
(2008) 03 MP CK 0057
In the Madhya Pradesh High Court

Satyanarayan and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A, 18, 30, 6

Citation : (2008) 4 MPHT 46 : (2008) 3 MPLJ 627

Hon'ble Judges : Subhash Samvatsar, J; S.K. Kulshrestha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Kulshrestha, J.

By this appeal u/s 2 of the Madhya Pradesh Uchch Nyayalaya (Khanda Nyaypeeth Ko Appeal) Adhniyam, 2005, the petitioners assail the legality and the propriety of the order dated 30th of November, 2007 passed by the learned Single Judge in W.P. No. 1688/2007. It is not disputed that land of the petitioners admeasuring 4.19 hectares situated in Village Goyla Khurd, Tehsil and District Ujjain was proposed for acquisition in relation to the scheme of the Housing Board and accordingly the notification u/s 4 was issued on 03-08-2001 and declaration was made on 21-09-2001. Before further steps could be taken to bring acquisition proceeding to their logical conclusion by passing award u/s 11 of the Land Acquisition Act (hereinafter referred to as "the Act"), the petitioners challenged the acquisition on various grounds and the proceedings were stayed by the Court/competent authority. It was in this connection that a period of 3 years 6 months and 19 days, during which the stay subsisted, could be excluded for computation of the period of 2 years provided in Section 11A of the Act for passing the award. Learned Single Judge, on the basis of the exclusion of 3 years 6 months and 19 days, came to the conclusion that statutory limit for passing the award was available till 9th April, 2007, with the result, the award passed on 05-03-2007 by the Collector, Ujjain was within the prescribed period.

The short contention raised by the learned Counsel for the appellants is that the draft award sent to the Commissioner was itself dated 05-03-2007, with the result it could not have been passed before 26-02-2007, the last date for rendering the award if the period of stay was calculated in accordance with law after excluding the period during which the stay did not subsist. It was in this context that we directed the learned Additional Advocate General to place the copies of the draft award and the final award together with the correspondence relating thereto.

The State has filed draft award bearing date 05-03-2007, which was sent to the Commissioner for approval in his ex-officio capacity as Secretary in the Revenue Department under a covering letter dated 22-2-2007. The requisite approval was accorded by the Commissioner/Ex-Officio Secretary to the Government, by his letter dated 24th February, 2007. Learned Counsel for the appellants contends that it is not the date of approval but the date on which the approval is received by the Collector which is material for computation of the period of limitation prescribed in Section 11A of the Act. In this context, learned Counsel for the respondent has invited our attention to a Full Bench decision of Hon'ble Karnataka High Court which has taken into consideration a similar contention and held that the approval of the Government to the draft award which is complete in all respects would relate back to the date on which the award was made by the Land Acquisition Officer. Paragraphs 24 and 25 of the report read as extracted below:

24. It is the statutory duty of the Land Acquisition Officer to make an award under the Land Acquisition Act. u/s 11(1) of the Act, he has to give a decision regarding compensation payable, though his decision is only an offer made on behalf of the Government. Before the said award becomes effective and operative, the approval of the Government is necessary. The approval of the Government can only be granted to an award made by the Land Acquisition Officer which is complete in all respects and must be signed by the Land Acquisition Officer so that the said award may receive the approval of the Government. Where the award is approved without any modification it would relate back to the date on which the award was made by the Land Acquisition Officer. Different considerations may arise where the award is not accepted in its entirety by the Government and the Government thinks it necessary to make certain modification in the award. In such a case the Land Acquisition Officer has to make an award incorporating the modifications suggested by the Government. In case the award is made and the sanction is granted by the Government within two years of the final publication of the notification u/s 6, then the signing of the award by the Land Acquisition Officer after the approval granted by the Government may not be necessary. In such a case approval would only be a formality to be observed and cannot be construed as an independent action on the part of the Government in replacing the award made by the Land Acquisition Officer. The question in such a case would be not when the approval was granted, but whether the approval has in fact been granted. In the present case,

the Land Acquisition Officer had determined the compensation payable for the lands acquired and has made a decision within a period of two years and approval was granted by the Government within two years after excluding the period during which the stay was in operation the date of grant of approval, though is a necessary step in the scheme of the Land Acquisition Act, is immaterial so long as the award is signed by the Land Acquisition Officer within the period of two years and also approval granted by the Government within two years.

It is accordingly held that a valid award had been made by the Land Acquisition Officer, as approval was granted by the Government within two years of the last publication u/s 6 of the Act.

He has further pointed out that this judgment was considered by the Apex Court in Smt. Bailamma @ Doddabailamma (Dead) and Others Vs. Poornaprajna House Building Co-operative Society and Others, and it was held that if the award was already signed by the Collector at the time of sending it for Government's approval, it becomes an award as soon as it is approved without alteration by Govt. or at least when notice is given to the parties interested.

Learned Counsel for the appellants by referring to Paragraph 21 of the said judgment has referred to the contention raised before the Apex Court to the effect that though the award binds the Collector but not the person who may challenge the finding of the Collector in a proceeding u/s 18 or Section 30 of the Act. He has, therefore, submitted that the reference point for computation of limitation would be communication of the award to the claimant whose property has been acquired.

We find that if the controversy with which their Lordships were dealing is examined from correct perspective, it was only in connection with the provisions contained in Section 18 empowering the parties to make a reference with respect to the inadequacy of the award, that it was observed that the period for making an application can be counted from the date the award is communicated. The purpose of Section 18 and commencing point of limitation, therefore, belongs to a sphere from the limitation prescribed in Section 11A of the Act. In view of the decision of the Full Bench in Poornaprajna (supra) as approved by the Supreme Court in Bailamma's case, there is no room for speculation as regards the date of the award being the date on which the approval has been accorded without modification. We may also refer to the draft award which recites that amount being in excess of Rs. 25,00,000/- it required the approval of the Commissioner in his capacity as Ex-Officio Secretary and the final award in Paragraph 13 also bears recital to the effect that approval was accorded by the Commissioner on 24-2-2007.

Though the learned Counsel for the appellants has expressed great doubt about the sanctity of these documents but when the documents are crosschecked, it becomes luculent that the Collector sent proposed award for approval to the

Commissioner on 22nd February, 2037 and the Commissioner accorded his approval on 24-2-2007. Parties do not dispute that even after excluding the period during which the stay was not operative, the last date for the expiry of the limitation u/s 11A was 26-2-2007. Thus the award rendered on 24-2-2007, does not suffer from any infirmity or impropriety.

Learned Senior Counsel for the respondent/Housing Board submits that possession of the land has also been taken and, therefore, there cannot be any divesting for any reason whatsoever. Since this point is not in issue before us, we refrain from expressing any opinion thereon.

In the result, we do not perceive any merit in this appeal. The appeal is dismissed but with no order as to costs.