

(2011) 10 BOM CK 0018
In the Bombay High Court
Case No : First Appeal No. 898 of 2009

Raju Rawale and Dnyaneshwar

APPELLANT

Vs

State of Maharashtra and Executive Engineer, Purna
Madhyam Prakaalpa Division, Achalpur, Tah. Achalpur,
District : Amravati

RESPONDENT

Date of Decision : 14-10-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 18(1)(2), 18(2)
Limitation Act, 1963 — Section 18

Citation : (2012) 2 ALLMR 333 : (2012) 1 MhLj 721

Hon'ble Judges : A.B. Chaudhari, J

Bench : Single Bench

Advocate : V.M. Deshpande, for the Appellant; T.D. Khade, A.G.P., for the
Respondent

Final Decision : Allowed

Judgement

A.B. Chaudhari, J.—Heard.

Admit.

2. This appeal is taken up for final disposal in view of the fact that the issue involved in the appeal is about the limitation namely whether the reference was barred by time. Counsel for both the parties agreed for final disposal in view of the above.

3. Learned counsel for the appellants assailing the impugned judgment and order dismissing the reference made by the appellants as barred by limitation, argued that the trial court committed an error in reckoning the date 14.10.1998 as the date of starting point of limitation, on which date it is alleged that notice u/s 12(2) of the Land Acquisition Act was served. According to him the said notice dated 14.10.1998 was never served on the appellants. But the appellants had pleaded that they received information on 15.10.1998 from one Narayan Pathak

on whom the said notice was served on 14.10.1998. But then that information cannot be construed as the official information as contemplated by section 18(2) of the Land Acquisition Act. He also argued that date namely 18.10.1998 was also required to be excluded as time spent for obtaining certified copy. He then argued that the said date of knowledge i.e. 15.10.1998 will have to be excluded in the light of the provisions of General Clauses Act, 1887 and if the said day is excluded the reference was filed on the 42nd day.

4. Per contra, Smt.T.D. Khade, learned A.G.P. relied on the Supreme Court judgment reported in Gurdial Singh and Another Vs. State of Punjab, . She argued that by now it is settled law that for the purposes of computation limitation u/s 18(1)(2) of the Land Acquisition Act being special enactment, the provisions of Limitation Act and that of the General Clauses Act shall not apply. According to her even a copying day i.e.18.10.1998 required for obtaining certified copy cannot be excluded and that being so limitation started running immediately from 14.10.1998 or at least from 15.10.1998 and in that event the reference was filed on 43rd or 44th day and therefore was barred by limitation. She therefore prayed for dismissal of the present appeal.

5. Looking to the controversy involved this court decided to call the original record from the office of the Land Acquisition Officer to verify the correctness of the claims made by both the parties and accordingly the record was produced by the learned Assistant Government Pleader before me.

6. Upon consideration of the rival contentions and the impugned judgment and order following points arise for my determination:

1]

Whether the reference court committed an error of law in holding that the reference (L.A.C. No. 1/2001) was filed on the 43rd day and was barred by limitation

---Yes

2]

What order

? Proceedings remanded.

7. It is not in dispute that the award was passed by the Land Acquisition Officer on 31.8.1998 and appellants were not present when the award was passed. It is further not in dispute that the Land Acquisition Officer had issued notices u/s 12(2) of the Land Acquisition Act giving intimation of the fact of passing of the award and to collect the compensation. From the perusal of the record produced before me it is seen that the notice u/s 12(2) of the Land Acquisition Act is addressed to one Narayan Pathak and the appellants herein. However, the acknowledgment on this notice u/s 12(2) is only of Narayan Pathak who had signed in token of receipt of the said notice u/s 12(2), but there is no signature

of any of the appellants though as earlier stated by me, the said notice was addressed to them also. But then in the absence of their acknowledgment of receipt of the said notice, it cannot be said by any stretch of imagination that the appellants were served with the notice u/s 12(2). Therefore, it will have to be held that the notice u/s 12(2) was never served on the appellants because no other record has been shown to me nor it is seen from the record about service of said notice on the appellants at any point of time thereafter. Thus, the trial court committed an error in assuming that the appellants also received the said notice on 14.10.1998 like Narayan Pathak, only because the said notice was addressed to the appellants also.

8. The trial court has further held that the appellants themselves had stated in their application u/s 18 that they came to know on 15.10.1998 about passing of award after service of the said notice u/s 12(2) on Narayan Pathak, and therefore the limitation started running from 15.10.1998. According to the trial court reference was filed on 26.11.1998 and even if the date 15.10.1998 is reckoned as the starting point of limitation still the reference was filed on 43rd day. At this juncture it is necessary to quote sub section (2) of section 18 of the Land Acquisition Act:

18(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

9. A conspectus of the various judgments of the Supreme Court as to the strict view on the point of limitation or non-application of the provisions about the power of the court to condone the delay under Limitation Act would show that the provision about limitation u/s 18 of the Limitation Act has been placed on a high pedestal making the provisions of Limitation Act or General Clauses Act inapplicable. In other words the provision regarding limitation has been strictly construed against the subject. In my opinion the provision of section 18(2)(b) in relation to the service of notice u/s 12(2) of the Land Acquisition Act also will have to be strictly construed. Section 18(2)(b) states that the reference has to be filed within six weeks of the receipt of the notice from the Collector u/s 12(2). This is the first part. The second part is "or within six months" from the date of Collector's award. There is no third part in this clause to enable the court to read any type of knowledge of the party besides what is stated in section 18(2)(b) of the Act. In the light of this view, I find in the instant case it is an admitted fact that the appellants never received the notice u/s 12(2) of the Land Acquisition

Act. The case of the appellants would therefore fall in the second part of the sub-clause(b) namely within six months from the date of the Collector's Award. The alleged date of knowledge namely 15.10.1998 that the appellants received information from Narayan Pathak cannot be taken into consideration since sub-clause(b) does not contemplate such type of knowledge of a party for commencement of limitation. Therefore, even assuming that the appellants had unofficial knowledge from Mr. Pathak about passing of award upon service of notice of section 12(2) on Mr. Pathak but not on the appellants, the same cannot be utilised to throw the appellants out of court who lost their valuable land under compulsory acquisition. The fact about knowledge of the appellants as aforesaid cannot be read into clause (b) when the legislature has not said so. To repeat such an unofficial information to the appellants cannot be considered or assigned any importance. Further if the said date of knowledge is taken into consideration, the latter part of sub-clause (b) would automatically come into operation which provides for limitation of six months. In my view therefore, the case of the appellants would fall in second part of sub-clause (b) thereby the appellants were entitled to file the reference within six months from the date of the Collector's award dated 31.8.1998. In this behalf, the following observations of the Supreme Court in the case of Parsottambhai Maganbhai Patel and Others Vs. State of Gujarat through Deputy Collector Modasa and Another, are relevant.

7. This Court, therefore, held that the limitation under the latter part of Section 18(2)(b) of the Act has to be computed having regard to the date on which the claimants got knowledge of the declaration of the award either actual or constructive. This principle, however, will apply only to cases where the applicant was not present or represented when the award was made, or where no notice u/s 12(2) was served upon him. It will also apply to a case where the date for the pronouncement of the award is communicated to the parties and it is accordingly pronounced on the date previously announced by the Court, even if, the parties are not actually present on the date of its pronouncement. Coming to the facts of the instant case the High Court has not rejected the plea of the appellants that they came to know of the award only when compensation was being paid to them in July 1988. They had admittedly no notice u/s 12(2) of the Act.

10. To sum up point No. 1 will have to be answered in affirmative. Thus I find that the reference was filed within limitation. As a sequel I make the following order:

ORDER

- i) First Appeal No. 898/2009 is allowed with costs.
- ii) The impugned judgment and award dated 30.4.2009 is set aside
- iii) The reference proceedings (L.A.C.No. 1/2001) are remitted to the reference court for a fresh decision on merits in accordance with law;
- iv) Parties are at liberty to amend their respective pleadings;

v) Reference court shall now take up the proceedings as expeditiously as possible and decide the same within one year from the date of receipt of the writ from this court,

vi) It shall be responsibility of the appellants to collect the writ of this court and reach the same to the reference court;

vii) Parties to appear before the reference court on 21.11.2011

viii) Court fees amount of Rs. 33,000/- in this appeal and the costs of this

appeal shall be deposited in the trial court by the respondent/ State within a period of two months from the date of first appearance in the trial court i.e. on 21.11.2011, which would be condition precedent for the State to defend the reference. Upon deposit the said amount of costs, the same shall be entirely paid to the claimants to enable him them to prosecute the reference.

ix) Award be drawn up in tune with order (viii) above.