

(2011) 08 BOM CK 0188
In the Bombay High Court
Case No : Writ Petition No. 366 of 2011

Mr. Ashok Ganaba N. Gaonkar

APPELLANT

Vs

The State of Goa and The Executive Engineer W.R.D. W.D.XI,
Government of Goa

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2
Land Acquisition Act, 1894 — Section 11, 18, 2, 23, 24

Citation : (2011) 5 ALLMR 596 : (2012) 2 BomCR 464 : (2011) 6 MhLj 363

Hon'ble Judges : S.A. bobde, J;F.M. Reis, J

Bench : Division Bench

Advocate : S. N. Vernekar, for the Appellant; Amey Kakodkar, A.G.A., for the Respondent

Judgement

F.M. Reis, J.—Heard Shri S.N. Vernekar, learned Counsel appearing for the Petitioner and Shri Amey Kakodkar, learned Addl. Government Advocate for the Respondents.

2. The above Petition challenges the Order passed by the Land Acquisition Officer, Salauli Irrigation Project, Margao, dated 28.01.2011, whereby the application of the Petitioner dated 07.12.2011 for re-determination of compensation u/s 28-A of the Land Acquisition Act, 1894, came to be rejected as being time barred. The reason for rejecting the said application by the Land Acquisition Officer is that Section 28-A is applicable to only those persons who make first attempt after the passing of the Order by the Court in a reference u/s 18 and not otherwise. The Petitioner in the present case was seeking to file such an application from the date of the passing of the judgment of the Hon'ble Apex Court in an Appeal preferred by a claimant. The Apex Court in a judgment in the case of Jose Antonio Cruz Dos R. Rodriguese and another Vs. Land Acquisition Collector and another, , has stated at para 3 thus:

3. Before examining the decisions of this Court on which the High Court has

placed reliance, we deem it appropriate to first examine the plain language of Section 28-A extracted earlier. Section 28-A was inserted as the last section in Part III entitled "Reference to Court and Procedure thereon" by Act 68 of 1984. Part III begins with Section 18 which provides that if an interested person does not accept the award made by the Collector u/s 11 of the Act, he may, by a written application to the Collector, require that the matter be referred for determination of the court. Section 2(d) defines the expression "Court" to mean the principal civil court of original jurisdiction unless a Special Judicial Officer has been appointed. Therefore, the court referred to u/s 18 can only mean the principal civil court of original jurisdiction. Section 23 then sets out the matters to be taken into consideration in determining the compensation to be awarded for the acquired land, and Section 24 indicates the matters to be omitted from consideration. Section 26 provides that the award shall be in writing signed by the Judge which shall be deemed to be a decree within the meaning of Clauses (2) and (9) of Section 2 of the Code of Civil Procedure, 1908. Section 27 provides for costs to be awarded and Section 28 provides for payment of interest on excess compensation. We then come to Section 28-A. The first part of the section begins with the words "Where in an award under this part, Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11" which clearly indicate that the legislature was talking of an award made under the provisions of Part III, i.e., an award u/s 11 and therefore, in that context, reference to "Court" can only mean the court to which a reference is made by the Collector u/s 18. This position is further clarified when the section refers to compensation awarded in excess of the amount awarded u/s 11 of the Act. The second part of the section then addresses "the persons interested in all the other land covered by the same notification... and who are also aggrieved by the award" and permits them to make a written application to the Collector "within three months from the date of the award of the Court" requiring him to redetermine the amount of compensation on the basis of the amount awarded by the Court, notwithstanding the fact that they had not sought a reference u/s 18 of the Act. Thus, the newly added section seeks to give the same benefit, which a person who had sought a reference and had secured the Court's award for a higher amount of compensation had received, to those who had, on account of ignorance or financial constraints, not sought a reference u/s 18. In the latter part of the section also, reference is to the award u/s 11 and later, to the award of the Reference Court u/s 18 of the Act. Therefore, the court referred to therein is again the court referred to in Section 2(d) of the Act, i.e., the principal civil court of original jurisdiction. The plain language of Section 28-A, therefore, prescribes the three months" period of limitation to be reckoned from the date of the award by the Court disposing of the reference u/s 18, and not the appellate court dealing with the appeal against the award of the Reference Court.

3. The Apex Court in a judgment in the case of Tola Ram v. State of U.P., (1997) 6 SCC 280 , has held at para 3 thus:

A reading thereof clearly indicates that a person whose land is acquired under a common notification issued u/s 4(1) of the Act but who failed to avail of the remedy of reference u/s 18, is eligible to make a written application within three months from the date of the award of the Court enhancing the compensation. It has been interpreted by this Court that the "court" means Court of Original Civil Jurisdiction to whom reference u/s 18 would lie. Admittedly, the award of the reference court having been made on 18-5-1990, the limitation began to run from that date. The proviso to Section 28-A gives a right to the persons to obtain the certified copy of the award and decree and the time taken for obtaining the certified copy of the award and the decree shall be excluded in computing the period of three months. In view of the express language, the question of knowledge does not arise and, therefore, the plea of the Petitioner that the limitation of three months begins to start from the date of the knowledge is clearly unsustainable and cannot be accepted. The High Court, therefore, is right in its decision in that behalf.

4. Considering the said Judgments of the Apex Court, we find No. reason to interfere in the impugned Order passed by the Land Acquisition Officer. There is No. dispute that the application filed by the Petitioner is time barred in case time is counted from the date of the judgment passed by the Reference Court. Hence, No. case for interference in the impugned Order is made out. As such, the Petition stands summarily rejected.