

(2010) 11 UK CK 0055

In the Uttarakhand High Court

Case No : Writ Petition No. 360 of 2009 (M/S)

Ranvir Singh and Another

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 17(4), 18, 4(1)

Citation : (2010) 3 UC 2093

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.S. Verma, J.—By means of this petition the Petitioners have sought a writ in the nature of certiorari quashing the impugned order passed by Collector Garhwal, whereby the application of the Petitioners filed u/s 18 of the Land Acquisition Act, to make reference to the Court, has been rejected.

2. According to the Petitioners in the land acquisition proceeding they have challenged the notifications which were issued Under Sections 4(1) and 17(4) of the Land Acquisition Act before High Court of Uttarakhand, by filing Writ Petition No. 1459 (M/B) of 2006, Ranvir Singh and Ors. v. State of Uttarakhand and Ors. which was dismissed by order dated 16-11-2006 by the Division Bench of this Court. The Petitioner preferred SLP before the Apex Court, which was also dismissed vide order dated 8.1.2007. The review application was also filed before the Apex Court and the same was also dismissed by the Apex Court on 28.3.2007. Thereafter the Petitioner moved an application for making reference u/s 18 of the Land Acquisition Act, to the Collector.

3. The application of the Petitioners was dismissed by the Collector on the ground of the application being time barred by 492 days. The award was made on 10-2-2006 and the application u/s 18 of the Act was presented on 18.6.2007.

4. It is stated in the application that the awarded amount was received by the

Petitioners under protest.

5. No counter affidavit has been filed on behalf of Collector.

6. The counter affidavit has been filed by the Respondent No. 3, Commissioner Trade Tax Department, Kotdwar, District Pauri Garhwal. In the counter affidavit no specific answer of the petition has been given and only evasive replies are given.

7. Learned Counsel appearing on behalf of the Petitioners has vehemently contended that the Petitioners were not present when the award was made and no objections have been filed by them. Therefore, it was imperative on the part of Collector to issue notice u/s 12(2) of the Act to inform the Petitioners that the award has been made and they may file the application u/s 18 of the Act.

8. The Respondents have not filed any document that such intimation was ever given to the Petitioners. According to the Petitioners after dismissal of SLP before the Apex Court they came to know that the award was made on 10-02-2006. Thereafter within a period of six months the application u/s 18 of the Act was filed.

9. Since the amount was received by the Petitioners under protest, no notice was issued to the Petitioners u/s 12(2) of the Act, which is mandatory in nature, and this fact is not disputed that the Petitioners were not present before the Collector during the proceeding of award, therefore, the writ petition is liable to be allowed.

10. The writ petition is allowed. The impugned order, contained in Annexure No. 11 to the writ petition, is set aside.

11. The Collector, Pauri Garhwal is directed to make reference of the application of the Petitioners filed u/s 18 of the Land Acquisition Act, to the Court concerned within six weeks from the date of production of certified copy of this order.