

(1991) 05 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 267 of 1989

Mohan Lal Revta	Vs	APPELLANT
State of Himachal Pradesh and Another		RESPONDENT

Date of Decision : 15-05-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Himachal Pradesh (Amendment) Act, 1980 — Section 18, 2
Land Acquisition Act, 1894 — Section 12(2), 12(2A) , 12(3) , 18 , 18(1)
Limitation Act, 1963 — Article 116, 10, 12, 12(2), 29(2)

Citation : (1992) 2 ShimLC 97

Hon'ble Judges : V.K. Mehrotra, Acting C.J.; Bhawani Singh, J

Bench : Division Bench

Advocate : D.D. Sood and Bhupinder Gupta, for the Appellant; L.S. Panta, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

V.K. Mehrotra, A.C.J.

1. Petitioner, Mohan Lal Revta, has approached this Court for relief through the present writ petition saying that his application for a reference u/s 18 of the Land Acquisition Act was wrongly rejected by the Land Acquisition Collector. According to the Petitioner, while the proceedings for acquisition of land, including some area belonging to him, were going on and an award, had been made in respect of an adjoining land, he applied for a certified copy of the award in respect of his own land on February 12, 1985 before the Land Acquisition Collector (I) H.P. P.W.D., Shimla. The award was actually announced on September 22, 1985 in his presence, but the particulars thereof were not announced. He accepted the amount of compensation, along with several other persons who were also present at the spot, but under protest. The Petitioner proceeds to say that on March 5, 1986, an incorrect copy of the award was given to him. He then made inspection of the record on May 3, 1986 and thereafter made an application u/s 18 on May 21, 1986 sending it by registered post to the Collector. The application

was received in the office of the Collector on May 26, 1986. The application was, however, rejected by an order of April 4, 1988 (its copy being Annexure P11 to the writ petition).

2. In the present petition, the Petitioner has also alleged that a notice dated May 8, 1987 (Annexure P-3 to the writ petition) was received by him from the Court of the Collector. Land Acquisition (I), H.P. P.W.D., Shimla, saying that the award in the case was announced on September 22, 1985 and six weeks limitation had elapsed on November 4, 1985 and further that the Petitioner should appear before the Collector on June 2, 1987 to defend his case. The Petitioner further says that he made in application dated September 2, 1987 (Annexure P-4) to the Collector in which he stated that he had applied for the copies of the award much earlier which were issued on March 5, 1986 when he was not able, in the absence of the details, to assess the claim of less payment and so he made inspection of the records on May 6, 1986 whereafter he submitted an application with a prayer for reference u/s 18 to the Collector by post on May 21, 1986. The prayer in this application is that "the case for filing the reference u/s 18 of the Land Acquisition Act may kindly be considered and forwarded the same to the learned District Judge, Shimla." This was followed by another communication dated October 1, 1987 (Annexure P-6) with a similar request and containing similar assertions on facts. The Petitioner also says that on October 3, 1987, he sent yet another application to the Collector of which a copy is Annexure P-7 to the writ petition. In this application, he prayed that he could understand the details of payment only on May 3, 1986 and so the application made by him for a reference u/s 18 was well within time.

3. The Petitioner received a communication (Annexure P-10) from the Land Acquisition Collector informing him that his petition dated May 26, 1986, (obviously referring to the date when it was received in the office of the Collector) filed against the award of the Collector dated September 2, 1985 was time barred and had been rejected.

4. The Petitioner has also appended to the petition a copy of the order dated April 4, 1988 as Annexure P-II which had been passed by the Land Acquisition Collector. In it, the Collector mentioned that the Petitioner had not filed an application "for condonation of delay". Further, that the limitation for filing the petition, as provided under Sub-section(2) of Section 18, had expired and hence the petition was rejected as time barred. The communication (Annexure P-10) was sent to the Petitioner after this order.

Section 18 of the Act says:

(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 the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the appointment 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 the 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, whichever period shall first expire.

5. The Act was amended in Himachal Pradesh through Himachal Pradesh Act No. 4 of 1980. Sub-section (2-A) was added after Section 2. By a further amendment by the Land Acquisition (Himachal Pradesh Amendment) Act, 1986 (Act No. 17 of 1986), the existing proviso to Sub-section (2) was substituted and the following second proviso was added:

Provided further that the Collector may entertain an application under this section, after the expiry of the period of six weeks but within a period of six months, if he is satisfied that Applicant was prevented by sufficient cause from making the application in time.

Sub-section (2-A) is not material for the purposes of this case. However, we may read Sub-section (3), which was added to Section 18 by the Amending Act of 1980. This sub-section says:

(3) Any order made by the Collector on an application 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 of Civil Procedure, 1908.

6. A perusal of Section 18(2) shows that if a person making an application with a prayer for reference to be made to the Court by the Collector "was present or represented before the Collector at the time when he made his award," the application for reference should be made within six weeks from the date of the Collector's award. It also shows that even in cases where the person was not present or represented before the Collector, an application can be made within six weeks of the receipt of a notice by him from the Collector u/s 12(2) or within six months from the date of the Collector's award, whichever period expires first.

7. In the present case, it is not in dispute now that the Petitioner was personally present at the time of the announcement of the award by the Collector. The effect of his presence, in the words of the Supreme Court in the State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, would be that: "it must be presumed that he knows the contents of the award" and that: "having regard to the scheme of the Act...knowledge of the award must mean knowledge of the essential contents of the award."

8. In view of what has been observed by the Supreme Court in the above case, it is unnecessary to notice or consider the decisions of the various High Courts cited at the bar about the effect of the language used in Section 18(2) that "the application shall state the grounds on which objection to the award is taken."

9. One line of judicial thinking brought to our notice was that before an application can state the grounds on which objection to the award is taken, the Applicant must have before him the copy of the award. May be, it is so. We are, however, not called upon to go into this aspect any further because, primarily, we are concerned with the question whether the application for reference made by the Petitioner was within limitation or not for that purpose, the observations of the Supreme Court in the State of Punjab, extracted by us, we feel, clinch the issue. The presence of a person at the time of the announcement of the award by the Collector rules out a plea on his behalf that he should be permitted to seek extension in the period of limitation for filing the application for reference with the aid of the time taken in obtaining a copy of the award.

10. We have read the relevant part of Section 18. We have also noticed clause (b) of the proviso to Section 18(2) which prescribes a maximum period of six months for filing the application. On the language, almost similar in nature, of Section 10 of the U.P Sales Tax Act 1948, the Supreme Court observed in the The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, that:

...the Revising Authority has no discretion to extend this period beyond a further period of six months, even on sufficient cause shown.

This is to be found in paragraph 8 of the judgment. Another observation of the Supreme Court, in the same case (in paragraph 11), would be material. It says:

.....from the scheme and language of Section 10, the intention of the Legislature to exclude the unrestricted application of the principles of Sections 5 and 10 of the Limitation Act is manifestly clear. These provisions of the Limitation Act which the legislature did not, after due application of mind, incorporate in the Sales Tax Act, cannot be imported into it by analogy.

11. The intendment of the Legislature is similar in the case of the Land Acquisition Act By providing for extension, on "sufficient cause" being shown, in the time for making an application, the Legislature has evinced its intention in unmistakable terms that Section 5 of the Limitation Act will not be applicable. Also, that extension, on "sufficient cause" being shown, will be for a maximum period of six months. This has been recognised by a Division Bench of this Court in Dharam Dass and Ors. v. State of H.P. and Anr. 1988 (1) Sim. LC 111.

12. Mohan Vasta v. State of Gujarat 1985 (I) GLR 293 was a case where the High Court of Gujarat was considering a case for extension of the period of limitation in the absence of a provision like the one added to the Land Acquisition Act by Himachal Pradesh Amendment Act No. 17 of 1986. It would be of no assistance

to the Petitioner in a case like the present where a specific provision for filing of an application for reference beyond the prescribed period of six weeks from the date of the award has been provided by the Legislature itself. The situation in the case before the Orissa High Court in *Chittaranjan Sahu v. Collector Dnenkanal* ILR 1975 Cut 1347 was similar to the one as in the Gujarat case.

13. Another aspect of the matter may now be noticed. Shri D.D. Sood urged with some emphasis that, in any case, the provisions of Section 12(2) of the Limitation Act were applicable by virtue of Section 29(2) of that Act and were attracted in the instant case. He sought assistance from the observations made by the Supreme Court in *D.P. Mishra Vs. Kamal Narayan Sharma and Another*, contained in paragraph 4, where the Supreme Court, while dealing with the provisions of the Representation of the People Act, 1951, said that:

The Act provides a special period of limitation different from the period of limitation prescribed by Article 116 of the Limitation Act, 1963 for an appeal to the High Court under the CPC from any decree or order.....By virtue of Section 29(2) of the Limitation Act, Sections 4 and 12 thereof apply and if the appeal is filed on the date on which the Court reopens after the recess it will be regarded as within time if the period of limitation, after taking into account the time requisite for obtaining a certified copy, had expired during the course of the recess.

Section 12(2) of the Limitation Act says that:

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

14. On its plain language, Section 12(2) would not apply to an application of the nature contemplated by Section 18(1) of the Land Acquisition Act. The provision of Section 12(2) of the Limitation Act is only available in computing the period of limitation for an application for leave to appeal or for revision or for review of a judgment and to no other application. This is the view which is shared by some other High Courts also. We may only notice the decisions of the Bombay High Court in *Jankibai Tukaram Vs. Nagpur Improvement Trust, Nagpur*, ; Punjab and Haryana High Court in *Gram Panchayat, Murthal Vs. The Land Acquisition Collector*, and Rajasthan High Court in *Capstan Meter (India) Ltd. Vs. The State of Rajasthan*, The basic reason for all these decisions is the same and it is that an application for a reference u/s 18 of the Land Acquisition Act is not an application of the nature specifically mentioned in Section 12(2) of the Limitation Act.

15. In conclusion, we hold that the Petitioner is not entitled to the relief sought by him in the writ petition which fails and is dismissed, though parties are left to bear their own costs.