

(2012) 04 SC CK 0023

In the Supreme Court Of India

Case No : Civil Appeal No. 3430 of 2012 (Arising out of SLP (C) No. 34815 of 2011)

Premji Nathu

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 09-04-2012

Acts Referred:

Constitution of India, 1950 — Article 136, 142

Land Acquisition Act, 1894 — Section 12, 12(1), 12(2), 18, 18(1)

Citation : AIR 2012 SC 1624 : (2012) AIRSCW 2382 : (2013) 1 AJR 622 : (2012) 3 ALLMR 434 : (2012) 3 AWC 3017 : (2012) 114 CLT 840 : (2012) 2 JCR 227 : (2012) 2 JLJR 237 : (2012) 2 KLT 62 SN : (2012) 4 MLJ 335 : (2012) 2 PLJR 359 : (2012) 3 RCR(Civil) 31 : (2012) 4 S

Hon'ble Judges : Sudhansu Jyoti Mukhopadhyaya, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : K.L. Dave and Rashmikumar Manilal Vithlani, for the Appellant; Preetesh Kapur, Jesel and Hemantika Wahi, for the Respondent

Judgement

G.S. Singhvi, J.—Whether the application submitted by the Appellant u/s 18(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was barred by time and Civil Judge (Senior Division), Junagadh (hereinafter described as the 'Reference Court') rightly refused to entertain his prayer for enhancement of the compensation determined by the Special Land Acquisition Officer is the question which arises for consideration in this appeal filed against judgment dated 16.8.2011 of the learned Single Judge of the Gujarat High Court.

2. The Appellant's land was acquired by the State Government along with other parcels of land for implementation of Mendarda - Amrapur Road Scheme. Notification u/s 4(1) was issued on 4.3.1982 and the declaration u/s 6(1) was published on 7.10.1982. The Special Land Acquisition Officer determined the amount of compensation at the rate of Rs. 110/- per Are for irrigated land and Rs. 80/- per Are for non-irrigated land.

3. After passing of the award, the Collector issued notice to the Appellant u/s 12(2), which was received by him on 22.2.1985. Similar notices were received by the other landowners on 22.2.1985 and 23.2.1985. As the copy of the award was not annexed with the notice, the Appellant obtained certified copy thereof through his Advocate and then submitted an application dated 8.4.1985 to the Collector for making a reference to the Court for award of higher compensation with solatium and interest. The reference made by the Collector in the Appellant's case was registered as LR Case No. 1/2000. The references made at the instance of the other landowners were registered as LR Cases Nos. 2/2000 to 15/2000. In their claim petitions, the Appellant and other landowners pleaded that their land had irrigation facilities; that they were taking crops of groundnut, wheat, fodder etc. and they are entitled to compensation at the rate of Rs. 1500/- per Are. In the reply filed on behalf of the State Government, it was pleaded that the Special Land Acquisition Officer had correctly fixed market value of the acquired land after taking into consideration the location, type and fertility of the acquired land. It was also pleaded that the landowners are not entitled to higher compensation because they had accepted the award without any protest.

4. It is not clear from the record whether in the reply filed on behalf of the State Government, an objection was taken to the maintainability of the applications filed by the Appellant and other landowners on the ground that the same were barred by time but the Reference Court did frame an issue in that regard. This is evident from the tenor of the issues framed by the Reference Court, which are extracted below:

- 1) Whether applicant proves that the compensation awarded is inadequate ? How much ?
- 2) What additional compensation, if any, he is entitled to ?
- 3) Whether this application is in time ?
- 4) Whether this Court has jurisdiction to try this reference case ?
- 5) Whether this reference case is barred by Section 25 of L.A. Act. ?
- 6) Whether the applicants have accepted the awarded amount without raising any objection ? If yes, what is the effect ?
- 7) Whether the applicant is entitled to get the amount of solatium & interest?
- 8) What order ?

5. After considering the oral and documentary evidence produced by the parties, the Reference Court concluded that the landowners are entitled to Rs. 450 per Are for the irrigated land and Rs. 280 per Are for non-irrigated land with an additional amount of Rs. 2 per square meter, but declined relief to the Appellant and other landowners on the ground that the applications filed by them were beyond the time specified in Section 18(2)(b) of the Act.

6. The Appellant and three other landowners challenged the judgment of the Reference Court by filing appeals u/s 54 of the Act which were dismissed by the learned Single Judge of the High Court vide judgment dated 16.8.2011, who relied upon the judgment of the Full Bench of the High Court in Special Land Acquisition Officer, Himatnagar v. Nathaji Kacharaji 2001 (3) GLH 312 and held that the applications filed by the Appellant and other land owners were barred by time.

7. Learned Counsel for the Appellant argued that the application filed by his client was within the period prescribed u/s 18(2)(b) of the Act and the Reference Court and the learned Single Judge of the High Court committed serious error by refusing to enhance the compensation by erroneously thinking that the application made on 8.4.1985 was barred by time. He submitted that 5th and 6th April, 1985 were holidays and, as such, the application filed by the Appellant on 8.4.1985 could not have been treated as barred by time. Learned Counsel further submitted that due to hyper-technical approach adopted by the Reference Court and the learned Single Judge, the landowners have been rendered remediless.

8. Shri Preetesh Kapur, Learned Counsel for the Respondents produced copy of the calendar of Gujarat for 1985 to show that 5th April was holiday being Good Friday but 6th April was a working day and argued that if the period of six weeks is counted from the date of receipt of the notice issued u/s 12(2), the conclusion recorded by the Reference Court and the learned Single Judge that the applications filed by the Appellant and other landowners were beyond the time prescribed u/s 18(2)(b) of the Act cannot be faulted.

9. We have considered the respective arguments and carefully perused the record. Sections 12 and 18 of the Act, which have bearing on the decision of this appeal read as under:

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. 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 be to the measurement of the land, the amount of the compensation, the person 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.

10. An analysis of the above reproduced provisions shows that by virtue of Section 12(1), an award made by the Collector is treated final and conclusive evidence of the true area and value of the land and apportionment of the compensation among the persons interested. In terms of Section 12(2), the Collector is required to give notice of his award to the interested persons who are not present either personally or through their representatives at the time of making of award. Section 18(1) provides for making of reference by the Collector to the Court for the determination of the amount of compensation etc. Section 18(2) lays down that an application for reference shall be made within six weeks from the date of the Collector's award, if at the time of making of award the person seeking reference was present or was represented before the Collector. If the person is not present or is not represented before the Collector, then the application for reference has to be made within six weeks of the receipt of notice u/s 12(2) or within six months from the date of the Collector's award, whichever period shall first expire.

11. The reason for providing six months from the date of the award for making an application seeking reference, where the applicant did not receive a notice u/s 12(2) of the Act, while providing only six weeks from the date of receipt of notice u/s 12(2) of the Act for making an application for reference where the applicant has received a notice u/s 12(2) of the Act is obvious. When a notice u/s 12(2) of the Act is received, the landowner or person interested is made aware of all relevant particulars of the award which enables him to decide whether he should seek reference or not. On the other hand, if he only comes to know that an award has been made, he would require further time to make enquiries or secure copies so that he can ascertain the relevant particulars of the award. What needs to be emphasised is that along with the notice issued u/s 12(2) of the Act, the land owner who is not present or is not represented before the Collector at the time of making of award should be supplied with a copy thereof so that he may effectively exercise his right u/s 18(1) to seek reference to the Court.

12. In *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, , this Court was called upon to decide whether the expression 'date of award' is to be interpreted with reference to the time when the award is signed by the Collector or from the date the affected party comes to know about

the same and held as under:

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.

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 filing 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.

(Emphasis supplied)

13. In *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, the principle laid down in *Harish Chandra's* case was reiterated and it was held:

It seems clear to us that the ratio of the decision in *Harish Chandra* case is that the party affected by the award must know it, actually or constructively, and the

period of six months will run from the date of that knowledge. Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party u/s 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly when a party is present in court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award.

(Emphasis supplied)

14. In *Bhagwan Das and Others Vs. State of UP and Others*, this Court interpreted Section 18 and laid down the following propositions:

(i) If the award is made in the presence of the person interested (or his authorised representative), he has to make the application within six weeks from the date of the Collector's award itself.

(ii) If the award is not made in the presence of the person interested (or his authorised representative), he has to make the application seeking reference within six weeks of the receipt of the notice from the Collector u/s 12(2).

(iii) If the person interested (or his representative) was not present when the award is made, and if he does not receive the notice u/s 12(2) from the Collector, he has to make the application within six months of the date on which he actually or constructively came to know about the contents of the award.

(iv) If a person interested receives a notice u/s 12(2) of the Act, after the expiry of six weeks from the date of receipt of such notice, he cannot claim the benefit of the provision for six months for making the application on the ground that the date of receipt of notice u/s 12(2) of the Act was the date of knowledge of the contents of the award.

The Court then held:

When a person interested makes an application for reference seeking the benefit of six months' period from the date of knowledge, the initial onus is on him to prove that he (or his representative) was not present when the award was made, that he did not receive any notice u/s 12(2) of the Act, and that he did not have the knowledge of the contents of the award during a period of six months prior to the filing the application for reference. This onus is discharged by asserting these facts on oath. He is not expected to prove the negative. Once the initial onus is discharged by the claimant/person interested, it is for the Land Acquisition Collector to establish that the person interested was present either in person or through his representative when the award was made, or that he had received a notice u/s 12(2) of the Act, or that he had knowledge of the contents of the

award.

Actual or constructive knowledge of the contents of the award can be established by the Collector by proving that the person interested had received or drawn the compensation amount for the acquired land, or had attested the mahazar/panchnama/proceedings delivering possession of the acquired land in pursuance of the acquisition, or had filed a case challenging the award or had acknowledged the making of the award in any document or in statement on oath or evidence. The person interested, not being in possession of the acquired land and the name of the State or its transferee being entered in the revenue municipal records coupled with delay, can also lead to an inference of constructive knowledge. In the absence of any such evidence by the Collector, the claim of the person interested that he did not have knowledge earlier will be accepted, unless there are compelling circumstances not to do so.

15. In the light of the above, it is to be seen whether the conclusion recorded by the Reference Court, which has been approved by the High Court that the application filed by the Appellant was barred by time is legally sustainable. A careful reading of the averments contained in paragraph 2 of the application filed by the Appellant u/s 18(1) shows that the notice issued by the Collector u/s 12(2) was served upon him on 22.2.1985. Thereafter, his advocate obtained certified copy of the award and filed application dated 8.4.1985 for making a reference to the Court. This implies that copy of the award had not been sent to the Appellant along with the notice and without that he could not have effectively made an application for seeking reference. On behalf of the State Government, no evidence was produced before the Reference Court to show that copy of the award was sent to the Appellant along with the notice. Unfortunately, while deciding issue No. 3, this aspect has been totally ignored by the Reference Court which mechanically concluded that the application filed on 8.4.1985 was beyond the time specified in Section 18(2)(b). The learned Single Judge of the High Court also committed serious error by approving the view taken by the Reference Court, albeit without considering the fact that the notice issued by the Collector u/s 12(2) was not accompanied by a copy of the award which was essential for effective exercise of right vested in the Appellant to seek reference u/s 18(1).

16. In the result, the appeal is allowed. The impugned judgment and the award passed by the Reference Court are set aside and the Respondents are directed to pay enhanced compensation to the Appellant at the rate of Rs. 450 per Are for the irrigated land and Rs. 280 per Are for non-irrigated land with an additional amount of Rs. 2 per square meter. The Appellant shall also be entitled to other statutory benefits like solatium and interest. The Respondent shall calculate the amount payable to the Appellant and make payment within three months from today.

17. Although, the other landowners are not shown to have prosecuted the matter further except that three of them filed appeals u/s 54 of the Act, we are convinced that this is a fit case in which the Court should exercise power under

Article 142 of the Constitution and direct the Respondents to pay enhanced compensation, solatium etc. even to those who did not file appeals before the High Court and/or have not approached this Court by filing petitions under Article 136 of the Constitution. This approach is consistent with the judgments of this Court in - B.N. Nagarajan and Others Vs. State of Mysore and Others, Bhupinderpal Singh and Others Vs. State of Punjab and Others, Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, and B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others, Therefore, we direct that the other landowners shall also be paid enhanced compensation and other statutory benefits within three months from today.