

(1969) 03 OHC CK 0002

In the Orissa High Court

Case No : Civil Revision No. 179 of 1967

Ramahari Moharana and Others

APPELLANT

Vs

Land Acquisition Officer and Another

RESPONDENT

Date of Decision : 10-03-1969

Acts Referred:

Land Acquisition Act, 1894 — Section 18(2), 18(3)

Citation : AIR 1969 Ori 198 : (1969) 35 CLT 358

Hon'ble Judges : G.K. Misra, J

Bench : Single Bench

Advocate : B.K. Ray, B.H. Mohanty and G.N. Sengupta, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, J.—The petitioners claim to have purchased the lands under acquisition on 28-4-55. Notice u/s 9 of the Land Acquisition Act (hereinafter to be referred to as the Act) was served in January 1963. On 30-4-63 the petitioners filed an application before the Land Acquisition Officer stating that their lands were being acquired and that the compensation was payable to them. No action was taken on this application. On 11-6-66 the award was passed in favour of the Collector as the lands were recorded as Anabadi. No notice was served on the petitioners u/s 12(2) of the Act giving them intimation of the award. On 16-10-66 the petitioners filed a second application by way of reminder to the earlier application, dated 30-4-63. Apparently the petitioners had no knowledge of the award by then. On 16-1-67 the Land Acquisition Officer passed an order rejecting the petitioner's application dated 30-4-63 on the ground that no objection was preferred within time in pursuance of the notice u/s 9 of the Act.

It is to be noted that the notice u/s 9 was served in the village on 17-1-63 and objections were to be filed by 31-3-63. On 25-1-67 the petitioners filed an application to get certified copies of the order dated 16-1-67 and of the award. They got the certified copies on 25-4-67. Coming to know that the award has

been passed in favour of the Collector, they filed an application u/s 18 of the Act praying for a reference being made to the District Judge. This application was accompanied by an application u/s 5 of the Limitation Act for condonation of delay. The Land Acquisition Officer rejected this petition on 22-5-67. He held that the application for making a reference u/s 18 of the Act was barred by limitation. Against this order, the Civil Revision has been filed.

2. Mr. Ray for the petitioners contends that though by misconception of law an application u/s 5 of the Limitation Act had been filed for condonation of delay, the application for making a reference u/s 18 was not barred by limitation. The contention is well founded. u/s 18(1) of the Act, 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. Sub-sections (2) and (3) of Section 18 run thus:--

"(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 with-in six months from the date of the Collector's award, whichever period shall first expire.

(3) Any order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure, 1908".

3. So far as the question of limitation is concerned, Sub-section (2)(b) would govern the matter. Sub-section (a) has no application as the petitioners were not present or represented before the Collector at the time when he made his award. Admittedly, no notice of the award was given to the petitioners u/s 12(2) of the Act. The last clause lays down that the application shall be made within 6 months from the date of the Collector's award. It is now authoritatively pronounced in *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, , that the time will run from the date when the party had knowledge either actually or constructively. Their Lordships observed that 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. In this case the petitioners would be ascribed knowledge on 16-1-67 when the Land Acquisition

Officer rejected their application dated 30-4-63. This is within a period of 6 months from the date of the filing of the application 6-5-67. This aspect of the law was wholly ignored by the Land Acquisition Officer. His order that the application was barred by limitation cannot be sustained.

4. Mr. Additional Standing Counsel however contends that though the order of the Land Acquisition Officer is not sustainable on its own merits, the application is to be thrown out as the petitioners were not parties to the land acquisition proceeding, and as such were not entitled to ask for a reference u/s 18. His contention is fully supported by a decision of this Court reported in AIR 1968 Ori 94 Narayan Das v. Kasinath Pani. Mr. Ray concedes that he could not find out a single decision taking the contrary view after thoroughly discussing the point at issue. He however, refers to a number of decisions in which the application u/s 18 was allowed even though the applicant was not a party to the land acquisition proceeding. In view of the concession of Mr. Ray that he was unable to cite a single decision to the contrary wherein the matter was raised and discussed, it is not necessary to refer this question to a larger Bench.

So far as the facts of this case are concerned, he however contends that the petitioners shall be deemed to be parties to the proceeding in view of their application dated 30-4-63 which was made a part of the record. It is not necessary to consider here whether this application was maintainable or barred by limitation not being filed within the time prescribed. All that this Court is to consider at this stage is whether by virtue of the application the petitioners became parties to the proceeding. Even assuming that the application was barred by time, it cannot be denied that they were parties. When they made the application they must first be impleaded and then the matter would be disposed of one way or the other. I am inclined to take a liberal view of the matter and hold that the petitioners were parties to the land acquisition proceedings. In terms Section 18 applies. They claim interest in the lands by virtue of their purchase and are persons interested as mentioned in Section 3, (b) of the Act. They have not accepted the amount mentioned in the award. They are therefore, entitled to ask for a reference, provided their application is not barred by time. What view will be taken in the reference is irrelevant to the question at issue now. The only point is whether a reference should be made. In view of my conclusion that the petitioners are parties to the proceeding and the application u/s 18 is not barred by limitation, the Land Acquisition Officer ought to have made a reference.

5. In the result, the order of the Land Acquisition Officer is set aside and he is directed to make a reference u/s 18 of the Act. The Civil Revision is allowed. But in the circumstances parties would bear their own costs.