

(2008) 02 RAJ CK 0078
In the Rajasthan High Court

Ninua Ram

APPELLANT

Vs

Addl. District Judge No. 2 and Others

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 12, 18

Citation : (2008) 2 RLW 1774

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—Heard learned Counsel for the parties. This writ petition has been filed against the judgment dated 28.7.2007 passed by the learned Additional District Judge No. 2 Bharatpur in reference case No. 13/1998 and the order dated 11.8.1998 passed by the Land Acquisition Officer PWD Zone, Bharatpur (Raj.). By the first order, the Court aforesaid rejected the reference application of the petitioner on the premise that he could not as per the Divisions of Section 18 of the Land Acquisition Act, 1894 directly approach the Court

2. The petitioner had earlier approached the Land Acquisition Officer by filing an application on 31.7.1998. Application of the petitioner was rejected by the Land Acquisition Officer vide order dated 11.8.1998 on the premise that since the award had already been passed, application for making reference for enhancement of the quantum of compensation could not be entertained thereafter. Smt. Sangeeta Sharma, Learned Counsel for the petitioner has argued that since the award was passed ex-parte against the petitioner, he could not come to know of the proceedings before the Land Acquisition Officer, especially the award passed and therefore he could not timely apply for reference to be made u/s 18 of the Land Acquisition Act, 1894. No sooner did he come to know about the award, he immediately approached the Land Acquisition Officer and submitted the reference application before him. But the land Acquisition Officer rejected the same vide order dated 11.8.1998 on the premise that since

the award has already been passed, he was not competent to make the reference.

3. The petitioner thereafter approached the civil Court, but objection was raised by the respondents about maintainability of reference application directly filed before the Court. The issue was decided as a preliminary issue by the very same Court by a detailed order dated 25.2.1999 wherein it held that civil Court was competent to hear the reference application even if the person concerned has approached the Court directly. The very same Court in subsequent judgment dated 28.7.2007 has taken a contrary view ignoring its" earlier order which has not only attained the finality but in fact revision petition filed there against being S.B. Civil Revision Petition No. 931/1998 was also dismissed by this Court vide order dated 1.7.2003.

4. On the other hand, Shri Ankur Rastogi, learned Additional Government Counsel however has opposed the writ petition and has argued that even if the award was passed ex-parte against the petitioner, there could be no reason for him to approach the Court directly especially when amount of compensation has been received by him.

5. It was argued that revision petition was not dismissed by this Court on merits but was dismissed in default on the part of the petitioner in not filing the process fee and notices in time. He further submitted that petitioner having accepted the amount of compensation, is now precluded from questioning the correctness of the quantum of compensation. Having heard learned Counsel for the parties and perused the impugned-order and other material forming part of the petition, I find that there is no denial to the fact that question whether the civil Court could be directly approached under the provisions of Section 18 of the Land Acquisition Act was decided as a preliminary issue by the very same Court vide order dated 25.2.1999. The issue was decided in favour of the petitioner on the premises that when award was passed ex-parte against the petitioner and that he had no knowledge of the fact as to when the award was passed, therefore, obviously, he could not apply for making reference to the civil Court u/s 18 of the Land Acquisition Act during the pendency of the proceedings.

6. The learned civil Court in arriving at the aforesaid view relied on the judgment of the High Court in Smt. Saroj Kumari Vs. The State of Madhya Pradesh and Others, in which the Madhya Pradesh High Court took the view that after passing of the award ex-parte, aggrieved person can approach the civil Court directly u/s 18 of the Land Acquisition Act for enhancement of quantum of compensation. A perusal of the impugned-order dated 28.7.2007 passed by the civil Court reveals that while deciding the Issue No. 2 on the question of competence of Court to entertain a reference application when the petitioner directly approached the Court u/s 18, no mention whatsoever has been made to the earlier detailed order passed by the very same Court on 28.2.1996.

7. Not only this, the order was subjected to challenge by the petitioner and even

if the revision petition was dismissed for default on part of the State, the fact nevertheless remains that the order attained finality. Resultant situation that emerges from the above referred to facts is that while the Land Acquisition Officer has declined to make a reference on the premise that award has already been passed, therefore, he was no longer competent to make reference, civil Court has also refused to entertain reference application on the analogy that the petitioner could not directly approach the Court.

Application u/s 18 of the Land Acquisition Act, 1894 has provided a valuable right to the person interested in the land who has not accepted the award and that he may by written application to the Collector, require that the matter be referred by the Collector for 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. No doubt, first proviso of Sub-section (2) of Section 18 requires that the person making such application if was present or represented before the Collector at the time when he made his award, shall within six weeks from the date of the Collector's award, have to make the application and in other cases, within six weeks of the receipt of the notice from the Collector u/s 12(2) or within six months from the date of the Collector's award, whichever period first expires.

8. So far as Clause (a) of the proviso to Section 18(2) is concerned, in the present case, the reply submitted by the respondents is completely silent about the fact when notice of the award was served upon the petitioner though in their reply, they have stated that when the petitioner applied before the Land Acquisition Officer for making a reference, he was on 11.8.1998 informed that the award has already been passed, therefore, reference cannot be now made to the civil Court. In any case, this is not even the specific case of the respondents as to when notice of award was given to the petitioner, therefore, the argument that starting point of limitation for counting the period of six months would be from the date of award u/s 12(2), also cannot be entertained.

9. The Collector therefore has wrongly refused to make reference and therefore the only remedy that was left to the petitioner was to approach the civil Court. In the peculiar facts of the case, when the legislature has intended valuable right To be conferred on the person whose land was acquired in relation to 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, that right cannot be completely denied to him for the mere reason that the award has already been passed ex-parte against him and reference could not be made or was not made by the Land Acquisition Officer within six months from the date of the award. And in the facts of the present case, what is further evident is that the civil Court having once taken a view that in peculiar facts of the case petitioner can directly approach it because the award was passed ex-parte against him, could not subsequently when the final judgment was passed without

referring to its earlier view and by completely ignoring it take a diametrically opposite view particularly when revision petition filed there against by the State Government was rejected by this Court and that order attained finality.

10. In view of what has been discussed above, the writ petition deserves to be allowed. In the result, the writ petition is allowed. Accordingly, the judgment of the learned Additional District Judge No. 2 Bharatpur dated 28.7.2007 is set-aside and the matter is remitted back to that Court for deciding it afresh in accordance with law. There will be however no order as to costs.