

(2009) 09 GAU CK 0081

In the Gauhati High Court

Case No : Land Acquisition Appeal No's. 8 to 10 of 2007

Oil India Ltd.

APPELLANT

Vs

Lal Babu Das and Another

RESPONDENT

Date of Decision : 23-09-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 12, 12(2), 18, 18(2), 4
Limitation Act, 1963 — Section 29(2), 5

Citation : (2010) 3 GLR 593 : (2010) 1 GLT 368

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : K.R. Pathak, A.M. Buzar Baruah and M.R. Pathak, for the Appellant;
B.B. Narzary, S. Chauhan, R. De, R. Islam, N. Mitra and R. Adhikari, for the
Respondent

Judgement

B.D. Agarwal, J.—The aforesaid appeals have been filed u/s 54 of the Land Acquisition Act, 1894 ("the Act") against the common Judgment and Award dated 28.9.2006, passed by the learned Additional District Judge No. 3 (FTC), Kamrup, Guwahati in Misc. Reference Case Nos. 7, 8 and 9 of 2003.

2. At the initial stage of hearing of the appeals, the learned Counsel for the appellants raised a preliminary objection about the maintainability of the reference applications u/s 18 of the Act.

3. I have heard Sri K.R. Pathak, learned senior counsel for the appellants, assisted by Sri M.R. Pathak, learned advocate. The private respondents/claimants were represented by Sri B.B. Narzary, learned senior advocate, assisted by Sri S. Chauhan and Sri R. De, learned Counsels and the Government of Assam was represented by Sri R. Adhikari, learned Government advocate.

4. Sri Pathak, learned Counsel for the appellants submitted that, before referring the applications of land owners by to the Reference Court, the Collector must be satisfied that the claimants have fulfilled the preconditions laid down u/s 18(2) of

the Act. Referring to Clause-B of Section 18(2) Sri Pathak submitted that such reference applications must be filed either within 6(six) weeks of the receipt of notice from the Collector u/s 12 or within 6(six) months from the date of the Collector's Award, whichever is earlier. According to the learned Counsel for the appellants in the present case, the reference applications having been made long after the expiry of the preparation of the Award and notices issued to the land owners intimating about the Award, neither it was proper for the Collector to refer the same to the court for adjudication nor the impugned Award of the Reference Court is tenable in law.

5. In support of the aforesaid submissions, the learned Counsel for the appellants referred to the decisions of the hon'ble Supreme Court rendered in the cases of State of Punjab and Another Vs. Satinder Bir Singh, ; Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, : Mahadeo Bajirao Patil Vs. State of Maharashtra and Others, , Mangat Ram Tanwar and another Vs. Union of India, and Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another,

6. Per contra, the learned Counsel for the claimants/private respondents contended that the notices as envisaged u/s 12 of the Act were not served upon the respondents and as such, the reference applications were filed within 6(six) months from the date of knowledge of the Award. The learned Counsel for the claimants also relied upon the Judgments of the Apex Court rendered in the case of Raja Harish Chandra (supra); State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, ; Pratap Narain v. Chief Commissioner, Delhi, 1969 (3) SCC 631 and Parsottambhai Maganbhai Patel and Others Vs. State of Gujarat through Deputy Collector Modasa and Another,

7. As could be gathered from the record nearly 45 Bighas of land was acquired by the Collector of Kamrup for the purpose of expansion of industrial area and construction of office building of Oil India Ltd. ("OIL"). The first notification u/s 4 of the Act was issued on 29.5.1993. However, for certain reasons the said notification lapsed and another notification u/s 4 was issued on 10.3.1995. Thereafter, an Award was prepared on 16.10.1995 and formal declaration for acquisition of the land was made on 12.2.1996 and the possession of the land was taken on 23.12.1986. In the meantime, the appellants (OIL) deposited the awarded money in the office of the Collector in the month of January 1996.

8. As could be gathered from the record the acquired land belonged to more than 27 persons and some of them appeared before the Collector submitting their objections u/s 5A of the Act resisting the acquisition of the land. This objection was filed pursuant to the first notification dated 29.5.1993. The records also reveal that after the preparation of the Award a list of 27 persons was prepared for giving notices u/s 12 of the Act. Ultimately, notices appear to have been upon only 11 persons issued on 17.12.1996. In the list of notices, the names of the private respondents in these appeals do not figure. Be that as it may, Sri R Adhikari, learned Government advocate, fairly conceded that notices upon the

private respondents (who are members of the same family) u/s 12 of the Act were not served. In fact, the claimants' witnesses were given any specific suggestion about service of notices u/s 12 far less about the exact date of service of notices during their cross-examination. The witnesses of the State have also basically dwelt upon the facts of topography of the area and the valuation of the land. It is true that one notice was served upon the predecessor-in-interest of the respondent, namely, Late Ram Sajivan Das, but service of the said notice cannot be construed as an effective notice upon the landowners since the said Ram Sajivan Das died on 6.8.1994, whereas the Award was prepared on 16.10.1995.

9. For ready reference, provisions of Sections 12 and 18(2) of the L.A. Act are reproduced below:

12. Award of Collector when to be final. - (1) Such award shall be filed in the Collector's office and shall except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

18(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.

10. What emerges from a conjoint reading of Clauses (a) and (b) of Section 18(2) is that six weeks period for filing reference applications is applicable if the land owner has knowledge of the award either directly or through notice u/s 12 and if the land owner has no such knowledge or has not received any notice the award can be challenged within six months from the date of Collector's award. The question whether six month period should be counted from the date of award or from the date of knowledge has been deliberated in several cases and a few judgments have also been cited by the learned Counsel for both the sides.

11. The judgment of Raja Harish Chandra (supra) appears to be the leading judgment to lay down the law that the limitation for filing a reference application

would run from the date of knowledge of the award. In this case, the proposition and legal import of the "Award" and consequences of publishing it without notice to the landowner has been succinctly laid down by the Apex Court in the following words:

(5) In dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector u/s 12. In a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, *inter alia*, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer Section 18 gives him the statutory right of having the question determined by court, and it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case it is on the amount, thus, determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance....

.... Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to, the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus, considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office; it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words "the date of the award" occurring in the relevant section would not be appropriate.

6. There is yet another point which leads to the same conclusion. 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 persons, 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 tiling 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 can be said to be 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 Section 18 in a literal or mechanical way.

12. The case of Raja Harish Chandra (supra) has been constantly followed. In the case of Parsottambhai Maganbhai Patel (supra) the Apex Court has held that if the landowner had no knowledge about the preparation of the award Clause (a) of Section 18(2) would not be applicable, rather the limitation period would run from the date of knowledge of the award.

13. In the case of Mahadeo Bajirao Patil (supra) relied upon by the learned Counsel for the appellants, the Apex Court has no doubt held that since there is no statutory form of notice, any kind of written information to the landowner would be enough to construe as service of notice u/s 12 of the Act. In this case the award was declared on 9.8.1994 and the landowner was intimated about the award by way of sending a telegram on 18.9.1994. The telegram was duly received by the claimants on 20.9.1994, whereas the reference applications were filed on 20.2.1995. Under such circumstances the hon"ble Supreme Court held that the period of six weeks of filing reference applications would be counted from the date of receipt of notice and, accordingly, the reference was found to be barred by limitation. However, in the case before me there is no evidence, whatsoever, about the sending or receiving of notice u/s 12.

14. In the case of Shah Manilal Chandulal (supra) the Apex Court has held that the date of receiving compensation can be considered as date of knowledge and the provisions of Sections 5 and 29(2) of the Limitation Act are not applicable to extend the limitation period for filing reference application. In the case before me the compensations were received by the private respondents on 7.1.1997, 9.1.1997 and 5.2.1997 and the reference applications u/s 18 were submitted on 10.1.1997 and 25.2.1997 and as such the reference applications were within six weeks of statutory period, in view of the decision of the hon"ble Supreme Court.

15. Shri Pathak learned Counsel for the appellants submitted that no date was put on the reference applications and even it is presumed that the reference

applications were submitted in the month of January and February 1997 there was inordinate delay in forwarding the same to the reference court and from this fact also it should be inferred that the reference applications were, in fact, filed subsequent to the limitation period.

16. It is true that in the case of Mangat Ram Tanwar (supra) the hon"ble Supreme Court has issued a direction to the State Governments to ensure that the reference applications should be scrutinised and processed within a period of 3 to 6 months. In the present case, no doubt, the reference applications were forwarded to the court after considerable period, however, on this count alone it cannot be held that the reference applications are barred by time. In this regard, I may refer the deposition of P.W.5. This witness is a Senior Assistant in the LAO Branch of the Collector. P.W.5 has categorically deposed that the reference applications were entered in the register on 16.4.1997 under serial No. 753, 754. Even if, it is taken into consideration that the reference applications were actually submitted in the Office of the Collector on 16.4.1997, still the same would be within the statutory period of six months as neither the claimants were heard or were present at the time of preparing the award nor there is any evidence of service of notice u/s 12. In this way the reference applications would attract the second limb of Clause (b) of Section 18(2) of the Act which stipulates six months period for filing reference applications.

17. For the reasons assigned herein above, I hold that the reference applications were within time and the preliminary objection concerning the legality of the impugned award is hereby overruled.

18. The Registry is directed to list the appeals for hearing on merit before any appropriate Bench.