

(1999) 02 GUJ CK 0005

In the Gujarat High Court

Case No : Special Civil Application No. 9168 of 1998

Patel Upendrabhai Chhotabhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 08-02-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (1999) 02 GUJ CK 0005

Hon'ble Judges : M.H. Kadri, J;J.M. Panchal, J

Bench : Division Bench

Advocate : U.M. Shastri, for the Appellant; H.L. Jani, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

J.M. Panchal, J.—Rule. Mr. H.L. Jani, learned A.G.P. waives service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing for the parties, the petition is taken-up for final hearing today.

2. By means of filing this petition under Article 226 of the Constitution, the petitioners have prayed to issue an appropriate writ, order or direction to quash and set aside order dated July 31, 1998 passed by respondent No.2 i.e. Special Land Acquisition Officer, Narmada Yojana (Shedhi) Unit No.9, Nadiad, by which separate applications dated November 29, 1996 submitted by the petitioners requiring the Special Land Acquisition Officer, Nadiad to refer the matters to the Court for the purpose of determination of compensation are rejected.

3. The petitioners were owners of different lands of village Khuntaj, Taluka : Nadiad, District : Kheda. Though in the petition particulars of those lands are not stated, the learned Counsel for the petitioners has produced a statement at the time of hearing of the petition. Therein particulars of survey numbers which were owned by the different petitioners are mentioned. A copy of the said statement was handed over to the learned Counsel for the respondents. Mr. H.L. Jani, learned Counsel for the respondents on instructions of Mr. R.V. Raval, Deputy

Mamlatdar, Nadiad, who is personally present in the Court, states that the particulars mentioned in the said statement are correct. The said statement is ordered to be taken on record of the case. The above-referred to lands belonging to the petitioners were acquired by the State Government for the purpose of construction of Khumarva - Vishakha's Khuntaj Minor Ex-Vina Distributory pursuant to notification dated October 7, 1993, which was published u/s 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) and declaration dated March 6, 1995 which was issued u/s 6 of the said Act. Thereafter the interested persons were served with notices for determination of compensation and the Land Acquisition Officer had registered the case as Land Acquisition Case No. 267/93. The petitioners have claimed in the petition that the Special Land Acquisition Officer had made award on March 19, 1996, but no notice as contemplated by section 12(2) of the Act was served on any of the petitioners. According to the petitioners, compensation offered by the Special Land Acquisition Officer was inadequate and, therefore, the petitioners made separate applications dated November 29, 1996 requiring Special Land Acquisition Officer, Nadiad to refer the matters to the Court for the purpose of determination of compensation. The demand made by the petitioners to refer the matters to Court for the purpose of determination of compensation is rejected by respondent no.2 on the ground that the applications were submitted by the petitioners after the prescribed time limit by order dated July 31, 1998, which is produced at Annexure-C to the petition. The petitioners have stated in the petition that the petitioners came to know about the award having been made only when the compensation was paid to them by respondent no.2 on November 8, 1996. What is averred in the petition is that as no notices were served on any of the petitioners u/s 12(2) of the Act, application dated November 29, 1996 made by the petitioners requiring respondent no.2 to refer the matters to the Court for the purpose of determination of compensation could not have been rejected on the ground that they were time barred. Under the circumstances, the petitioners have filed present petition and claimed relief to which reference is made earlier.

4. Though the respondents are duly served, no affidavit-in-reply has been filed by any of the respondents controverting the averments made in the petition. Mr. H.L. Jani, learned A.G.P. after verifying the record produced for his perusal by Mr. R.V. Raval, Deputy Mamlatdar, Nadiad, states that the record does not indicate that any notice was served on any of the petitioners as required by section 12(2) of the Act after the award was made by the Special Land Acquisition Officer on March 19, 1996. Section 18, sub-section(2)(b) of the Land Acquisition Act, 1894 requires that an application as contemplated by section 18(1) should be made within six weeks of the receipt of notice from the Collector u/s 12(2) or within six months from the date of the Collector's award whichever period expires first. Section 18 sub-section(2) proviso clause (b) is interpreted by the Supreme Court in the case of State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, to mean that limitation of six months under second part of clause (b) runs from the knowledge of contents of the award. What is emphasised therein is that a literal

and mechanical construction of the words "six months from the date of Collector's award" occurring in the second part of clause (b) of the proviso, would not be appropriate and 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 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 view of the interpretation placed by the Supreme Court on Section 18 of the Act, the petitioners would be justified in filing application within six months from the date of knowledge of the award made by the Special Land Acquisition Officer, Nadiad. The averment made by the petitioners in the petition to the effect that the petitioners came to know about the award having been made on November 8, 1996 is not disputed by the respondents. As observed earlier, the award was made by the respondent no.2 on March 19, 1996, but the petitioners came to know about the same only on November 8, 1996 and, therefore, applications dated November 29, 1996 filed by the petitioners requiring respondent no.2 to refer the matters to Court for the purpose of determination of compensation could not have been treated as time barred. The respondents have failed to point out as to how the applications dated November 29, 1996 submitted by the petitioners u/s 18 of the Act are time barred. The basis of the order dated July 31, 1998 being erroneous in law, the impugned order cannot be upheld. Under the circumstances, the petition deserves to be accepted.

5. For the foregoing reasons, the petition succeeds. The order dated July 31, 1998 passed by respondent no.2 which is produced at Annexure-C to the petition, is hereby set aside and quashed. Respondent no.2 is directed to pass appropriate orders for making reference to the concerned Court for determination of compensation pursuant to applications dated November 29, 1996, which were submitted by the petitioners. Such an order shall be passed by respondent no.2 as early as possible and preferably within four weeks from today. Rule is made absolute accordingly, with no order as to costs. Direct Service is permitted.