

(1984) 06 BOM CK 0017

In the Bombay High Court

Case No : Civil Revision Application No. 742 of 1980

Mohanlal Jagannath

APPELLANT

Vs

B.S. Deshmukh, Special Land Acquisition Officer and others

RESPONDENT

Date of Decision : 11-06-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Land Acquisition Act, 1894 — Section 12, 14, 18, 18(1), 18(2)

Citation : (1984) MhLj 841

Hon'ble Judges : M.S. Deshpande, J

Bench : Single Bench

Advocate : W.G. Somalwar, for the Appellant; M.P. Badar, for the Respondent

Final Decision : Allowed

Judgement

M.S. Deshpande, J.—These two revision applications are directed against the orders dated March 29, 1974 passed by the Special Land Acquisition Officer, Nagpur, rejecting the applicant's applications u/s 18 of the Land Acquisition Act, for making references to the Court u/s 18 of the Act, for determining the amount of compensation payable for the lands.

2. The amount of compensation was determined by the Special Land Acquisition Officer, after issuing requisite notices under the Land Acquisition Act. For the field Khasra No. 159, 15, 13, acres of Mouza Hari, total amount of compensation awarded was Rs. 34,845, while for field Khasra No. 162, 7, 81 acres, total amount of compensation awarded was Rs. 11, 676. The amounts in respect of both the acquisitions were made payable to the non-applicant No. 3 Sundarlal Jagannath Gawali. The present applicant Mohanlal claiming to be the brother of non-applicant No. 3 Sundarlal, contended that the land belonged to him and Sundarlal as their joint family property and he was not aware of the land acquisition proceedings as he was residing in his home town in Uttar Pradesh and came to know of the awards in the first week of December 1973 when he came to Nagpur. Contending that, he was a person interested in the compensation, and

the amount of compensation awarded was low, he prayed for determination of the compensation by making references to the Civil Court.

3. The Special Land Acquisition Officer, took the view that the applications which were presented on 15-2-1974 i.e. more than six months after the date of the award which was passed on 13-2-1973, were barred by time and that the applicant was not a "person interested" within the meaning of section 18 (1) of the Land Acquisition Act. Feeling aggrieved by these orders, the applicant challenged them by filing writ petitions, but later they came to be converted into Civil Revision Applications, as a revision application lay u/s 18(3) of the Land Acquisition Act, as amended in this State.

4. The first point to be considered is whether the applications were within time. Section 18(2) of the Land Acquisition Act provides as follows:

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.

There is no dispute about the inapplicability of clause (a) of the proviso. According to the applicant he filed the two applications within six months of the knowledge of the Collector's award and they were, therefore, within time. The Special Land Acquisition Officer took the view that the applications should have been filed within six months from the date of the award which was passed on 13-2-1973 and, therefore, the applications were barred by time. His observations in para 5 would, however, show that the applicant's averment about his getting knowledge of the award as stated by him was not contested because the learned Special Land Acquisition Officer observed that the payment of compensation amount was made to Sundarlal on 13-1-1974 i.e. about a month after the applicant knew about the award. In *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, it was observed:

Where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. So the knowledge of the party affected by the award made by the Collector u/s 12 of the Land Acquisition Act, 1894, either actual or constructive is in essential requirement of fairplay and natural justice. Therefore, the expression "the date of the award" used in proviso (b) to section 18(2) of the Act must mean the date when the award is either communicated to the party or

is known by him either actually or constructively. It will be unreasonable to construe the words from the date of the Collector's award used in the proviso to section 18 in a literal or mechanical way.

This was also affirmed in *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, .

5. Shri Badar, the learned Advocate for the opponent No. 2 urged that since in this case the question whether of limitation or whether the applicant was an interested person, was for the Collector to decide, this Court would not in its revisional jurisdiction interfere with the finding of fact reached by the Collector. In *Dakor Temple Committee Vs. Shankerlal*, a Division Bench of this Court held:

On an application for a reference to the Court u/s 18 it is for the Collector to decide in the first instance whether the case falls within the terms of section 18 and if he thinks that it does not, e.g. for the reason that the application for reference is time-barred he should decline to make a reference. It is wrong for the Collector to refer the case to the Court with an expression of his opinion that the application for reference is time-barred.

This Court further took the view:

On a reference u/s 18 the Court is bound to satisfy itself that the reference made by the Collector complies with the specified conditions so as to give the Court jurisdiction to hear the reference. It is not a question of the Court sitting in appeal or revision on the decision of the Collector, it is a question of the Court satisfying itself that the reference made under the Act is one which it is required to hear.

The difficulty encountered when that decision was rendered no more subsists because no bar exists in view of insertion of sub-section (3) by which the order made by the Collector is made subject to revision by this Court, as if the Court of Collector were subordinate to the High Court within the meaning of provisions of section 115 of the Civil Procedure Code, 1908. It is obvious that in the present case the Special Land Acquisition Officer did not consider the position of law as laid down in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, and *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, which is that the limitation should be computed from the date of the knowledge of the award. The Special Land Acquisition Officer, therefore, acted with material irregularity in the exercise of his jurisdiction, and the order passed by him holding that the application was barred by time, cannot be allowed to stand.

6. With regard to the next question as to whether the applicant was "a person interested" within the meaning of section 18 (1), one must go back to section 3 (b) which defines the expression "person interested" as including all persons claiming interest in compensation to be made on account of the acquisition of land under the Act and a person shall be deemed to be interested in land if he is

interested in an easement affecting the land. According to Shri Badar Since, section 18 (1) itself lays down the conditions which have to be satisfied before a person makes an application for reference to the Court, which includes determination of the question whether the applicant is a person interested who has not accepted the award, this point also fell for consideration of the Special Land Acquisition Officer and since he has decided against the applicant on this point, the finding of fact ought not to be disturbed. This Court observed in *Daryaji v. Land Acquisition Officer, Balapur* 1960 NLJ Note 119 that u/s 18 of the Land Acquisition Act there is no discretion left to the Land Acquisition Officer in the matter of making a reference. When there is a proper application u/s 18 (1), it is obligatory on the Land Acquisition Officer to make a reference. Refusal on the ground that the award was proper and did not work injustice on the applicant, is illegal. It was held in *Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead)* by LR's., :

The definition of a "person interested" given in section 18 is an inclusive definition and must be liberally construed so as to embrace all persons who may be directly or indirectly interested either in the title to the land or in the quantum of compensation. Thus the definition of "person interested" in section 18 must be construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation.

Mr. Badar urged that on the authority of *Panna Lal v. The Collector, Etah* AIR 1959 All 370, before exercising the jurisdiction conferred upon him by the section, the Collector is bound to see whether the required conditions have been complied with, and if they have not been complied with, he cannot exercise the jurisdiction. The making of the application within the prescribed time being one of the conditions laid down in the section itself, if the application is not made within time, the Collector can reject the application as incompetent and refuse to make the reference. On the same analogy it was urged that unless the applicant established that he was a person interested and satisfied the Collector about his qualification to make an application, the Collector was not bound to make a reference and so the order passed by the Special Land Acquisition Officer in the present case was good. What this argument, however, overlooks is that u/s 18(1) of the Land Acquisition Act, any person interested who has not accepted the award may by an application to the Collector require the matter to be referred by the Collector for the determination of the Court (1) whether his objection be to the measurement of the land, (2) the amount of compensation, (3) the person to whom it is payable or (4) the apportionment of the compensation among the persons interested. The applicant claimed to be elder brother of Sundarlal in whose name the property was recorded in the revenue papers and because the property was joint Hindu family property he was entitled to a portion of the compensation amount. The learned Special Land Acquisition Officer relied only on the entries in the Khasra and the fact that Sundarlal alone had appeared in the land acquisition proceedings, for holding that the applicant was not a person

interested. It is not unusual that joint family property may stand in the name of only one coparcener without in any way affecting the rights of the other coparceners to claim a share in the property. This was a question which the Collector could not decide. Whether the person is entitled to claim the amount or not is also a question to be referred u/s 18(1) of the Land Acquisition Act by the Collector to the Court for decision and it is, therefore, difficult to agree with Shri Badar that the Collector had also to determine whether the applicant was a person interested.

7. All that could be expected was whether, prima facie, the allegations made by the applicant showed that he was a person interested in the compensation and it was only to this extent that the Collector may satisfy himself before making a reference. He cannot, however, arrogate to himself, to the exclusion of the Court, the power to decide whether the applicant was a person interested and refuse to make a reference. In *Kako Bai Vs. The Land Acquisition Collector, Hissar and Others*, it was pointed out that the enquiry by the Collector under the Land Acquisition Act are administrative and not judicial proceedings although u/s 14 of the Act the Collector has power to summon and enforce attendances of witnesses and to compel production of documents. It is not open to the Collector to decide an application u/s 18 on merits on the objections raised therein and then refuse to refer the matter to Civil Court. All that the Collector can do is to decide whether the formalities laid down in section 18 have been complied with or not. I respectfully agree with this view and I find that the Special Land Acquisition Officer was not at all justified in refusing to make a reference u/s 18(1) of the Land Acquisition Act.

8. At this stage Mr. Badar urged that the matter may be sent to the Special Land Acquisition Officer for deciding the question of limitation because he has not considered whether the applicant had filed the applications within six months of acquiring knowledge of the award. I have already pointed out above that the date on which the knowledge was acquired was not contested and even the Special Land Acquisition Officer has not in his order disputed this position. Since it is only a question of finding out whether the applications were filed within six months from the knowledge, it is not necessary to ask the Special Land Acquisition Officer to hold a fresh enquiry and decide the matter.

9. In the result, the revision applications are allowed. The orders passed by the Special Land Acquisition Officer are set aside and he is directed to make a reference to the Court u/s 18(1) of the Land Acquisition Act.