house or office of the addressee or to the addressee or his servant or agent or other person considered to be authorised to receive the article according to the usual manner of delivering postal articles to the addressee, shall be deemed to be delivery to the addressee.

Reading Section 3, it is clear that till the article is delivered, is in course of transmission by post and when delivered at the house or office of the addressee or to the addressee or to his servant or agent or other person considered to be authorised to receive the article according to the usual manner of delivering postal article to the addressee, shall be deemed to be delivery to the addressee. Thus, before such delivery to the addressee, the article remains in course of transmission by post and if that be so, it cannot be said that the application was delivered to the Officer on Special Duty. Mr. Nanavati submitted that whether the application was received by the addressee or not is to be considered in the instant case. He has relied upon the judgment in the case of Kirloskar Brothers Ltd. v. Commissioner of Income Tax, Bombay reported in AIR 1952 Bombay 306 wherein the question for determination was as to whether certain sum of money was received by the assessee in British India so as to make it liable to tax. It was contended that the cheque was posted in Delhi at the instance of assessee company, and hence the assessee company received the cheque in Delhi and the receipt of the income was in British India and not in Aundh outside British India. The Court held that "Unless the post office was an agent of the assessee company to receive the cheque, mere posting of the cheque would not in law amount to cheque being received by the assessee company when the cheque was posted". In the case of The Commissioner of Income Tax, Bombay South, Bombay Vs. Ogale Glass Works Ltd., Ogale Wadi, , the Apex Court held that "there can be no doubt that as between the sender and the addressee it is the request of the addressee that the cheque be sent by post that makes the post office the agent of the addressee After such request the addressee cannot be heard to say that the post office was not his agent and therefore, the loss of the cheque in transit must fall on the sender on the suspicious plea that the sender having the very limited right to reclaim the cheque under the Post Office Act, 1893, the Post Office was his agent, when in fact, there was no such reclamation. Of course, if there be no such request, express or implied, then the delivery of the letter or the cheque to the post office is delivery to the agent of the sender himself. Apart from this principles of agency there is another principles which makes the delivery of the cheque to the post office at the request of the addressee a delivery to him and that is that by posting the cheque in pursuance of the request of the creditor the debtor performs his obligation in the manner prescribed and sanctioned by the creditor and thereby discharges the contract by such performance.

Apex Court held that "that there can be no doubt that as between sender and the addressee it is the request of the addressee that the cheque be sent by post that makes the post office the agent of the addressee".

6. Thus, in absence of any request by the addressee, it cannot be said that the post office is the agent of the addressee and remains as an agent of the sender. Thus, in view of the law laid down by the Apex Court and the provisions contained in the Post Office Act it is very clear that in absence of an agreement, between the sender and the addressee, if the sender has forwarded an article by post, then the post office continues to be an agent of the sender till the article is delivered to the addressee. Considering these aspects in the instant case, the letter was posted on 19-12-1987 would not mean that it was received on 19-12-1987 by the addressee, i.e., by the Officer on Special Duty and therefore, the application was made after the prescribed period u/s 18(2) of the Act.

7. The section requires that it must be a written application to the Collector and it shall be made within the time stipulated under Sub-clause (2) of Section 18. Thus, it is clear that the application must reach the Collector within the prescribed period. Only then, it can be said that the application is made within prescribed period.

8. Before the Kerala High Court, similar question was raised. The question was that the application made u/s 18 of the Land Acquisition Act received by the Collector after the prescribed period of limitation can be regarded as one made within the prescribed period? Such application was presented to the post office for being dispatched to the Collector by registered post within prescribed limit. The Division Bench in the case of Mahalaxmi Jayanth @ Mahalakshmi Thampi and Ors. v. State of Kerala and Anr. reported in 1990(1) CCC 220 considered the aforesaid question. The statutory provision makes it clear that the application must be made to the Collector within prescribed period of limitation. Making in the context means submitting or presenting. Considering the word "making", the Court observed:

What is of the essence of the matter is that the application should have been received by the Collector within the prescribed period of limitation. Receipt by the post office for transmission to the Collector is not receipt by the Collector. It is only when such an application is received by the Collector within the prescribed period of limitation that the application can be regarded as having been made to the Collector within the prescribed period of limitation.

9. We have no hesitation in taking the view that the petitioners'' application sent by post not having been received by the Collector within prescribed period of

limitation, cannot be regarded as having been made to the Collector within prescribed period of limitation.

10. Learned Advocate Mr. Vin for the petitioners submitted that plea of limitation should not ordinarily be taken by a Government authority. He placed reliance on the decision rendered in the case of Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s, . The Court in terms has observed that:

Of course, if a Government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the Court, but what we feel is that such a plea should not ordinarily be taken up by a Government or a public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence of the purpose of resisting such a claim has become unavailable.

In that case, the claim was a just claim as it was by recommendation of the Assistant Collector of Customs and hence in exercise of discretion, Their Lordships under Article 136 of the Constitution held that "they do not see any reason why the Court should not proceed to hear the appeal and adjudicate the plea of the appellant based on Section 110 of the Madras Port Trusts Act".

In view of delay, Mr. Vin submitted that instead of taking a technical plea, the Collector should make a reference on the application u/s 18 of the Act. Such a proposition cannot be accepted in view of the prescribed period of limitation and that Collector is not a Court.

10.1 The Apex Court in the case of Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, held that "the Collector when he makes a reference, acts as a statutory authority and not as a Court". The Court further held that - "It would thus be clear that one of the conditions precedent to make a valid reference to the Court is that the application u/s 18(1) shall be in writing made within six weeks from the date of the award when the applicant was present either in person or through Counsel at the time of making of the award by the Collector under Clause (a) of proviso to Sub-section (2). The Collector, when he makes the reference, acts as a statutory authority". The Court held, "The applications were barred by limitation and the Collector had no power to extend time for making an application u/s 18(1) for reference to the Court".

Learned Government Pleader drew our attention to this judgment only with a view to point out that the condition precedent for making a valid reference must be fulfilled and if it is not within time, it must be rejected and there is no power of condoning delay in filing such an application.

11. In view of what we have stated above, it is clear that the application must be presented before the Collector for making a reference within time stipulated u/s 18(2) of the Act and mere posting before time is not sufficient to say that the application is made within time Under the circumstances, all these applications

are rejected. Rule discharged in each application with no order as to costs.

