

(1996) 07 GUJ CK 0005
In the Gujarat High Court

Ravji Kala (Decd.) through his heir Batuk Ravji	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 25-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Land Acquisition Act, 1894 — Section 11, 18, 19, 4, 54
Limitation Act, 1963 — Section 5

Citation : (1997) 1 GLR 80

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

Bench : Single Bench

Judgement

Y.B. Bhatt, J.—This is an appeal u/s 54 of the Land Acquisition Act read with Section 96 of C.P.C. filed by the original claimant in a Reference u/s 18 of the Land Acquisition Act.

2. The Reference Court, while dealing with the merits of the Reference u/s 18 of the said Act, dismissed the Reference as being time-barred. The undisputed and undisputable facts are that the award passed by the Land Acquisition Officer u/s 11 of the said Act is dated 12th February, 1972. The applicant obtained the certified copy of the award on 5th May, 1972. The Reference u/s 18 was tiled on 26th December, 1986, i.e., more than 14 years later. There was no application for condonation of delay filed either before the Collector, or before the Reference Court.

3. It is, therefore, obvious that the Reference is clearly barred by limitation by virtue of proviso to Sub-section (2) of Section 18 of the said Act, no matter whether Clause (a) or Clause (b) of the said proviso is considered applicable to the facts of the case. It is obvious that in either case limitation would commence to run from the date of knowledge of the award, and since the applicant obtained the certified copy of the award on 5th May 1972, that would be the starting point of limitation.

4. As already stated above, there was no application for condonation of delay

either before the Collector or before the Reference Court, and therefore, there is no question of whether the delay could or could not have been condoned. On these facts, therefore, I am not required to consider whether the Reference Court, in law, could or could not have condoned the delay.

5. The first contention raised by the learned Counsel for the appellant was to the effect that the contention as regards limitation was not specifically raised by the State in its written statement before the Reference Court, nor had the Reference Court raised any issue on the question of limitation. However, according to the learned Counsel for the appellant, the Reference Court has permitted the State to argue this question and has decided the same against the applicant in the Reference. In this context, the learned Counsel for the appellant submits that in the absence of the specific issue, the Reference Court has committed an illegality in recording the finding of the bar of limitation against the applicant.

6. This contention is required to be noted only to be rejected. The question of limitation is not merely a pure question of law, but has been considered on the facts of the case, since the same did not require any evidence and the same could be decided on the admitted facts already on record. Furthermore, the question of limitation is also a fundamental question of jurisdiction. The Supreme Court has laid down in a number of decisions that the Law of Limitation operates so as to raise or create jurisdictional barrier between the claimant and the Court, and unless such barrier is lifted (by holding that the claim or application is within the period of limitation), the Court cannot assume jurisdiction so as to decide the dispute on merits. Even otherwise, learned Counsel for the appellant conceded that the parties before the Reference Court were *ad idem* on this controversy, and had full opportunity to make their submission in this regard. Thus, it cannot be said that the Reference Court ought not to have entertained the plea of limitation at all.

7. The next contention raised by the learned Counsel for the appellant was to the effect that the Reference Court while exercising jurisdiction u/s 18 of the said Act could not go behind the Reference already made by the Collector and that therefore, it has no jurisdiction to decide the question of limitation. In other words, it was submitted that once the Collector made a Reference, the Reference Court was bound to decide the same on merits without reference to the question of limitation.

8. With a view to support this proposition, the learned Counsel for the appellant sought to rely upon the observations of Supreme Court in the case of *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, . With reference to this decision, the learned Counsel for the appellant sought to rely upon the observations made in Para 4.

9. Having considered this decision, I find that it has no relevance either to the facts of the case or to the proposition being canvassed by the learned Counsel for the appellant. The relevant observations in the said decision pertain only to

the correct approach which the Reference Court must adopt for the purpose of determining the market value of the acquired land. In the cited case, the Supreme Court was nowhere concerned with the question of the bar of limitation and therefore, the observations sought to be relied upon can be of no assistance to the appellant.

10. The learned Counsel for the appellant also sought to rely upon the observations of the Supreme Court in the case of Balram Chandra Vs. State of U.P., .

11. Learned Counsel for the appellant sought to interpret this decision to mean that the Reference Court cannot go behind the act of Reference made and performed by the Collector and that therefore, the Reference Court while exercising jurisdiction u/s 18 of the said Act, has no powers except to decide the same on merits. This interpretation on the part of the learned Counsel for the appellant is entirely fallacious and cannot be supported even on a plain reading of the decision. The Supreme Court in the said decision laid down the principle that in a Reference u/s 18, the Reference Court cannot go behind the Reference, in the sense that it cannot extend its powers beyond the scope of the section itself, and thereby acquires no power to declare the notifications under Sections 4 and 6 to be null and void or illegal. Obviously, these observations are made in the context of the facts of that case where the Reference Court had in fact, declared these notifications to be null and void. This decision cannot be interpreted in any manner whatsoever to mean that the Reference Court cannot examine the question of limitation in the light of the proviso to Section 18 Sub-section (2). On the contrary, para 3 of the said decision specifically reads as under:

When such an application within the limit prescribed under the proviso to Section 18 is made, the Collector is required, u/s 19 of the Act, to refer the objections with a statement with regard to the objections raised to the Civil Court.

(Emphasis supplied)

This passage clearly defines the role of the Reference Court, and in fact, enjoins upon the Reference Court to examine the claim of enhanced compensation made by the claimant, only when it is found that the application is within the limitation prescribed under the proviso to Section 18 Sub-section (2).

In any case, the controversy sought to be raised by the learned Counsel for the appellant cannot survive in view of the decision of a Full Bench of this Court in the case of Memon Ibrahim Haji Latif Sukhediwala Vs. Officer on Special Duty (Land Acquisition) and Another, .

12. The substance of the Full Bench decision, so far as it is relevant for the present purposes is that the Collector is not a Court, and cannot exercise the powers of a Court merely because he has been vested with certain powers under the Code of Civil Procedure, inasmuch as the provisions of Section 5 of the

Limitation Act apply only to applications made to Courts. The Collector does not attain nor is conferred with any power to condone delay (and/or to extend the period of limitation for "sufficient cause").

13. Without unnecessary discussion, suffice it to say that paragraphs 10, 11 and 12 of the said decision clearly establish the principle that the Collector can only make a Reference provided the same is within the prescribed period of limitation, and even if he makes a Reference which is outside the period of limitation, the Reference Court can nevertheless examine the Reference from the aspect of limitation, and throw out the Reference if the conditions are found not to have been fulfilled.

In the premises aforesaid, the present appeal is without any substance, and is, therefore, summarily dismissed. Notice discharged with costs.