

(1971) 02 AHC CK 0041
In the Allahabad High Court
Case No : Writ Petition No. 3034 of 1968

Om Gir and Others

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 04-02-1971

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : AIR 1971 All 413

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : Satyaprakash, for the Appellant; B.L. Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This writ petition arises out of the proceedings for acquisition of petitioners' land. The State Government issued a notification u/s 4 Land Acquisition Act on 5th October 1963, stating that the land belonging to the petitioners, along with certain other land in the locality was needed for the Extension Stage III of Harduaganj Steam Station for the Superintending Engineer, Hydel State Electricity Board. In due course the Land Acquisition Officer made an award on 12th August, 1964. The same day some of the petitioners accepted the amounts awarded to them as compensation. The petitioners allege that they accepted the compensation under protest while the respondents' case is that no protest was made at that time. On the same day some of the petitioners made an application before the Land Acquisition Officer, expressing their dissatisfaction at the compensation awarded and stating that they accept the compensation subject to the determination of their rights by the Civil Courts, because they were thinking of applying for a reference to the District Judge against the award. Thereafter, on 14th April 1965 some of the petitioners made an application u/s 18, Land Acquisition Act, praying that their case be referred to the District Judge for determination of the compensation. This application was, however, dismissed by the Land Acquisition Officer, presumably, on the ground

that it was barred by limitation.

2. Thereafter the petitioners made an application to the District Judge where a reference made at the instance of respondents Nos. 6 to 10 was pending disposal. They prayed that they may be impleaded as parties in the pending reference, and on 14-9-1965 this application was allowed. But, on 19th March 1966 the learned Additional District Judge passed another order, stating that the applicants failed to get the reference petition amended and therefore, the order of 14th September 1965 allowing these persons to be impleaded as parties became unenforceable. Their names now could not be added because the Court had already disposed of the pending reference on 19th February 1966. Some of the petitioners filed a writ petition in this Court against this order but the same was dismissed (Paragraph 23 of the Writ Petition). The present writ was instituted by twenty-six persons on 27th August 1968.

3. Learned counsel for the petitioners has pressed two points. In the first place, if it was urged that the application dated 12th August 1964 (Annexure I to the Supplementary Affidavit) was in law an application praying for a reference u/s 18 Land Acquisition Act. In this connection learned counsel has placed reliance upon *Maddur Krishnammal Vs. Collector of Coimbatore*, . In my view, the submission has no merit. Section 18(1), Land Acquisition Act provides that "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." Under Sub-section (2) of Section 18, Land Acquisition Act the application has to state the grounds on which the objection to the award is taken. Thus, there are three essential conditions for an application being treated as an application for a reference u/s 18 of the Act. It must be by a person who has not accepted the award. The petitioners allege that they accepted the compensation payable under the award under protest. The respondents in their counter affidavit controverted this. It has been stated that the petitioners appeared on the same day the award was made, namely on 12th August, 1964 and received the money payable to them as compensation without making any protest. Normally, a writ petition is not entertained when disputed questions of fact are involved. On this point of fact the parties have sworn contradictory affidavits. It is hence difficult to allow this point. In such a state of affairs, it cannot be said that a person interested who had not accepted the award had made the application dated 12th August 1964.

4. In the next place, the application has to be in writing and has to require the Collector to refer the matter for determination of the Court. The application made by some of the petitioners stated that they were not satisfied with the compensation awarded. They were accepting the compensation subject to the determination of the compensation by the Civil Courts. Having said that, they, further stated that they were doing so because they were thinking of making a reference to the District Judge against the award. This last sentence in the application clearly brings out the intention behind making this application and the

intention was that they were not satisfied with the compensation and that they were thinking of applying for a reference. Clearly they had not till then settled their minds and were not definite about making an application for a reference. They were still thinking about it. Under the circumstances, this application dated 12th August, 1964, could not be deemed to be an application requiring the Collector to refer the matter to the Court for determination of the compensation. The second condition of Section 18 Land Acquisition Act also remained unsatisfied.

5. The third condition is that the application should state the grounds of objection to the award. The application made by the petitioners did not state any particular grounds of objection. That is made further clear by the other application dated 14th April, 1965 made by some of the petitioners. In that application as many as seven definite grounds of attack against the award were stated. Under the circumstances, the Land Acquisition Officer was justified in not treating the application dated 12th August, 1964, as an application u/s 18, Land Acquisition Act. The decision of the Madras High Court is equally inapplicable to the facts of the present case. In that case the person interested had stated, "I will not receive the amount, but will contest the matter in the District Court." This was taken as settled intention of getting the matter determined by the District Court and as such the application was treated as one u/s 18, Land Acquisition Act. Here, the application made by the petitioners clearly brought out that the petitioners had not till then decided that the reference be made. This case is distinguishable.

6. For these reasons, I am not inclined to accept the first point urged on behalf of the petitioners.

7. The second point related to the order dated 19th March, 1966. Learned counsel challenged the validity of this order. Some of the petitioners had filed a writ petition against this order. That writ petition was dismissed. That order would operate as res judicata. The writ petition was dismissed as not pressed nonetheless a second writ on same facts is barred by Clauses 22 and 7 of rules of Court. Paragraph 23 of the present writ petition does not make it clear which of the petitioners filed the previous writ petition. This point cannot be entertained on behalf of any specific petitioner. Further, the writ petition filed on 27th August, 1968 is highly belated in relation to the order dated 19th March, 1966. There is no satisfactory explanation for this long delay. Merely making repeated applications to the Land Acquisition Officer could not furnish an adequate excuse for not coming to this Court promptly.

8. In the result, the petition fails and is accordingly dismissed, but, I make no orders as to costs.