
(2011) 12 P&H CK 0229

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 3425 of 2011

Nikko and others

APPELLANT

Vs

State of Haryana and another

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 12(2), 18, 18(1)
Limitation Act, 1963 — Section 29(2), 5

Citation : (2012) 2 ILR (P&H) 361 : (2013) 1 RCR(Civil) 90

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : P.K. Ganga, for the Appellant; Amandeep Singh, Assistant Advocate General, Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—The landowners have filed the present appeal seeking enhancement of compensation for the acquired land. Briefly the facts of the case are that vide notification dated 25.2.2005 issued u/s 4 of the Land Acquisition Act, 1894 (for short "the Act"), the State of Haryana sought to acquire land situated within the revenue estate of village Baruwali-II, Tehsil and District Sirsa, for construction of Mangala Direct Minor Extension. The Land Acquisition Collector (for short "the Collector") vide award dated 2.5.2006 assessed the market value of the acquired land @ Rs. 5,00,000/- per acre. Supplementary award was passed on 28.12.2006. The objections were filed by the landowners before the learned Collector on 3.10.2007. The same were rejected by the learned court below being time barred vide judgment dated 4.1.2011, which is under challenge before this court.

2. Learned counsel for the appellants submitted that due to death of some close relative in the family of the appellants, they could not file objections within the period of limitation. The prayer is for condonation of delay by taking liberal approach so that the appellants may not suffer due to technical reasons.

3. On the other hand, learned counsel for the State submitted that just and fair compensation has been awarded by the Collector to the appellants. Earlier they were satisfied with the award of the Collector. However, later on due to enhancement of compensation by this court in the appeals filed by other landowners, they decided to file objections. The same being time barred, the prayer is for upholding the findings of the learned court below.

4. Heard learned counsel for the parties and perused the paper book.

5. Admittedly, the award in the present case was announced by the Collector on 28.12.2006. The objections were filed before the Collector on 3.10.2007. Section 18 of the Act, which deals with the time for filing objections to the award of the Collector, is extracted below:

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 for the determination of the Court, whether his objection be to the measurement of the land, the amount of 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 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.

6. The aforesaid section provides that in case any person interested does not accept the award, he may by written application to the Collector require that the matter be referred to the court. The objections can be regarding measurement of the land, the amount of compensation, the persons to whom it is payable or the apportionment of compensation amongst the persons interested. The application should contain the grounds on which the award is objected to. Proviso to sub-section (2) of Section 18 of the Act provides the period in which the objections could be filed. Clause (a) thereof provides that in case a person is present or represented before the Collector at the time of announcement of the award, the objections can be filed within six months from the date of the Collector's award. Clause (b) provides that in other cases, the objections can be tiled within six weeks of the receipt of notice from the Collector u/s 12(2) of the Act or within six months from the date of Collector's award, whichever period expires first.

7. The issue as to whether the period of six months is to be counted from the

date of award of the Collector or from the date of knowledge of the award to the person concerned or from the date of payment of compensation to the land owners, is no more *res integra* and similar is the position with regard to the fact whether the objections filed beyond the period of six months either from the date of award or from the date of knowledge of the award could be entertained or have to be dismissed as time-barred.

8. In *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, Hon''ble the Supreme Court opined that knowledge of the party affected by the award either actual or constructive is an essential requirement of fair play and natural justice. 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. In case the rights of a person are affected by any order and limitation is prescribed for enforcement of the remedy by the person aggrieved against the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. The relevant paragraphs thereof are extracted below:

6.....If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect person, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot, consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it, it can be said to have been made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to S. 18 in a literal or mechanical way.

9. In *The State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, Hon^{ble} the Supreme Court opined that the limitation period of six months for an application for reference to the court will run from the date of knowledge of the award.

10. In *Mohammed Hasnuddin Vs. State of Maharashtra*, Hon^{ble} the Supreme Court opined as under:

24. The word "require" in Section 18 of the Act implies compulsion. It carries with it the idea that the written application makes it incumbent on the Collector to make a reference. The Collector is required to make a reference u/s 18 of the Act on the fulfillment of certain 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. The power of the Collector to make a reference under S. 18 is thus circumscribed by the conditions laid down therein, and one condition is the condition regarding limitation to be found in the proviso.

25. The conditions laid down in S. 18 are "matters of substance and their observance is a condition precedent to the Collector's power of reference", as rightly observed by Chandavarkar J, in *Re Land Acquisition Act* (supra). We are inclined to the view that the fulfilment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of the Collector to make the reference exists. It must accordingly be held that the making of an application for reference within the time prescribed by proviso to S. 18, sub-sec. (2) is a sine qua non for a valid reference by the Collector.

11. In *Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others*, Hon^{ble} the Supreme Court considered the issue as to whether limitation provided for u/s 18(2) of the Act for filing objections can be extended and it was answered in the negative. Paragraphs 17 and 18 thereof are extracted below:

17. It is to be remembered that the Land Acquisition (Amendment) Act (68 of 1984) was enacted prescribing the limitation to exercise the power under Sections 4, 6 and 11 and also excluded the time occupied due to stay granted by the courts. Taking cognizance of the limitation prescribed in proviso to sub-section (2) of Section 18, the provisions of the Limitation Act were not expressly extended. Though Section 29 (2) of the Limitation Act is available, and the limitation in proviso to sub-section (2) of Section 18 may be treated to be special law, in the absence of such an application by Land Acquisition (Amendment) Act (68 of 1984), the Act specifically maintains distinction between the Collector and the court and the Collector/LAO performs only statutory duties under the Act, including one while making reference u/s 18. It is difficult to construe that the Collector/LAO while making reference u/s 18, as statutory authority still acts as a court for the purpose of Section 5 of the Limitation Act.

18. Though hard it may be, in view of the specific limitation provided under

proviso to Section 18(2) of the Act, we are of the considered view that sub-section (2) of Section 29 cannot be applied to the proviso to sub-section (2) of Section 18. The Collector/LAO, therefore, is not a court when he acts as a statutory authority u/s 18(1). Therefore, Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to subsection (2) of Section 18. The High Court, therefore, was not right in its finding that the Collector is a court u/s 5 of the Limitation Act.

The same view was followed in *State of Karnataka Vs. Laxuman*, .

12. Similarly, in *Parsottambhai Maganbhai Patel and Others Vs. State of Gujarat through Deputy Collector Modasa and Another*, , Hon''ble the Supreme Court opined that limitation under the latter part of Section 18 (2) (b) of the Act has to be computed having regard to the date on which the land owners got knowledge of the declaration of the award either actual or constructive. This principle is applicable only in situation where the land owner or his representative is not present when the award is made or where no notice u/s 12(2) of the Act is served upon him. Similar view was expressed by this Court in *Jagat Singh versus Punjab State and others* 1983 CRI. L.J. 601; *Ram Kishan's case* (supra); *Usaf and another versus The Collector Urban Estate Land Acquisition, Urban Development, Punjab* 1989(1)PLR 253. *Jaswant Rai's case* (supra), *Naunehal Singh (died) and others'' case* (supra) and in *RFA No. 1467 of 2004 Gurdip Singh and another vs Sub Divisional Magistrate. Ludhiana and others* decided on 25.3.2010.

13. In view of the aforesaid enunciation of law, in case the land owner or his representative is not present at the time of announcement of the award, the objections can be filed either within six weeks from the date of receipt of notice from the Collector u/s 12(2) of the Act or within six months from the date of award of the Collector, whichever period expires first. The provisions are mandatory in nature. The time period provided therein cannot be extended. The date of award of the Collector has been interpreted to mean that it is the date of actual or constructive knowledge of award to the person concerned, as the words "date of Collector's award" cannot be given literal meaning considering the fact that in the absence of knowledge of announcement of the award, no one can possibly file objections thereto.

14. As far as the facts of the present case are concerned, the admitted position available on record is that the land owners had the knowledge of the award dated 28.12.2006. The filing of objections before the Collector on 3.10.2007 were clearly beyond the period prescribed. Accordingly, no fault can be found with the findings of the learned court below holding the objections to be beyond limitation. For the reasons mentioned above, the appeal is dismissed.