

(1978) 02 BOM CK 0019

In the Bombay High Court

Case No : Civil Revision Application No. 231 of 1974

Ramkrishna Balaji Kirnapure and others

APPELLANT

Vs

D.S. Patil and Another

RESPONDENT

Date of Decision : 17-02-1978

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 12(2), 17, 18

Citation : (1978) MhLj 532

Hon'ble Judges : R.D. Tulpule, J

Bench : Single Bench

Advocate : W.G. Misar, for the Appellant; M. P. Badar, Asstt. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Tulpule, J.—This is a revision application against the order passed by the Special Land Acquisition Officer, Koradi Super Thermal Project, Nagpur on 11th July 1973 rejecting the application of the petitioners for a reference to be made u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act). The lands belonging to the petitioners were sought to be acquired for Koradi Super Thermal Project, tahsil and district Nagpur. The lands in question were from out of survey Nos. 112 and 113 which belonged to the petitioners.

2. An award came to be passed in respect of the compensation payable to the petitioners by the Special Land Acquisition Officer u/s 11 of the Act on 28-9-1972. By that award, a total sum of Rs. 23054.23 was awarded to the petitioners in respect of the lands which were sought to be acquired. There is no dispute as regards the knowledge of making of the award by the Special Land Acquisition Officer to the petitioners.

3. It appears that on 1-12-1972 the petitioners presented an application to the Collector praying that a reference may be made u/s 18 of the Act and that they had not accepted the award dated 28-9-1972 for the reasons which were

enumerated therein, and claimed that they were not satisfied with the compensation amount awarded to them which according to them, was insufficient, and inadequate having failed to take into account a number of circumstances mentioned therein. The petitioners also supplied necessary court-fee stamps as required by the Bombay Court-fees Act along with the application.

4. Following the award, and in the meantime on 11-10-1972 the Land Acquisition Officer issued notices u/s 12 sub-section (2) of the Act to all those persons who were entitled to compensation, including the claimants in the present case, that the award has been made and that they were entitled to receive that amount and that they could take away that amount. This notice also made it clear that the amount could be accepted under protest given in writing on the 26th October, 1972. Pursuant to this notice, as the record will go to show, the claimants revision-petitioners before me, accepted this amount of Rs. 23,054.23. When they did so, record does not show that they registered any protest or made a note that they were accepting the amount under protest. It will be noticed that it is only thereafter that the claimants filed an application u/s 18 of the Act to the Collector with a request to make a reference to the Civil Court.

5. The Land Acquisition Officer who received the application subsequently on 1-11-1972 u/s 18 praying that a reference may be made, rejected that application as pointed out above on 11-7-1973 i. e. after nearly 7 months. It is against this order that the present revision application is filed u/s 18, sub-section (3) as introduced by the Bombay Amending Act 38 of 1964 which provides that the Collector's order rejecting the application u/s 18 is subject to the revision by the High Court." That is how this revision application is before me.

6. Mr. Misar who appeared for the petitioners contended firstly, that the Land Acquisition Officer took an unduly long time to inform the petitioners that their application u/s 18 of the Act could not be forwarded to the Court and they have been deprived of a valuable right and had accepted the amount under protest,. It is contended by him that they had made their protest but that this protest was made orally and that it was for the Land Acquisition Officer to record that protest of the petitioners in writing. If the petitioner's protest was not recorded and, therefore, it was not on record which was made orally, then Mr. Misar submits that the petitioners cannot be made to suffer. Section 18 of the Act under which the reference is to be made, does not lay down any procedure or method of registering protest and according it. Under the circumstances according to Mr. Misar, the protest could be made orally and was sufficient for the purpose of section 31 and for section 33 also.

7. According to the Land Acquisition Officer and the learned Assistant Government Pleader, there was no such protest and the order of the Land Acquisition Officer in rejecting the reference u/s 18 of the Act was perfectly valid and good.

8. In support of his contention Mr. Badar relied upon two decisions, one of the

Calcutta High Court and the other of the Madras High Court reported in Suresh Chandra Roy Vs. The Land Acquisition Collector, Chinsurah, and Mrs. S. Thomas v. The Collector of Madras A I R 1958 Mad. 186. In the Calcutta case an Award was made awarding to the claimants-petitioners certain sums of money. On July 9, 1958 notice was issued informing the petitioners that they were at liberty to receive the amount. On 18-7-1958 i. e. soon after the making of the Award the petitioners prayed to the Collector that a reference may be made to the Court u/s 18. In that application they also made it known that they would receive compensation as awarded under protest on the date on which it was notified. Subsequently, however, they received the monies on two dates upon their application on 12-8-1958 and on 18-8-1958. In both these application, the petitioners failed to note that they were receiving the amount of compensation awarded to them under protest, and accepted the bank drafts on executing two receipts in favour of the Collector. In none of these receipts and the applications dated 12-8-1958 and 18-8-1958 any protest was registered on behalf of the petitioners. That reference u/s 18 was rejected by the Collector and it was against that rejection that the revision application was filed in the High Court.

9. It was contended before the High Court that the petitioners having made their application for reference to the Court u/s 18 and having stated therein that they would accept the amount awarded under protest, the applications which following thereafter on 12-8-1958 and 18-12-1958 should be treated as if they were applications under protest and the amount was received under protest. This contention was negatived and it was held that the protest must be made in the application for receiving the disputed amount of compensation, if any such application is to be at all made and in any case must be recorded in the receipt given showing that the disputed amount of compensation money was accepted under protest.

10. The Madras decision reported in Mrs. S. Thomas v. The Collector of Madras, however, a short judgment by Justice Rajagopala Ayyangar, as he then was, and merely says that the acceptance of an award u/s 18 and the receipt of the money as contemplated u/s 31(2) denote the same idea and, therefore, the same criteria must apply to the construction of section 21 as well as section 18. In other words, according to the Madras High Court also the protest must be available for being verified regarding receipt of payment before taking action upon an application u/s 18 of the Act.

11. Mr. Misar on the other hand, relied upon a Division Bench Judgment of the Madras High Court reported in Kamalam v. The Special Tahsildar (Land Acquisition) (1966)1 MLJ 86. The Head Note of that case reads under:?

"No doubt section 31(2) of the Act contemplates that any person who is not satisfied with the quantum of the award may receive it under protest. But this does not mean that if any amount awarded is received as compensation without protest the claimant concerned is denied his right u/s 17 to ask for reference. The proviso is not intended to have effect as a kind of estoppel against the

claimant exercising his right u/s 17."

This judgment, however, does not consider the earlier Madras case *Mrs. S. Thomas v. The Collector of Madras* (Supra) to which I have made a reference. With respect it seems to me that the question is really, not one of estoppel, but whether an application u/s 18 is made within time and whether the applicant has accepted the award or otherwise, for it is plain that where the claimant has accepted the award, there can be no question of making a reference. There was also no reference to the decision of the Calcutta High Court reported in *Sureshchandra v. Land Acquisition Collector* (Supra).

12. If we consider the scheme of the Land Acquisition Act, it will become clear as to why the fact that the claimant has not accepted the award and has not received the compensation without protest is necessary to be known and ascertainable before any application u/s 18 can be forwarded. A person may not accept the award and may yet not make an application u/s 18 for a reference to the Court. He may not accept the award and may yet accept the compensation amount and forget the rest. Where he accepts the compensation amount without any protest that can only be under the circumstance that he accepts the award. In any case it would indicate his acceptance of the award. An acceptance of the award operates as a bar to an application u/s 18.

13. Now an award is to be made u/s 11 after notices under sections 4, 6 and 9 are issued to the persons concerned, and they have been heard and the matters raised therein are thereby considered, After the award is made u/s 11, the award has to be filed in the office of the Collector and the Collector then as per section 12, sub-section (2) has to give immediate notice of the award to persons interested who were not personally present or with their representatives when the award was made. A notice u/s 12 sub-section (2) also may inform the parties as to when they can take away the compensation amount awarded under the award. Where notice, however, is silent in that behalf, an application as referred to in the Calcutta decision *Sureshchandra v. Land Acquisition Officer* (Supra) would be contemplated. An application for payment without protest or without any indication that the claimant does not accept the award would mean prima facie that the claimant has accepted the award.

14. In the instant case the award was made on 28th September 1972 and notices were issued u/s 12 and served upon the parties calling upon them to receive the compensation on 27th October, 1972 which they could receive under protest. The claimants-petitioners in this case received the payment on 27th October, 1972 and it is only thereafter that on 1-12-1972 they filed the present application u/s 18.

15. Now section 18 prescribes two periods within which to make an application to the Collector requesting him to make a reference to the Court. Sub-section (2) of section 18, (so far as is relevant for our purpose) says that an application for that purpose has to be made within six weeks if the person interested was

present either himself or through his representative when the award was made. In the second class of cases where the person interested is not present, the period of six weeks is prescribed from the date of receipt of notice u/s 12 sub-section (2) or within six months from the date of Collector's award whichever period shall first expire. It will thus be seen that clause (b) gives a larger period of limitation in case where the notice is not sent for a considerable time u/s 12 sub-section (2) or is not sent at all. Now, the notice u/s 12 issued by the Collector prescribing therein, either the time when the payment would be made or without any reference to it will start the running of the period even if the payment should be made within a period of six weeks or if no date is fixed and no application is made even beyond the period of six weeks. But it is plain that a reference u/s 18 can only be made where the person interested "has not accepted the award". The receipt of payment of compensation amount without a protest would lead to an inference that the person has accepted the award. It is only persons who have not accepted the award can make an application and in the absence of protest on an application u/s 18, action can only be taken if the Collector is satisfied that the person claiming has not accepted the award and secondly, his application is within the time prescribed.

16. Where there is no payment made and there is nothing to indicate otherwise that the person has accepted the award, there would be no difficulty of passing an order u/s 18 making a reference where the application is otherwise in time. The question would only arise where payment is made and when the payment is made though the application may be within the period of six weeks, there is no evidence to show that the person has not accepted the award. As pointed out, if the compensation amount is received without protest it is obvious in that case that the person has not challenged the award and has accepted it. In such a case reference would be barred. Where he accepts the payment upon protest also there would be no difficulty. In any case, therefore, u/s 18, the Collector must be satisfied clearly, before taking any action, that the person has not accepted award. Notices in this case u/s 12(2) were apparently issued on 11th October, 1972 and seem to have been served sometime prior to 18th October as the endorsement on the office copy will go to show. The period of six weeks, will, therefore, have to be counted at least from 18th inasmuch as the exact date of service is not known. It was thereafter that these claimants made an application for payment being made to them on the 26th October, 1972 and the payment was actually made to them on 26th October, 1972. This application which is at record page 91 does not show either that the application was made for payment registering their protest, or when the amount was received any protest against the award was entered. An oral protest would be of no consequence as alleged, assuming one was made, because it is not available for being verified, to the person who has to decide an application u/s 18. A protest or a fact that the claimant has not accepted the award must be available for being verified, and that can only be done where it is in writing. If it is not in writing then the necessary satisfaction of the Collector that the person has not accepted the

award cannot be reached. It is not so much a question of estoppel, as a question of a finding as to whether the person has accepted the award or not, which is a pre-condition for making a reference to the Court. Since, in this case, the money was accepted without registering any protest, even though the application is in time having been made within six weeks from 18-10-1972, it could not be said when the application was made, that the person interested had not accepted the award. A subsequent change of mind would not in such a case be available. The reason why the protest must be available for being verified clearly is, that a person would not be entitled to change his mind. He may even accept the award even after receiving the money under protest and not make an application, or he may accept the award, accept the money having accepted the award, but subsequently change his mind and make an application u/s 18. It is in order to prevent latter such situation, that I think there is a necessity of the fact of non-acceptance of the award being patent on the record. It seems to me that the scheme of the Act is that where there is acceptance of the award either expressly or impliedly when the compensation amount is accepted without entering any protest it is irreversible by a subsequent change of mind for the purpose of the Act.

17. In that view of the matter the application was rightly rejected and the revision application fails and has to be dismissed. Under the circumstances, there will be no orders as to costs.