

(2003) 01 OHC CK 0079

In the Orissa High Court

Case No : Civil Revision No. 232 of 2001

Purna Chandra Mohanty

APPELLANT

Vs

Special Land Acquisition Officer, M.C.I.I. Project

RESPONDENT

Date of Decision : 07-01-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Land Acquisition Act, 1894 — Section 18, 31(2)

Citation : (2003) 1 OLR 488

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : S.C. Mohanty, for the Appellant; G.K. Mohanty, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.P. Das, J.—This Civil Revision is directed against the order passed by the Special Land Acquisition Officer, Mahanadi Chitrotpala Island Irrigation Project (M.C.I.I. Project), Cuttack. vide memo. No. 1030 dated 7.5.2001, rejecting the application made by the petitioner u/s 18 of the Land Acquisition Act, 1894 ("the Act") praying to refer the matter to the Civil Court, for enhancement of the market price of the land acquired by the State Government for the aforesaid Project.

2. The short facts necessary for disposal of the present revision application are that the petitioner was the owner in possession of the lands bearing Khata No. 100 under plot No. 2051 with an area of Ac.0.04 decs, and plot No. 2588 with an area of Ac.0.05 decs, in Mouza Behedpur in Jagatsinghpur district. By virtue of the notification issued u/s 4(1) of the Act, the State Government acquired the aforesaid lands for the M.C.I.I. Project. Upon receipt of the notice issued u/s 12(2) of the Act in L.A. Case No. 13 of 1997 calling upon the petitioner to receive the compensation awarded by the Collector, the petitioner appeared before the opposite party and after putting his signatures on some documents, received the

compensation money. It is stated in the revision application that being an illiterate rustic villager, the petitioner does not know how to read and write except putting his signature. According to the petitioner, while receiving the compensation he protested orally saying that the price paid for the acquired lands was very low. That apart, the petitioner after receiving the compensation filed an application u/s 18 of the Act praying to refer the matter to the Civil Court for enhancement of the compensation. The Special Land Acquisition Officer of the Project has, however, rejected the petition on the ground that the same was barred by the proviso to Section 31(2) of the Act, as would appear from the communication made to the petitioner vide memo. No. 1030 dated 7.5.2001

3. Counsel for the petitioner contends that as the petitioner filed the application for reference u/s 18 of the Act immediately after receiving the compensation money, that would manifest his intention and, therefore the protest against the award of the Collector was implied notwithstanding acceptance of the compensation.

4. At the outset it is worthwhile to have a look at Section 31(2) of the Act, which lays down as follows :

"31. Payment of compensation or deposit of same in Court:

(1).....

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference u/s 18 would be submitted :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount.

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18.

xxx xxx xxx"

5. From the impugned communication, I find that as the petitioner received the awarded amount of compensation without protest, the application filed by him u/s 18 of the Act was rejected as barred by the proviso to Section 31 (2) of the Act.

Learned counsel for the petitioner submits that the petitioner is a poor man and he lodged the protest orally as the quantum of compensation was low. It is stated by the learned counsel for the petitioner that the application for reference was filed in time.

6. In a circumstances like this, the Apex Court in Ajit Singh and Others Vs. State of Punjab and Others, held thus :

"... In as much as the appellants have filed an application for reference u/s 18 of

the Act that will manifest their intention. Therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation..."

Similar view was taken by a learned Single Judge of the Andhra Pradesh High Court in *N. Sangaiah v. Special Deputy Collector, Land Acquisition 1999 (2) LAC 54*, wherein it was held :

"There is no provision under the Act or the Rules framed thereunder as to mode, method and manner of expressing protest while receiving the amount of compensation under an award passed u/s 11 of the Act. Under those circumstances, the acceptance of the amount of compensation under the award by way of oral protest would meet the requirements of law. The protest could be either oral or writing. The application for reference u/s 18 of the Act cannot be rejected on the ground that the claimants have not expressed their protest in writing, provided the applications are filed within the period of limitation prescribed by the Act. The second proviso to Sub-Section (2) of Section 31 merely declares that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18.

So, what is required is a protest by the claimants. The very application seeking a reference by the claimant by necessary implication would show that the amount of compensation has been received under protest. It would be entirely a different matter, if the application is not filed within the period of limitation."

7. This being the position of law and in the instant case the application seeking reference having been filed within the period of limitation, as stated by the petitioner, the said application would manifest the intention of the claimant / land-oustee of his implied protest against the award of the Collector at the time of receiving the compensation. There is also nothing to disbelieve the claim of the petitioner having made an oral protest at the time of receiving the compensation since he is an illiterate and rustic villager.

8. For the reasons stated in the foregoing paragraphs, the Civil Revision is allowed. The impugned order communicated vide memo. No. 1030 dated 7.5.2001 is set aside and the Special Land Acquisition Officer. M.C.C.I.I. Project, is directed to make a reference of the matter u/s 18 of the Act to the competent Civil Court within six weeks from the date of receipt of this order.

There shall be no order as to costs.