
(2006) 03 BOM CK 0136
In the Bombay High Court
Case No : First Appeal No. 2581 of 2005

Shantaram Ganesh Shenoy	Vs	APPELLANT
Special Land Acquisition Officer		RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 12(2), 18, 18(1)
Limitation Act, 1963 — Section 29(2), 5

Citation : (2006) 6 ALLMR 167 : (2006) 5 BomCR 299 : (2006) 3 MhLj 781

Hon'ble Judges : A.S. Oka, J

Bench : Single Bench

Advocate : Vijay Patil, for the Appellant; K.K. Tated, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

A.S. Oka, J.—Admit. Shri Tated, learned A.G.P. waives service for the Respondent. Since the Appeal can be decided on the basis of the facts which are not in dispute it is immediately taken up for final hearing.

2. The appellant is the claimant who made an application for reference u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act of 1894). On the basis of the said application, the Special Land Acquisition Officer, Ratnagtri made a reference to the District Court. By impugned Judgment and Award dated 13th October 2005, the reference has been dismissed on the ground that the application for reference was barred by limitation.

3. There is no dispute between the parties that the Award u/s 11 of the said Act of 1894 was made on 8th December, 1995 and the appellant received a notice u/s 12(2) of the said Act of 1894 on 6th May, 1998. Undisputedly, the application for reference was filed by the appellant on 30th September 1998. The case of the appellant is that on 12th May 1998 he applied for grant of certified copy of the Award and the same was received on 10th September, 1998.

4. The reference Court held that though the appellant was claiming enlargement

in period of limitation on the basis of time required for obtaining a certified copy of the Award, the original certified copy was not produced by the appellant. The reference Court held that the Application for reference was filed after stipulated period of six weeks from the date of service of notice u/s 12(2). Therefore, the reference Court dismissed the reference on the ground of bar of limitation.

5. Shri Patil for the appellant submitted that if the time required for obtaining certified copy of the Award is excluded, the Application for reference was certainly filed within the statutory period of 42 days. He placed reliance on the Affidavit of the appellant which is filed in this Appeal. In the said Affidavit it is stated that along with reference application filed on 30th September, 1998, the appellant filed the certified copy of the Award obtained by him. It is further submitted by him that while sending papers to the District Court, the Special Land Acquisition Officer did not forward the certified copy of the Award which was filed by the appellant. The learned Counsel for the appellant invited my attention to the amendment made to Section 18 of the said Act of 1894 by the Maharashtra Act No. 38 of 1964. He submitted that the order passed by the Collector or by the Special Land Acquisition Officer on application u/s 18(1) of the said Act of 1894 is a revisable order and the revision lies to this Court as if the Collector or the Special Land Acquisition Officer is the Court subordinate to this Court. He submitted that while passing the order on application u/s 18 of the said Act of 1894, the Special Land Acquisition Officer did not act as an agent of the Government. He, therefore, submitted that if the State Government was aggrieved by the order made by the Special Land Acquisition Officer of referring the matter to the District Court, remedy of preferring a Revision Application was available to the State Government under Sub-section (3) of Section 18 of the said Act of 1894 as amended by Maharashtra Act No. 38 of 1964. As the State Government has not availed of the remedy of revision, the order passed by the Special Land Acquisition Officer of making reference has attained finality and the said order cannot be questioned by the State Government in the reference proceeding before the District Court. He submitted that in view of this position, reference Court could not have held that the order passed by the Special Land Acquisition Officer was illegal on the ground that the application for reference was barred by limitation.

6. Shri Tated, learned A.G.P. on behalf of the State Government submitted that the Special Land Acquisition Officer does not act as a Court while making or refusing to make a reference u/s 18(1) of the said Act of 1894 and therefore the provisions of Limitation Act, 1963 will not apply. Even assuming that the appellant has produced certified copy of the Award, time required for obtaining certified copy of the Award cannot be excluded. He submitted that the Reference Court gets the jurisdiction to entertain and decide the reference only if the reference is validly made. He invited my attention to some of the decisions of the Apex Court and this Court.

7. Shri Patil in reply to the submission of Shri Tated submitted that none of the

decisions relied upon by Shri Tated considers the effect of Sub-section (3) of Section 18 as amended by Maharashtra Act No. 38 of 1964. He invited my attention to the decision of the learned Single Judge of this Court reported in The State of Maharashtra Vs. Shri Ramdas Dhaya Patil, in support of his case.

8. I have carefully considered the submissions made by the learned Counsel for the parties. A reference will have to be made to the decision of the Apex Court reported in Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, The Apex Court in the said decision held that in view of specific limitation provided in proviso to Section 18(2) of the said Act of 1894, Sub-section (2) of Section 29 of the Limitation Act, 1963 cannot be applied to the proviso to Sub-section (2) of Section 18. The Apex Court held that the Collector/Special Land Acquisition Officer is not a Court and he acts as a statutory authority. Therefore, the Apex Court came to the conclusion that Section 5 of the Limitation Act cannot be applied for extension of period prescribed under the proviso to Sub-section (2) of Section 18 of the said Act of 1894.

9. My attention has also been invited to the decision of the Apex Court reported in State of Punjab and Another Vs. Satinder Bir Singh, . In paragraph No. 8 of the said decision the Apex Court has held thus:

8. The question then is whether the notice u/s 12(2) is a valid notice. From a conjoint reading of Sections 11 and 12, it is clear that notice is only an intimation of making of the Award requiring the owner or person interested to receive compensation awarded u/s 11. On receipt of the notice, if the person interested receives compensation without protest, obviously no reference need be made. The determination of compensation becomes final and binds the parties. When he receives the compensation under protest as contemplated u/s 31 of the Act, the need to make the application for reference u/s 18(1) would arise. At that juncture, it will be open to the person interested either to make an inspection of the award which was conclusive between him and the Collector by operation of Sub-section (1) of Section 12, or seek a certified copy of the award from the Collector and the contents. Thereon he could make necessary objection for the determination inter alia, of compensation for the land. It is not necessary that the notice should contain all the details of the award including his consideration and its manner of determination of the compensation as opined by the learned Judge of the High Court. It is not incumbent that the person interested should immediately make the reference application on his receiving compensation u/s 31. In other words receipt of the amount and making the reference application are not simultaneous. The statutory operation of limitation mentioned by Section 18(2) does not depend on the ministerial act of communication of notice in any particular form when the Act or Rules has not prescribed any form. The limitation begins to operate from the moment the notice u/s 12(2) is received or as envisaged by Section 18(2).

(Emphasis supplied)

10. A Division Bench of this Court in the case of Smt. Laxmibai Narayan Patil and another Vs. State of Maharashtra and another, relying upon the aforesaid decision of the Apex Court held that time runs from the date of receipt of notice u/s 12(2) and once notice is received, the recipient must be fixed with the knowledge. This Court held that the date of receipt of certified copy has no relevance.

11. The Full Bench of this Court in a decision reported in Suresh Marutrao Jadhav Vs. State of Maharashtra and Another, relying upon the aforesaid decision of the Apex Court in a case of Satinder Bir Singh (supra) held that the Special Land Acquisition Officer is not a Court and he acts as a statutory authority u/s 18(1) of the said Act of 1894.

12. In view of what has been held by the Apex Court and this Court, it is obvious that in a case where notice u/s 12(2) of the said Act of 1894 is duly served on the claimant, the limitation starts running from the date of service of notice. The time required for obtaining certified copy of the Award cannot be excluded while computing stipulated period of limitation of 42 days which is provided under Clause (b) of the proviso to the Sub-section (2) of Section 18 of the said Act of 1894. Therefore, even assuming that the appellant had filed certified copy of the Award on record, the time required for obtaining certified copy cannot be excluded while computing the limitation of 42 days as provided under the statute. Thus, no fault can be found with the finding recorded by the Reference Court when it was held that the application for reference was not filed within the stipulated period of limitation.

13. Now I come to the second submission made by Shri Patil regarding the legal effect of the failure of the State Government to prefer revision application under Sub-section (3) of Section 18. The power of reference Court will have to be considered for dealing with the said submission. The Apex Court had an occasion to deal with the said aspect in case of Mohammed Hasnuddin Vs. State of Maharashtra, . In paragraphs 25 and 26 of the said decision the Apex Court held thus :

25. The conditions laid down in Section 18 are "matters of substance and their observance is a condition precedent to the Collector's power of reference", as rightly observed by Chandavarkar, J. in Re Land Acquisition Act (supra). We are inclined to the view that the fulfilment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of the Collector to make the reference exists. It must accordingly be held that the making of an application for reference within the time prescribed by proviso to Section 18 Sub-section (2) is a sine qua non for a valid reference by the Collector.

26. From these considerations, it follow that the Court functioning under the Act being a tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector u/s 18 complies with the conditions laid down therein so as to give the Court jurisdiction to hear the reference. In view of these

principles, we would be extremely reluctant to accept the statement of law laid down by the Allahabad High Court in State of Uttar Pradesh Vs. Sri Abdul Karim, .

(Emphasis supplied)

14. Thus, the law laid down by the Apex Court is that the reference Court being the Tribunal of special jurisdiction, it is the duty of the reference Court to examine whether the reference made to it by the Collector complies with the essential requirements provided u/s 18 of the said Act of 1894. The Apex Court held that only if the conditions stipulated u/s 18 are complied with, the reference Court gets jurisdiction to hear the reference. If this is the position of law, it is the duty of the reference Court to apply its mind to the question whether the application for reference was filed within stipulated period of limitation. The reference Court has jurisdiction to decide whether the reference application was made within limitation. Making an application for reference within the time stipulated by law is a sine qua non for a valid reference. It is not necessary to decide the question whether the State Government can challenge the order of making reference by preferring a revision Application u/s 18(3) of the said Act of 1894. Even assuming that the State Government could have challenged the order passed by the Special Land Acquisition Officer by preferring revision application and even if such revision application was not filed, that will not take away the jurisdiction of the reference Court to perform its duty to examine whether the reference made by the Collector complies with the requirement of the statute. The reference Court gets jurisdiction to decide a reference u/s 18 on merits provided an Application for reference is filed within the limitation provided by statute. If the reference is not validly made, the reference Court does not get jurisdiction to decide the reference. In my view, there is no merit in the second contention raised by Shri Patil.

15. At this stage, it must be Dhaya that the decision of the learned Single Judge of this Court in the case of the State Government v. Ramdas Patil (supra) will not help the appellant. The aforesaid decisions of the Apex Court and this Court were not brought to the notice of the learned Single Judge as is apparent from the decision of the learned Single Judge. Therefore, the said decision of the learned Single Judge cannot be read as a binding precedent. There is no merit in the Appeal and the same is dismissed with no order as to costs.