
(2010) 04 GUJ CK 0123
In the Gujarat High Court
Case No : First Appeal No. 658 of 2010

Patel Ratilal Revabhai

APPELLANT

Vs

Project Manager and Another

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1963 — Section 11, 12, 12(2), 15, 18

Citation : (2010) 3 GLH 670

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Jigar G. Gadhavi, for the Appellant; Ajay R. Mehta for Defendant 1 and None for Defendant 2, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Thaker, J.—Present appeal arises from an award dated 03.02.2009 passed by the Reference Court in Land Reference Case No. 1220/1996, whereby the learned Reference Court has dismissed the reference as time barred. Mr. Jigar G. Gadhavi, learned Advocate, has appeared for the appellant and Mr. Ajay R. Mehta, learned Advocate, has appeared for opponent No. 1 and Ms.V. S. Pathak, learned Assistant Government Pleader, has appeared for opponent No. 2. Heard the learned Counsel. Rule. Having regard to the joint request by the Counsel for the parties and considering the fact that a limited issue is required to be examined, the Rule is made returnable forthwith. Mr. Mehta has waived the service of notice of Rule. Mr. Gadhavi has requested to decide the issue finally at this stage. Hence the appeal is taken up for hearing and decision today.

2. It deserves to be mentioned that present appeal was filed 134 days after the prescribed period of limitation. However, so as to enable the appellant to address the appeal on merits and with a view to ensuring that the appellant's chance of opposing the award on merits may not be lost, by order dated 19.03.2010, the delay caused in preferring the appeal, was condoned.

3. So far as the relevant facts giving rise to present appeal are concerned, it is to be noted that pursuant to the Notification u/s 4 issued on 20th April, 1993 followed by Notification u/s 6, which was published on 15th May, 1994, certain parcels of the land situate in Village: Gamanpura, Taluka & District Mehsana came to be acquired, for the purpose of opponent No. 1-Corporation,. Thereafter, the learned Land Acquisition Officer passed an award u/s 11 on 28th February, 1995, whereby the Land Acquisition Officer awarded compensation for the lands in question at Rs. 4.41 per sq. meters. It appears that the appellant herein felt aggrieved by the said award. However, instead of taking action within prescribed time, the appellant filed the application seeking reference as late as on 19th December, 1995 i.e. after almost 10 months. The Collector, without examining the factual aspect regarding delay made reference, which culminated into the aforesaid Land Reference Case. The reference was contested by the opponents on several grounds, including the preliminary objection that it was barred by limitation inasmuch as the reference: application was not preferred within the prescribed period of limitation. The Reference Court, after taking into account the relevant dates, came to the conclusion that the reference was delayed by 74 days and that therefore, it was time barred. Having arrived at such conclusion, the Reference Court dismissed the reference. Hence, present appeal.

4. Mr. Gadhavi, learned Advocate for the appellant, has submitted that considering the contention that the compensation awarded by the Land Acquisition Officer is inadequate. The Reference Court ought to have tried the reference on merits instead of dismissing the same as time barred. He submitted that the impugned award is contrary to equity and justice and that the Tribunal has committed serious error in dismissing the reference on the sole ground of delay. He has not made any further submissions.

5. Per contra, Mr. Mehta, learned Advocate for the opponent No. 2, has submitted that there is no error in the decision of the Reference Court. He has submitted that the reference application was filed beyond the period of limitation. The Court does not have jurisdiction to entertain a reference, which is time barred and that therefore, the award impugned in present appeal does not deserve any interference.

6. Reverting, for a while, to the earlier events would help in recalling that the award u/s 11 was passed by the Land Acquisition Officer on 28th February, 1995. The appellant herein, feeling aggrieved by the said award had filed application seeking reference. The said application was filed as late as on 19th December, 1995 i.e. after almost 10 months .-

7. In this context and at this stage, it is appropriate to take into consideration provisions of Section 18 of the Act. The said provision reads thus:-

"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 to be 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.

(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."

8. According to the aforesaid Section, the claimant-land owner can, if aggrieved by the award of the Land Acquisition Officer, apply for reference strictly in accordance with the right conferred by Section 18 of the Act. The said provision, by virtue of the proviso, prescribes the limitation within which the right to make application demanding reference, has to be exercised by the claimant-land owner. As per the provisions contained under sub-clause (a) of Clause (2) of Section 18, if the concerned person/claimant remain present or is represented before the Collector, when the award is made (declared/pronounced), then the claimant, if dissatisfied with the award, can seek reference within six weeks from the date of the Collector's award. The sub-clause (b) of Clause (2) of Section 18 provides that in other cases, the claimant can, if dissatisfied with the award, seek reference within six weeks from the receipt of notice issued u/s 12(2) or within six months from the date of Collector's award, whichever is earlier. The said condition and requirement is mandatory. If the application is made after the expiry of the prescribed period of limitation, the Competent Authority/Collector does not have the jurisdiction and authority of law to entertain such application and/or to make reference to the Court since it would amount to condoning the delay and would amount to exercising the power or authority not conferred by law. The Competent Authority/ Collector not being "Court" cannot exercise power of relaxing the rigour of the provision and excusing the delay in making the application.

9. In present case, it is not the defence of the appellant that the appellant was not present when the award u/s 11 was declared by the Land Acquisition Officer. The appellant has not raised such contention and/or made even an allegation that he was not aware about the declaration of the award or that he had no intimation about the award. Thus, in view of the provisions contained u/s 18(2) (a), the claimant was required to make application seeking reference within six weeks from the date of Collector's award i.e. within six weeks from 28th February, 1995. Indisputably, the application was not made within six weeks from 28th October, 1995. Now, even if for the sake of benefit of the claimant, it

is presumed, without accepting it as a fact, that the appellant-claimant was not present at the time when the award was made and/or that he was not aware about the notice u/s 12(2), then also it is a matter of record and undisputed fact that the appellant-claimant received the certified copy of the award on 15th October, 1995. Thus, in view of the provisions u/s 18(2)(b), the appellant-claimant was required to make application seeking reference within six weeks from 5th October, 1995 (provided the said date is treated, on assumption and without accepting it as a fact, as the date of receipt of notice under sub-Section 2 of Section 12) or within six months from 28th February, 1995 (the date on which award was made) whichever period expired first. It is a matter of record, and not disputed by the appellant, that he had received the certified copy of the award on 5th October, 1995. If the appellant's case is considered in light of the said fact then also, in view of the provisions of Section 18(2), the appellant's application seeking reference, which was made on 19th December, 1995, was beyond the time limit prescribed by the Act and is rightly not entertained by the learned Trial Court.

10. On this count, it is relevant to take into account the judgment in case of Memon Ibrahim Haji Latif Sukhediwala Vs. Officer on Special Duty (Land Acquisition) and Another, , wherein the Hon"ble Full Bench has observed in para-5 as follows:-

"xxx The third ground on which the decision of the High Court rests relates to the applicability of Sec. 5 of the Limitation Act, 1963. We do not see how Sec. 5 could be invoked in connection with the application made on October 17, 1965 by the first respondent. Under Sec. 5 of the Limitation Act an appeal or application "may be admitted after the prescribed period if the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such periods". The Collector to whom the application was made was not a Court, though Sec. 15 of the Act vested him with certain specified powers under the Code of Civil Procedure; also the kind of application that was made had no time limit prescribed for it, and no question of extending the time could therefore arise. We therefore think that the High Court misdirected itself in referring to Sec. 5 of the Limitation Act. xxx"

The above passage reiterates the proposition that the provisions of Sec. 5 of the Limitation Act, 1963, will apply only to applications to Courts. The mere vesting of certain powers under the CPC on the Collector does not elevate him to a Court"

11. After having observed thus, the Hon"ble Full Bench observed in paras 10 & 12 that:-

"10. The Apex Court in Mohammed Hasnuddin Vs. State of Maharashtra, did not approve the view of the High Court of Calcutta in Administrator General of Bengal v. Land Acquisition Collector, 24-Parganas. (1908) 12 Cal. WN 241, that the Collector's power was a judicial power under Part III of the Act, so as to be amenable for review under Sec. 115 of the CPC or Sec. 107 of the Government

of India Act, 1919, and the Apex Court held :-

"xxx The Calcutta High Court's view that the Collector's power was a judicial power and that the Collector was a Court subordinate to the High Court was obviously wrong but it persisted in taking that view to obviate injustice, xxx"

The Apex Court categorically opined :-

"xxx The Calcutta High Court tried to exercise its supervisory jurisdiction to provide the subject with a remedy. The power of the Collector to make an order under Sec. 18 was not judicial in nature, nor was the Collector a Court subordinate to the High Court. The other High Courts, therefore, expressly dissented from the view of the Calcutta High Court. xxx"

The first proposition deducible from the pronouncement of the Apex Court in Mohammed Hasnuddin Vs. State of Maharashtra, is that one of the conditions prerequisite for the exercise of power under Sec. 18 of the Act is. the application for reference ought to have been made within the time prescribed therefor, and the making of an application for reference within the prescribed is a sine qua non for a valid reference by the Collector. When such is the rigour of the rule, we do not think that it could be watered down on an assumption of a power to condone the delay or, in other words, to extend the time. No such power is discernible for him. The second proposition deducible from the above pronouncement is; the Collector exercise under Sec. 18 of the Act, no judicial power and the Collector is not a Court subordinate to the High Court. The earlier pronouncement of the Apex Court, already referred to, have settled the rule that the provisions of the Limitations Act. 1963 apply only to proceedings in "Courts" and not the appeals or applications before bodies, other than Courts, such as quasi judicial Tribunals or Executive Authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Code of Civil Procedure, or the code of Criminal Procedure."

(emphasized supplied)

"12. Broadly speaking, from the analysis of the principles settled by the pronouncement of the Apex Court, they can be summarized as follows :-

(i) The provisions of the Limitation Act, 1963 do not, by themselves apply-to quasi judicial Tribunals or Executive Authorities:

(ii) The provisions of Limitation Act, 1963 apply only to Courts governed by the Codes of Civil or Criminal Procedure;

(iii) Regarding applications which would fall under Art. 137 of the Schedule to the Limitation Act, 1963, it could be not necessarily under the Codes of Civil or Criminal Procedure and they could also be applications under other Acts; but it has to be an application to a Court;

(iv) The Collector, under Sec. 18 of the Act, discharge only administrative functions and not judicial functions and he could not have the character of a

"Court" for the purpose of invoking the provisions of the Limitation Act, 1963;

(v) The fulfillment of the conditions, including the condition prescribing the time limit for asking for a reference under Sec. 18 of the Act, is a sine qua non for the exercise of the power by the Collector to make a reference :

And

(vi) If the Collector commits an error in making the reference in that he has not adhered to the fulfillment of the conditions, the Court dealing with reference can, still, examine it and throw out the reference, if the conditions are found to have not been fulfilled"

(emphasized supplied)

12. The Hon"ble Apex Court, in the case of the the Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, has held that :-

"Even if the reference is wrongly made by the Collector, the Court will have to determine the validity of the reference because the very jurisdiction of the Court to hear a reference depends upon a proper reference being made u/s 18. If the reference is not proper there is no jurisdiction in the Court to hear the reference. It was, therefore, held that it is the duty of the Court to see that the statutory conditions laid down in Section 18 including the one relating to limitation, have been complied with and the application is not time-barred. It is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It has to proceed to determine compensation and if it is time-barred, it is not called upon to hear the same. It is only a valid reference which gives jurisdiction to the Court. Therefore, the Court has to ask itself the question whether it has jurisdiction to entertain the reference. If the reference is beyond the prescribed period by the proviso to sub-Section (2) of Section 18 of the Act and if it finds that it was not so made, the Court would decline to answer the reference. Accordingly, it was held that since the reference was made beyond the limitation, the Court was justified in refusing to answer the reference.

9. It would thus be clear that one of the conditions precedent to make a valid reference to the Court is that the application u/s 18(1) shall be in writing and made within six weeks from the date of the award when the applicant was present either in person or through Counsel, at the time of making of the award by the Collector under clause (a) of proviso to sub-Section (2). The Collector, when he makes the reference, acts as a statutory authority."

"17. It is to remember 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. 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. "

13. Insofar as facts of present case are concerned, as noted hereinabove, the award u/s 11 was passed on 28th February, 1995. It is not a case of the claimant-appellant that he had no intimation about the declaration of the award and/or that he was not present at the time of declaration of the award u/s 11. Hence, the date on which the award was declared ought to be and can be taken as the relevant date. However, if with a view to giving benefit to the claimant-appellant, it is presumed, without accepting as fact, that the claimant-appellant did not have intimation about declaration of the award u/s 11 then also it is an undisputed fact that the claimant-appellant had received the certified copy of the award on 5th October, 1995. Therefore, in view of the provisions u/s 18(2) (b), the application seeking reference u/s 18 ought to have been made by the claimant-appellant (within six weeks from receipt of Section 12(2) notice) or on or before 15th November, 1995, whereas the claimant-appellant tendered the application as late as on 19th December, 1995 i.e. much after the expiry of prescribed period of six weeks applicable in his case. Even considering the six months" period from the date of Collector"s award (which was passed on 28th February, 1995). the application is much beyond the prescribed period of limitation of six months from the date of award. Hence, considering from every angle, the application when made, was time barred and that therefore, reference could not have been made. The Collector is not a Court and therefore, is not Competent to condone delay exercising powers available to the Court u/s 5 of the Limitation Act. It is settled position that the provisions of Limitation Act, 1963 did not, by themselves, apply to the Tribunal or Executive Authorities. The Collector u/s 18 of the Act discharges administrative function and not judicial function and that therefore, he does not have the character of the Court for the purpose of invoking provisions of Limitation Act, 1963. The condition prescribing the period of limitation contained u/s 18 is a pre-condition and compliance of this condition is mandatory for valid reference. The said requirement cannot be thrown to wins by the Collector and/ or cannot be diluted by him by making order of reference even after expiry of prescribed period of limitation.

14. Thus, in present case, the Collector could not have made reference on appellant"s application which was tendered on 19th December, 1995 since the application was made after the expiry of the prescribed limitation. The learned Reference Court is right and justified in holding that the reference being time barred, was bad in law. The Reference Court has rightly dismissed the reference. In this view of the matter, it is not possible to hold that the Reference Court has committed any error by rejecting the reference as time barred. The appeal,

therefore, fails. Hence the appeal is rejected.