
(1988) 09 GUJ CK 0012

In the Gujarat High Court

Case No : Spl. Civil Application No. 3959 of 1988

Patel Vashram Copalbhai and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 05-09-1988

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : AIR 1989 Guj 231 : (1989) 1 GLR 128

Hon'ble Judges : P.R. Gokulakrishnan, C.J.; R.J. Shah, J

Bench : Division Bench

Advocate : A.J. Patel, for the Appellant; M.I. Hawa, for the Respondent

Judgement

Gokulakrishnan, C.J.—Rule. Mr. Hawa waives service of the rule. By "consent, the rule is heard today.

2. In this petition, the main prayer is for referring the matter to the Court under S. 18 of the Land Acquisition Act for getting enhanced compensation. The prayer for reference was rejected by the Collector concerned on the ground that the petitioner has, without any demur, accepted the award and as such no reference is possible under S. 18 of the Act. Mr. Patel, learned counsel appearing for the petitioners, states that there was an oral objection and that said protest was made before the Officer concerned before accepting the award and that the question as to whether there was an objection or not has to be decided by the court, to which reference under S. 18 be made. In order to strengthen the case of the petitioner herein, Mr. Patel read Annexure C to the petition wherein in para. 3(2) it is stated as follows :

"3(2). When the said award was declared, on the date of payment also my clients had informed you that the compensation is very much inadequate and it is not according to their demand and that it is not according to the current market rate. My clients were ready to give their written objections in that behalf at the very time. But you had informed them that the objections are raised from the

beginning and their demand is also there on the record and, therefore, it was not necessary to give additional objections at the time of payment. In spite of that, you had not taken note of the oral objections raised by my client and thereafter my clients had accepted the amount of compensation".

3. The question as to whether such a protest was made or not, according to Mr. Patel, has to be decided by the District Court, to which the reference will be made under S. 18 and this question, according to Mr. Patel, was decided by this Court in the case of Rabari Mahadev Amra Vs. Prant Officer, Radhanpur, . No doubt, in this case, a single Judge of our High Court has considered the propriety of the trial Judge while rejecting the reference on the ground that the protest was not in writing. In that decision, the learned Judge has referred to the Full Bench decision of the Punjab and Haryana High Court in State of Punjab v. Smt. Harcharan Kaur, AIR 1975 Punj and Har 66. In that decision, the Punjab and Haryana High Court has fairly stated as under: - (at p. 7 1)

"Since S. 31(2), second proviso of the Act, creates a statutory bar to a person who has accepted the compensation without protest from making an application u/s 18 of the Act, it is the duty of the Court, if an objection is raised by the respondent, to determine whether the applicant has the right to make the application or not. If he comes to the conclusion that the application had been made by a person who had accepted the award, he must throw out the reference without deciding it on merits. Such a decision will disentitle the applicant from claiming any enhancement in the amount of compensation awarded by the Collector."

Referring to this decision, our High Court has held in that decision as under:- (at p. 194)

"It is clear from these observations that what the Court dealing with a reference under S. 18 of the Act is enjoined to do is to make an inquiry as to whether the amount of compensation was accepted by the applicant without protest i.e. whether the applicant had accepted the award without a demur and if the Court comes to the affirmative finding on this question, it is bound to reject the reference in view of the statutory bar created by the second proviso to S. 31(2) of the Act." Hence it is duty of the District Court, to which the reference will be made under S. 18, to decide as to whether the award was accepted without protest or not. If the Court comes to the conclusion that the award was accepted without any protest, it may throw out the reference under S. 18. Thus, it is not for the Collector to decide and reject the reference under S. 18, but he has to refer the same, leaving the question open to be decided by the District Court to which reference will be made under S. 18.

4. In view of this, we direct the respondent 2 to refer the matter to the District Court under S. 16 of the Land Acquisition Act and it is for the District Court to decide as to whether the acceptance of the award was under protest or not. After deciding the same, it is for the District Court to dismiss or entertain such a

reference under S. 18.

5. With the above said observations, the rule is made absolute with no order as to costs.

6. Rule made absolute.