

(1956) 08 AHC CK 0018
In the Allahabad High Court
Case No : Special Appeal No. 151 of 1956

Raja Harishchandra Raj Singh	Vs	APPELLANT
Deputy Land Acquisition Officer and Another		RESPONDENT

Date of Decision : 07-08-1956

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 13(2), 18

Citation : AIR 1957 All 112 : (1956) 26 AWR 619

Hon'ble Judges : Mootham, C.J;M.L. Chaturvedi, J

Bench : Division Bench

Advocate : N.D. Pant, for the Appellant; A.P. Pandey, for the Respondent

Final Decision : Allowed

Judgement

Mootham, C.J.—This is an appeal from an order of a learned single Judge of this Court dated 22-2-1955, granting certain reliefs on a petition under Article 226 of the Constitution. The relevant facts are not in dispute and can be stated shortly.

2. Certain property belonging to the petitioner was acquired under the provisions of the Land Acquisition Act, 1894; and on the 25th March, 1951, the Collector made an award in accordance with the provisions of Section 11 of the Act. No notice of his award was given by the Collector to the petitioner under Sub-section (2) of Section 12, and the petitioner's case is that he did not come to know that the award had been made and filed until 13-1-1953.

The petitioner was not prepared to accept the award and on 24-2-1953, he filed an application u/s 18 of the Act before the Collector that the matter be referred to the Court. This application was rejected by the Collector ,on the same day as being beyond time. It is not clear whether, as alleged by the appellants, the petitioner was immediately informed that his application had been rejected or whether, as stated by the petitioner, he ascertained this fact only at the end. of October 1953.

On the 21-12-1953. he filed the writ petition out of which this appeal arises. In

that petition the relief sought by the petitioner was the issue of a writ of certiorari quashing the entire proceedings culminating in the award or, alternatively, the issue of a writ of mandamus commanding the first respondent, the Deputy Land Acquisition Officer, Colonisation Scheme, Moradabad, "to give an opportunity to the petitioner to substantiate his application for reference and dispose of the same in accordance with the law."

3. The learned Judge allowed the petition. He was of opinion that the time within, which an application u/s 18 had to be made began to run from the date upon which the petitioner became aware that an award had been made. The application made by the petitioner on 24-2-1953, was accordingly filed within time, and he directed the second respondent, the State of Uttar Pradesh, to consider that application in accordance with law.

4. The appellant's contention is that whether a notice be issued by the Collector pursuant to Section 12(2) of the Act or not, the maximum period within which an application must be made u/s 18 is six months from the date of the Collector's award, and that as the application in the present case was admittedly filed at a very much later date it was properly rejected.

5. Now Section 18(1) of the Land Acquisition Act provides that any person interested who has not accepted the award may, by a written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and Sub-section (2) enacts that the application shall state the grounds on which objection to the award is taken. Then there is a proviso to this sub-section which reads thus:

"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."

The first question which we have to determine, therefore, is whether this proviso provides periods of limitation for all applications made under Sub-section (1) or whether it applies to only to some of such applications. We think the answer to the question must be that the Legislature intended the proviso to apply to all applications. The opening words of the proviso are that "every such application" shall be made, and then follow Clauses (a) and (b) stating the periods within which this must be done.

Clause (a) makes provision for the case of a person who was present or represented before the "Collector at the time when the latter made his award, and in the case of such a person the application must be made within six weeks from the date of the award. Clause (b) is the provision which applies "in other

cases" and this phrase in the context in which it is used can mean duly, in our opinion, "in all other cases", that is to say in all cases not falling within the ambit of Clause (a).

6. It has been urged by Sri A.P. Pande who appears for the petitioner that the concluding words of this clause, "whichever period shall first expire," show that the clause only has-application when there is a conflict between the alternative periods of six weeks and six months and that if no notice has been issued u/s 12(2) this clause can have no application; and in support of this submission learned counsel relies upon two sentences in the judgment of Chandavarkar, J. in *In re Land Acquisition Act* ILR 30 Bom 275 (A), where, at page 283, the learned Judge says with reference to Clause (b):

"The clause in question prescribes One of two periods of limitation for a party who has not accepted the Collector's award-either six weeks from the date of the receipt of the Collector's notice, whether immediate or not, or six months from the date of the award; whichever period shall first expire. These last words, which I have italicized, show that the element of notice is an essential in gradient, so to say, of the two alternative periods....."

We do not, with respect think that the conclusion arrived at by the learned Judge can be drawn from the premises. What that clause means, in our opinion, is that in all cases to which (a) does not apply the application must be made within six months from the date of the Collector's award, but that if notice is received from the Collector that period is reduced to six weeks from the date of such receipt if that period be the shorter.

7. Sri Pande's argument means of course that the proviso does not cover all cases. It would not have application where (as in this case) no notice was issued at all or where notice was issued but was not received until after the expiry of the period of six months. The result therefore would be that in respect of such applications no period of limitation has been prescribed and the application can be filed at any time.

We think it was the intention of the Legislature that, in the public interest, not merely the physical acquisition of land under the Act but the determination of compensation therefore should be completed without undue delay, and in our opinion Section 18(2) provides a period of limitation for all applications, the maximum period being six months from the date of the Collector's award. This question was considered at length by the Bombay High Court in the recent case of *Jehangir Bomanji and Others Vs. C.D. Gaikwad*, a case which appears not to have been brought to the attention of the learned Judge from whose order this appeal has been filed.

The facts in that case were very similar to those in the case now before us. Fifteen months elapsed between the date of the award and the date upon which the petitioners became aware that it had been made, the only difference being that sixteen months after the award had been made, and therefore a month"

after they had acquired knowledge of it, a notice u/s 12(2) of the Act was served upon them.

The Court, in a judgment delivered by the learned Chief Justice, was of opinion that an application made by the petitioners as soon as they became aware of the existence of the award was rightly rejected as being beyond time. We agree, with respect, with that decision and are in general agreement with the reason therefore stated by the learned Chief Justice.

8. Learned counsel for the petitioner has also contended that Section 18 has in this case no application as no valid award was made by the Collector. The argument is that notice of the proposed award to every person interested in the land is a condition precedent to the making of the award, and for this proposition learned counsel relies on the provisions of Section 12 and on two decisions to which we shall shortly refer. Section 12 reads as follows:

"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." Learned counsel contends that the words "except as hereinafter provided," appearing in Sub-section (1) refer to the provisions, "inter alia", of Sub-section (2). We do not think this is so, for, in our opinion, it is clear that the phrase we have quoted refers to later sections in the Act providing for a reference to the Court for the determination of the amount of compensation, Section 12 is concerned not with making of the award--that is dealt with in Section 11 but with its finality, and had it been the intention of the Legislature that the finality of the award should be dependent on compliance with the provisions of Sub-section (2) some such words as "and subject to the provisions of Sub-section (2)" would have been inserted, we think, in Sub-section (1) after the phrase "except as hereinafter provided."

9. The first of the cases upon which Sri Pande relies is the decision of the Punjab Chief Court in *Macdonald v. Secretary of state* 4 Ind Cas 914 (Punj) (C). in that case the Court held that it was an essential part of the making of an award that it should be communicated to the interested parties. This decision was followed in *Hari Das Pal v. Municipal Board, Lucknow* 22 Ind Cas 652 (Oudh) (D) the second case relied upon a decision of the Oudh Judicial Commissioner's Court. We think however that these decisions are based, if we may say so with great respect, on the desire to avoid the hardship which may undoubtedly arise, if Section 18 is properly interpreted. Indeed in the earlier of these cases the Court said:

"To hold that an award is "made" as soon as it is signed by the Collector would in many cases result in grave hardship, and we, therefore, feel fully justified in holding that an award is not made until it is announced or communicated to the person interested."

10. Section 12(2) deafly imposes a duty on the Collector; but we are unable to see that neglect of that duty affects the making of the award-an act which has in fact already been done.

11. We are therefore unable to agree with the view that time u/s 18 cannot run until the person interested, (if he was not present or represented before the Collector) has received notice u/s 12(2). It is clear that the Collector can under that Sub-section give notice only to such persons as he knows, or ought to have known, to be interested in the land acquired; but it is manifest that there may well be persons with a legal interest in the land of whom the Collector is wholly unaware--persons for example who have left the State and whose whereabouts cannot be traced.

What is the position if ten years after the proceedings have been completed an interested person comes along who has not had notice? Is the award invalid and can that person file an application u/s 18? We think not. Hardship may undoubtedly arise in exceptional cases, but proceedings under the Land Acquisition Act are given considerable publicity, and where, as in the case before us, the petitioner filed a claim u/s 9 the Legislature may well have taken the view that as any person with a direct interest in the land would keep himself informed of the course of the acquisition proceedings, or at least ascertain from time to time whether any award has been filed in the office of the Collector.

12. In our opinion this appeal must be allow ed. The order of the learned Judge is set aside and the appellants are entitled to their costs in both courts.