

(1995) 06 GUJ CK 0017
In the Gujarat High Court

Case No : Civil Revision Application No. 124 of 1992

Ramanlal D. Desai and Another

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 15-06-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Land Acquisition Act, 1894 — Section 11, 18, 4, 48(2), 6

Citation : AIR 1996 Guj 33 : (1996) 2 GLR 381

Hon'ble Judges : Y.B. Bhatt, J

Bench : Single Bench

Advocate : D.T. Soni, for Mohit S. Shah, for the Appellant; Bina R. Gajjar, AGP, for the Respondent

Judgement

1. The petitioners herein are the owners of certain lands which were notified u/s 4 of the Land Acquisition Act as land likely to be required for public purposes. This was followed through by a notification issued u/s 6 of the said Act. The latter notification was challenged by the petitioners-land owners by taking various proceedings, obtaining interim relief in such proceedings, etc. Apparently as the State felt that the delay in the completion of the acquisition proceedings would frustrate the very purpose of acquisition the Government decided to drop the acquisition and ultimately implemented this decision by taking appropriate action whereby the petitioners' lands were released from acquisition.

2. The petitioners thereupon felt that on account of the pendency of the acquisition proceedings, there was a restriction on their right to develop the land and, therefore, they had suffered substantial damages. Petitioners, therefore, made an application to the Collector together with the claim for compensation in respect of the damage suffered by them and required the Collector to determine the relevant compensation due to them u/s 48(2) of the said Act. The Collector, after due process of law, decided the said application on merits and concluded that the petitioners were not entitled to any compensation whatsoever. It may be

noted at this stage that this decision of the Collector was specifically a decision u/s 48(2) of the said Act and that it was a decision on merits by a speaking order.

3. The petitioners were apparently dissatisfied with the aforesaid order. With a view to challenge the same, apparently believing that the remedy available to them would be a reference u/s 18 of the said Act, the petitioners filed an application to the Collector requiring him to make a reference to the District Court u/s 18 of the said Act. It is also required to be noted at this stage that although they had approached the Collector at this stage of the matter by way of an application purporting to be one covered by Section 18 of the said Act and requesting the Collector to refer the matter to the District Court as a Reference u/s 18, in fact and substance what the petitioners sought to do was to challenge the order of compensation passed u/s 48(2) of the said Act. A question would then arise as to whether a Reference would lie to the District Court u/s 18 of the said Act, In respect of an order passed u/s 48(2) of the said Act or whether the remedy of the person affected would lie elsewhere. However, I refrain from entering into this question for only one reason viz. that this question does not directly arise in the present revision.

4. The Collector then dealt with the petitioners' application for making a reference u/s 18 by rejecting the said application. In other words, he refused to make a Reference to the District Court u/s 18 of the Said Act. Again I may emphasise at this stage that the refusal on the part of the Collector was only in the context of the petitioners' request to make a Reference u/s 18 of the said Act and in no other context. It may be that the Collector gave reasons for not making the reference. It may be that the reasons given by the Collector for refusing to make such a Reference were good reasons or bad reasons. It may be that the refusal to make a Reference u/s 18 of the said Act was a good refusal or a bad refusal. I am not concerned with these aspects of the matter in the present revision since the question does not arise here. I have, therefore, refrained from examining the reasons given by the Collector for not making the Reference.

5. It appears that the refusal on the part of the Collector to make a Reference u/s 18 of the said Act to the District Court was not challenged by the petitioners by taking any proceedings whatsoever.

6. The petitioners then sought to by-pass this situation by approaching the District Court directly with an application praying that the District Court may accept their Reference u/s 18 directly from the petitioners. This application when presented by the petitioners in the District Court, was styled as Land Acquisition Reference No. 731/91, the nomenclature thereof subsequently changed to "Misc. Civil Application No. 731/91." This was obviously done inasmuch as it was presented directly as a Reference u/s 18, but was presented with an application with a prayer that it may be accepted as a Reference u/s 18, by the leave of the Court.

7. The District Court then heard the application on merits and rejected the same.

It is this order of rejection which is the subject-matter of the present revision.

8. Before I proceed further with the matter on merits, it is required to be noted that the only order challenged in this revision, is the order of the District Court refusing to accept directly from the petitioners their application for enhanced compensation u/s 18 of the said Act. In this context it must be distinctly understood that the order of the Collector refusing to make the reference has not been challenged, neither in the District Court nor in this Revision. Whether such a challenge, even if made would be sustainable, is a question which does not directly arise, which, however, has been dealt by me since submissions were made in that regard.

9. The District Court in the impugned order, after discussing the history and the facts of the case, has come to the conclusion that it has no jurisdiction whatsoever to accept a Reference u/s 18 directly from the claimants. It may be that the District Court has, during the course of discussion, indicated where the remedy may lie in case the petitioners are aggrieved by the order of the Collector refusing to make such Reference. This, however, may be regarded to be in the nature of speculation and/or prima facie opinion, but in any case cannot be regarded to be either a finding of fact, or the Court's view on a question of law, particularly since the question of the proper remedy was not in issue before the District Court. For the same reason I do not propose to enter into a discussion on the proper remedy which the petitioners could have chosen for challenging the order of the Collector, passed u/s 48(2) of the said Act.

10. Now coming to the merits of the impugned order passed by the District Court. I am of the opinion, that the same is eminently correct and fully justified in view of the specific provision viz. Section 18 of the said Act. The District Court was entirely correct in concluding that it had no jurisdiction to accept the Reference u/s 18 directly from the party, even where the Collector has refused to make such a Reference.

11. Learned counsel for the petitioners is unable to point out any provision under the Act whereby an aggrieved party is entitled to, approached the District Court directly by way of a Reference u/s 18 of the said Act. Moreover, the learned counsel for the petitioners has also failed to point out to any decision which would indicate that the District Court has the jurisdiction to entertain such a Reference directly and through the hands of the aggrieved party, without such a Reference having been made by Collector.

12. Once again I refrain from entering into the question as to whether such a Reference, even if made u/s 18 of the Act by the Collector, would be a legal and valid Reference. I refrain from discussing this question, firstly because the Collector has refused to make a Reference and it is not this refusal which is the subject-matter of the present revision. Another reason for not entering into this question is that since there is no Reference u/s 18 of the Act the question of its maintainability does not arise. Such a question could only have arisen if the

Collector had made a Reference and the District Court had dealt with it on merits. It was only then that the District Court would have been required to examine the question whether a Reference u/s 18 would be competent from an order of the Collector passed u/s 48(2) of the said Act.

13. Learned counsel for the petitioner, however, submitted with reference to certain decisions that the Collector has no discretion or power to refuse to refer the dispute to the District Court if the application is otherwise in order. If the Collector so refused to make the reference, such refusal would be an illegal exercise of jurisdiction, and would also be exercise of jurisdiction not vested in him and, therefore, would be liable to be quashed and set aside.

14. In this context I may say that as a general proposition this is true and may be accepted. However, it must also be noted, in the context of this proposition, that the Collector has to deal with the application of the party which requests the Collector to forward the Reference to the District Court u/s 18 of the said Act. If the Collector is confronted with such a request, and if such a request does not pertain to matters covered by Section 18, certainly the Collector may refuse to forward the said Reference to the District Court. It is not as though the Collector is bound to forward any and all applications made by affected parties to the District Court in the form of a Reference u/s 18. Obviously the Reference u/s 18 arises only where the affected parties are dissatisfied with the award of the Collector u/s 11 of the said Act. As already observed hereinabove it is doubtful whether a Reference u/s 18 of the said Act would lie from an order passed u/s 48(2) of the said Act.

15. Learned counsel for the petitioner seeks to rely upon a decision of a single Judge of this Court in the case of *Bai Mani Vs. The Special Land Acquisition Officer, Broach and Another*, . This decision, even if considered in the most favourable light, as is sought to be submitted by the learned counsel for the petitioners, does not advance their case any further. This decision does not lay down any ratio which can even be remotely understood to mean that the District Court has jurisdiction to accept an application for a Reference u/s 18 directly from the party and not through the Collector. This decision, after examining the facts of that case, examined the powers of the Land Acquisition Officer and found on the facts of that case that the Special Land Acquisition Officer had no power or authority to reject the Reference application on the grounds on which the refusal was based.

16. This decision would not assist the petitioners in any significant manner for various reasons, Firstly, it only deals with the power of the Land Acquisition Officer to refuse to make Reference on the facts of that case. Therefore, it has no application to the facts of the present case. Secondly, it must be noted that in the said decision it was the specific order of the Special Land Acquisition Officer, which was the subject-matter before the High Court. Such is not the case here. As already observed hereinabove, it is the order of the District Court, refusing to accept a Reference directly from the party, which is the subject-matter of the

present revision. Thirdly, I am of the opinion that so far as the aforesaid decision is concerned, the High Court has no power u/s 115 of the C.P.C. to issue a mandamus or even a direction to the Land Acquisition Officer to make a Reference to the District Court u/s 18 for the simple reason that the Land Acquisition Officer, when he makes an award u/s 11, or the Collector when he exercises jurisdiction upon the application made u/s 18, is not a Court which is "subordinate to such High Courts" within the meaning of Section 115, C.P.C. My view in this regard is amply supported by a Division Bench judgment of this Court, following a number of decisions of the Bombay High Court, as discussed hereinafter. Learned counsel for the petitioner also sought to rely upon a decision of the Division Bench of this Court in the case of Mohan Mulji Vs. Special Land Acquisition Officer, Rajpila and Another, . The learned counsel for the petitioners sought to place reliance upon certain observations made in paras 6 and 7 of the said decision. It must first be noted that the observations sought to be relied upon are mere observations, and not the ratio of the decision arising from the issue directly before the Court in that case. Secondly, it must also be noted that the observations which arise from the specific facts of that case could not possibly have a general application under any and all circumstances.

17. In this context it must be noted that the question before the Division Bench in the said case was whether the application filed before the Collector for making a Reference u/s 18 to the District Court was properly stamped or not and whether the Collector could refuse to make a Reference on the ground that it was not properly stamped. It is in the context of this dispute that the Division Bench had occasion to observe that the Collector is not merely a conduit pipe, but he has an important function to perform when he forwards the application of the petitioner to the District Court as a Reference u/s 18, and that he has to dispose of the application only if it bears the proper Court-fee stamp and complies with the requirements of Section 18. In this context the Division Bench also held that the Collector may reject or refer to the Court such an application depending on whether it satisfies all the requirements as to stamps-fee and other conditions. It is in the context of this controversy that the Division Bench observed in para 6 of that decision as under:

"If the application does not comply with the requirements of Section 18 or does not bear the requisite Court-fee-stamp, the Collector would reject the application and if the application bears the proper Court-fee stamp and complies with the requirements of Section 18, the Collector would grant it. The order of the Collector in either case would dispose of the application : in one case it would be disposed of by an order rejecting it and in the other case it would be disposed of by an order making a reference to the District Court."

It is these observations of the Division Bench which are sought to be relied upon by the learned counsel for the petitioners. As already stated by me hereinabove, these observations have been made in the context of the power of the Collector to withhold or refuse of make a reference on the ground that the application is

not adequately stamped. Obviously when these observations are read in that context, the contention on behalf of the present petitioner, that the Collector is bound to forward the application to the District Court, if it is found that it is correctly stamped, is a contention which must be rejected. Such observations cannot amount to a general proposition that the only power of the Collector is to examine the adequacy of the stamp or the procedural formalities or the procedure contemplated by Section 18, etc. and that the Collector has no jurisdiction to withhold the request on any other ground.

18. As already stated by me hereinabove, I am not required to go into validity of the reasons on the part of the Collector in the instant case for not making a reference. Suffice it to say here that the said decision does not assist the petitioners in any manner.

19. This decision is, however, relevant for another purpose, viz, whether the order of the Collector refusing to make a reference is subject to the revisional power of this Court u/s 115 of C.P.C. As already discussed by me hereinabove, the issue does not directly arise in the present petition inasmuch as it is not the order of the Collector which is challenged in the present revision. This question arises only because learned counsel for the petitioner relies upon the decision in the case of Bai Mani Vs. The Special Land Acquisition Officer, Broach and Another, where this Court had, in a revision u/s 115, directed the Special Land Acquisition Officer to make a Reference to the District Court.

20. Para 5 of the Division Bench decision in the case of Mohan Mulji Vs. Special Land Acquisition Officer, Rajpila and Another, , after considering a number of decisions of the Bombay High Court, specifically considered and decided the question whether a Revision Application u/s 115 was competent from the order of the Collector refusing to make a reference. A specific proposition of law approving of the earlier decisions has been laid down in this decision to the effect that the High Court cannot, in the exercise of its jurisdiction u/s 115, C.P.C. revise an order passed by the Special Land Acquisition Officer or the Collector refusing to make a reference u/s 18, for the simple reason that such an officer is not a Civil Court which can be said to be "a Court subordinate to the High Court" and also for the reasons that such an officer is not discharging judicial functions u/s 18. As discussed by me hereinabove, since the High Court cannot exercise revisional jurisdiction over orders of the Special Land Acquisition Officer or the Collector under such circumstances, the decision of the learned single Judge in the case of Bai Mani Vs. The Special Land Acquisition Officer, Broach and Another, would not, in my opinion, be good law.

21. In the premises aforesaid learned counsel for the petitioners is unable to sustain his contention that the District Court has jurisdiction to entertain an application in the nature of a reference u/s 18 directly from the party affected, if the same is not forwarded by the Special Land Acquisition Officer or Collector. The impugned order is clearly legal and in accordance with law and cannot be said to be hit by any jurisdictional error which would justify interference in the

present revision. This revision is, therefore, rejected. Rule is discharged with no order as to costs.