

(1971) 04 MAD CK 0068
In the Madras High Court
Case No : Writ Petition No. 674 of 1979

Ranganathan

APPELLANT

Vs

Revenue Divisional Officer Pattukottai

RESPONDENT

Date of Decision : 30-04-1971

Acts Referred:

Contract Act, 1872 — Section 4

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

Citation : AIR 1972 Mad 7 : (1971) 84 LW 512 : (1971) 2 MLJ 167

Hon'ble Judges : Palaniswamy, J

Bench : Single Bench

Judgement

Palaniswamy, J.—This petition raises an interesting and important question of interpretation of sub-section (2) of S. 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act). A land belonging to the petitioner was acquired under the Act and an award was passed on 25-7-1966. The award that was sent by post to the petitioner was received by him on 19-9-1966. On 31-10-1966, the petitioner addressed a communication to the respondent, the Land Acquisition Officer, protesting against the quantum of compensation and requesting that a reference may be made to the court u/s 18 of the Act. The respondent received the communication on 1-11-1966, but declined to make a reference contending that he received the requisition after the expiry of the time fixed under the Act. This petition is filed for the issue of a writ of Mandamus directing the respondent to make a reference u/s 18 of the Act.

2. Sub-Section (2) of S. 18 of the Land Acquisition Act reads-

"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 shall first expire."

It is contended on behalf of the respondent that the application sent by the petitioner by post should be deemed to have been validly made only on the date when the respondent received it, namely, on 1-11-1966, and that inasmuch as the period of six weeks, namely 42 days had by then elapsed, the application cannot be said to have been made within the time. This raises the question whether the application posted by the petitioner within the time is an application, made within the time, within the meaning of the proviso to sub-section (2) of S. 18.

3. Mr. Ramana, appearing for the petitioner, contended that in the case of a contract, where the communication of acceptance is sent by post, such a communication can be taken to be complete if the acceptor puts the communication in the course of the transmission to the proposer so as to be out of his power, within the meaning of Section 4 of the Indian Contract Act. He further pointed out that the communication sent by post is itself sufficient to comply with such acceptance. In support of this argument, he relied on the decision of the court of Appeal in *Household Fire Insurance Co. v. Grant* (1879) 4 Ex D 216. In my view, it is not possible to apply the principles of Contract Act to a case of this kind, for in this case, neither of the parties is in the position of the offeror or acceptor. Here is a case where the petitioner is entitled as of right to make an application for making a reference to the court and if such a request is made in time, the respondent, Acquisition Officer, is bound in law to make the reference. It does not depend upon the volition of the respondent to make the reference, if the application is made within time.

4. Under the Act, a communication by post is permitted. The learned government Pleader concedes that position. It is not stated in Section 18(2) of the Land Acquisition Act that the application shall be presented in person to the Acquisition Officer. The expression under is general and it is, "application shall be made". If, for instance, in a case, the owner of the land sends his requisition for making a reference u/s 18 of the Act well in advance before the expiry say, then days before the expiry of the time, and if for some reason or other for which he is not responsible, the postman delays and hands over the requisition to the Acquisition Officer after the expiry of the time, it cannot be said that the owner did not make the application within that time. So long as the law permits an application to be sent by post, it should be deemed that the moment an application is posted, it is an application made on that date, and the fact that the application reached the other side some days later cannot make it an application made after the due date. In this view, I find that the application made by the petitioner on the last date is an application within the time, though it reached the respondent the next day.

5. In the result, the writ petition is allowed. The respondent is directed to make the reference within three months from this date. There will be no order as to

costs.

6. Petition allowed.