
(2006) 05 GAU CK 0006
In the Gauhati High Court
Case No : Writ Petition (C) No. 73 of 2005

Sh. R. Laithuama

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 16-05-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 18, 18(2), 3

Citation : (2006) 3 GLT 209

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Advocate : C. Lalramzauva, A.R. Malhotra and R. Lalduhawmi, for the Appellant;
N. Sailo, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—The writ Petitioner by the present writ petition has been challenged the communication dated 9.6.2005 issued by the District Collector, Aizawl district, Aizawl to the Petitioner intimating him that the application dated 7.4.2005 filed u/s 18 of the Land Acquisition Act, 1894 (in short the Act) being not within the time allowed under Sub-section 2 of Section 18 of the Act cannot be entertained and also praying for directing the Collector, Aizawl District to treat the application/complaint dated 30.8.2004, filed by the Petitioner before the Hon"ble the Chief Minister, as an application u/s 18 of the Act.

2. The facts in brief relevant for the purpose of disposal of the present writ petition is stated below : An Acquisition proceeding under the provision of the Act was initiated for acquisition of land for a public purpose namely, Serlui "B" Hydro Electric Power Project, wherein the land belonging to the Petitioner covered by the Garden Pass was also acquired. An award was passed by the learned Collector, Aizawl in the said acquisition proceeding on 3.8.2004. The Petitioner claims that on 30.8.2004, an application was filed before the Hon"ble Chief Minister through the local M.L.A. which was in turn handed over to the District Collector, Kolasib District, who subsequently, forwarded to the District Collector,

Aizawl District on 6.9.2004, seeking enhancement of compensation, awarded by the learned Collector under the award dated 3.8.2004. The Petitioner, thereafter, on 7.4.2005 filed another application u/s 18 of the Act before the Collector, Aizawl, together with an application for condonation of delay, requesting the Collector to make a reference to the District Court. The said application was rejected by the Collector by the impugned order dated 9.6.2005 and hence, the present writ petition.

3. I have heard Mr. C. Lalramzauva, learned Counsel for the Petitioner and Mr. N. Sailo, learned Government Advocate appearing on behalf of the Respondents.

4. Mr. C. Lalramzauva, learned Counsel for the Petitioner has submitted that the Petitioner had filed an application before the Hon"ble Chief Minister through the local M.L.A. on 30.8.2004, disputing the amount of compensation awarded by the learned Collector, vide award dated 3.8.2004 and as, such application was filed within six months from the date of the award and as the same was forwarded by the learned Collector, Kolasib District to Collector Aizawl District, the same is to be treated as an application u/s 18 of the Act, and therefore, the Collector Aizawl is duty bound to make a reference to the District Court for its decision as the Petitioner did not accept the award passed by the learned Collector. Mr. C. Lalramzauva has further submitted that though, he has filed an application on 7.4.2005 u/s 18 of the Act, his first application dated 30.8.2004 has to be treated as an application u/s 18 of the Act. Referring to the statement made in the affidavit in opposition filed by the Secretary. Power Department, the learned Counsel for the Petitioner has submitted that the said Respondent in his affidavit has not denied filing of the application dated 30.8.2004 before the Hon"ble Chief Minister and has, in fact, admitted filing of such application. The learned counsel, therefore, submits that the Collector, Aizawl may be directed to treat the said application filed before the Hon"ble Chief Minister as an application u/s 18 and to refer the matter to the District Court for adjudication.

5. Mr. N. Sailo, learned Government advocate appearing on behalf of the Respondents, on the other hand, disputing the filing of the application dated 30.8.2004 has submitted that in fact, the record reveals that no such application was filed. It has further been submitted that had an application been filed by the Petitioner before the Hon"ble Chief Minister that must had been mention by the Petitioner in the application dated 7.4.2005 filed before the Collector as subsequent applications filed before the Hon"ble Chief Minister on 23.2.2005 & 18.3.2005 were mentioned in such applications. According to the learned counsel, the maximum time allowed u/s 18 of the Act for filing written application claiming reference being 6 months from the date of the award, the same having been expired on 2.2.2005, the learned Collector has rightly rejected the application dated 7.4.2005 filed by the Petitioner which was beyond the time allowed u/s 18 of the Act. Mr. N. Sailo has further submitted that in any case, Section 18 provides for filing of a written application before the Collector and therefore, any application claiming reference has to be filed before the authority

stipulated in the provision of law and not before any other person including the Hon"ble Chief Minister. According to the learned counsel, application filed before anybody except the "Collector" of the concerned District cannot be treated as an application u/s 18 of the Act.

6. I have considered the submissions of the learned Counsel for the parties and also perused the pleadings, as well as the records produced by the learned State counsel before this court.

7. In the instant case, there is no dispute about the passing of the award by the learned Collector under the provision of the Act on 3.8.2004. Section 18 of the Act provides for filing written application to the Collector by any persons interested, who has not accepted the award, within six weeks from the date of the award, if the person making such application was present or represented before the Collector, at the time when he made the award or within six weeks from the date of receipt of the notice from the Collector u/s 12(2) of the Act or within six months from the date of the award, whichever period shall expire first. According to the Petitioner, neither he, nor his representative was present when the Collector passed the award and no notice u/s 12(2) of the Act was issued to him. Therefore, under Clause (b) of the proviso to Sub-section 2 of Section 18 of the Act a written application seeking reference has to be filed before the Collector of the concerned District within six months from the date of the award passed by him. Clause (C) of Section 3 defines Collector, which reads as follows:

(C) The expression "Collector" means a collector of a District, and includes a Deputy Commissioner and any Officer specially appointed by the appropriate Government to perform the function of a collector under this Act.

8. It is, therefore, evident from the provision of Section 18 read with Section 3(C) of the Act that the written application, seeking reference has to be filed before the "Collector" as stipulated u/s 18 of the Act. When the provision of law stipulates a particular authority before whom an application is required to be filed, such application has to be filed before that particular authority only and not before any other authority, so as to construe the same as an application for the purpose of the said provision. Section 18 of the Act having specifically mentioned that the written application, seeking reference has to be filed before the Collector, the same has to be filed before the collector and nobody else unless such authority comes within the definition of "Collector" u/s 3(C) of the Act.

9. In the instant case, the case of the Petitioner is that, an application dated 30.8.2004 was filed by him through the local M.L.A. to the Hon"ble Chief Minister and which, according to the Petitioner was forwarded by the District Collector, Kolasib to the District Collector, Aizawl District, Aizawl vide communication dated 6.9.2004. The said application admittedly having not been filed before Collector of the concerned District, i.e. Aizawl, who passed the award dated 3.8.2004, the same cannot be treated as an application u/s 18 of the Act. In any case, it is evident from the application dated 7.4.2005, annexed as Annexure 4 to the writ

petition that the Petitioner has filed an application dated 7.4.2005 before the Collector, Aizawl together with an application for condonation of delay in filing the application u/s 18 of the Act. In the said application, two representations addressed to the Hon''ble Chief Minister dated 20.3.2005 & 18.3.2005 were enclosed. The Petitioner in the said application did not even make any whisper about filing of any application dated 30.8.2004 before the Hon''ble Chief Minister through the MLA. This court, for the purpose of verifying whether any such application was infact filed directed the Respondents to produce the record. The record does not disclose filing of any application dated 30.8.2004 by the Petitioner before the Hon''ble Chief Minister. On the other hand records disclosed filing of the applications by 11 (eleven) other persons, other than the writ Petitioner before the Hon''ble Chief Minister, which were forwarded by the District Collector, Kolasib to District Collector, Aizawl vide communication dated 6.9.2004. The version of the Petitioner that the application dated 30.8.2004 was filed before the Hon''ble Chief Minister also cannot, therefore, be accepted, though, the Secretary, Power Department in the affidavit in opposition has not denied filing of such application. Moreover, there is no allegations of malafide against any officer and also no allegation that somebody has taken out the application from record.

10. It is a settled position of law that the time limit given u/s 18(2) of the Act cannot be extended and no application for condonation of delay in seeking reference u/s 18 is maintainable. In that regard, open may refer to the decision of the Apex Court in Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, as well as in Mahadeo Bajirao Patil Vs. State of Maharashtra and Others, The Petitioner's application, having been filed on 7.4.2005 i.e. beyond the period of six months stipulated in Section 18(2) of the Act, the learned Collector has rightly rejected the prayer for making the reference. It is also not the case of the Petitioner that he filed the said application u/s 18 of the Act before the Collector within six month from the date of his knowledge of the award.

11. In view of the aforesaid discussions, I do not find any merit in the present writ petition and hence, the same is dismissed. No costs.