

(2009) 04 BOM CK 0148

In the Bombay High Court

Case No : Civil Revision Application No. 631 of 2008

Shri Gorakh Sripati Mahingade and Others

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12(2), 18, 18(2), 25

Citation : (2009) 4 MhLj 855

Hon'ble Judges : R.V. More, J

Bench : Single Bench

Advocate : T.D. Deshmukh, in all the CRAs, for the Appellant; Geeta Mulekar, AGP in Civil Revision Application No. 638 of 2008, A.A. Mane, AGP in Civil Revision Application No. 644 of 2008 and S.P. Manchekar, AGP in Civil Revision Application No. 650 of 2008, for the Respondent

Final Decision : Allowed

Judgement

R.V. More, J.—Heard learned Counsel appearing for the respective parties.

2. Rule in all the above Civil Revision Applications. By consent, Rule is made returnable forthwith and heard finally.

3. The issue involved in above Civil Revision Applications is one and the same therefore, they are being disposed of by this common order. The facts involved in the Civil Revision Application No. 631 of 2008 are being referred for this common order.

4. All these Revisions take exception to the order dated 20th October, 2005 passed by the Special Land Acquisition Officer, rejecting the Petitioners' reference filed u/s 18 of the Land Acquisition Act.

5. Brief facts giving rise to the present Revisions are as follows:

i. The Petitioners' land is acquired for developing Kurduwadi Bypass Road under the Land Acquisition Act. Notification u/s 4 of the Land Acquisition Act, 1 of 1894

(hereafter called "the said Act") was issued on 6th December, 2001. Thereafter, declaration u/s 6 of the said Act was issued and published in the Government Gazette on 18th March, 2002 and the Respondent No. 2 thereafter passed Award u/s 11 of the said Act on 2nd April, 2004. There is no dispute that the Award was passed in the absence of the Petitioners. The notice of the Award as contemplated u/s 12(2) of the said Act was thereafter issued and the Petitioners received the same on 24th November, 2004. The Petitioners immediately thereafter on 23rd December, 2004 made a reference u/s 18 of the said Act to the Respondent No. 2, Special Land Acquisition Officer. The Special Land Acquisition Officer, as stated above, by the impugned order rejected the Reference and hence the present Revision.

6. The Respondent No. 2 rejected the Petitioners' reference on three grounds, namely, (i) the Reference is not made within the period of six months from the date of declaration of Award, (ii) that the Petitioners accepted the amount of compensation without protest and (iii) that the Petitioners did not file any objection, reply nor raised any claim in response to the notice u/s 9(3)(4) of the Act.

7. Having heard the learned Counsel for the respective parties and having perused the impugned order alongwith relevant records, I find, all the three grounds on which the Petitioners' reference was rejected are devoid of any substance. The first ground for rejection of reference is that the reference u/s 18 of the Act was not made within the period stipulated in Sub-section 2 of Section 18 of the Land Acquisition Act. The proviso to Sub-section (2) of Section 18 reads as follows:

Provided that every such application shall be made,:

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

The Clause (a) of the proviso applies where the person who has made the application was present or represented before the Collector at the time when award was made. This clause has no application in the present case, since the Petitioners were neither present before the Collector nor had they been represented when the award was made. Under Clause (b) of the proviso, the application has to be filed within the period of six weeks from receipt of the notice from the Collector under Sub-section (2) of Section 12 or within six months from the date of the Collector's award, whichever period shall first expire. The words "date of the Collector's award" were interpreted in the judgment of the Apex Court in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, . The Apex Court held that the award of the

Collector being in the nature of tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance, the making of award as properly understood must involve the communication of the offer to the party concerned. Consequently, the Apex Court in paragraph 5 held as follows:

Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office; it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words "the date of the award" occurring in the relevant section would not be appropriate.

In paragraph 6 of the above judgment, the Apex Court has further held as follows:

6. There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector, it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement, and award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actually or constructive, being an essential requirement of fairplay and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be reasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way." The law laid down by the Apex Court in Raja

Harish Chandra Raj Singh case, supra, has recently been followed in Parsottambhai Maganbhai Patel and Others Vs. State of Gujarat through Deputy Collector Modasa and Another, .

8. In the present case, the Petitioners were not before the Collector when the award was made on 2nd April, 2004. Consequently, knowledge of making of the award can be attributed to the Petitioners only when the award came to be communicated either actually or constructively following the law laid down by the Apex Court. Even, if the notice u/s 12(2) is taken as the date on which such knowledge can be imputed, the period of six weeks under Clause (b) of the proviso of Section 18 Sub-section (2) would begin to run with effect from the date of service of that notice. The reference u/s 18 was made on 23rd December, 2004 i.e. within the period of six weeks from the date of receipt of notice u/s 12(2). In the circumstances, Respondent No. 2 committed an error in rejecting the Petitioners' reference on the ground that the same is barred by limitation by computing the period of six months from the date of declaration of the award by the Collector. The mere signing of the award or filing of the award in the Office of the Collector cannot be regarded as date of the award of the Collector for the purpose of Section 18, in view of the law laid down by the Apex Court. The Respondent No. 2 therefore, committed an error in rejecting the application on that ground.

9. The next ground on which the Petitioners' reference was rejected is that the Petitioners' accepted the amount of compensation without any protest. This ground is also without any merit, in view of the Apex Court judgment in Ajit Singh and Others Vs. State of Punjab and Others, . The Apex Court in paragraph 5 of the said judgment held that the filing of application for reference u/s 18 would itself manifest the Appellant's intention and therefore, the protest against the award of the Collector was implied notwithstanding the acceptance of compensation. Thus, the reference could not have been rejected on the ground that the amount of compensation was not accepted under protest.

10. The last ground on which the Petitioners' reference was rejected is that the Petitioners did not file any objection/reply to Section 9(3)(4) notice, is misconceived in view of the amendment to Section 25 in the year 1984. Prior to 1984, Section 25(1) read as follows:

25. Rules as to amount of compensation: (i) When the applicant has made a claim to compensation, pursuant to any notice given u/s 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector u/s 11.

11. By virtue of amendment by Act 68 of 1984, Section 25 was amended and substituted as follows:

Section 25 : The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector u/s 11.

Thus, the restriction that the amount of compensation awarded by the Court, shall not exceed the amount claimed u/s 9(3)(4), is removed. Under substituted Section 25, the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector u/s 11. Reading of unamended and substituted Section 25 together makes it clear that the amount of compensation awarded by the Court does not depend upon claim to compensation pursuant to any notice u/s 9(3)(4). It appears that the objection regarding non-filing of the claim in pursuance of Section 9(3)(4) notice was raised relying upon the unamended Section 25 of the Land Acquisition Act. Since, this section is substituted by Amendment Act 68 of 1984, the Petitioners' application could not have been rejected on the ground of non-filing of the claim in pursuant to Section 9 notice.

12. In the facts and circumstances mentioned above, all the Revision Applications succeeds. The order impugned in the revisions is accordingly, quashed and set aside.

13. The Respondent No. 2 shall verify the service of notice u/s 12(2) on the respective Petitioners and if the reference is made within the period of six weeks from the date of receipt of the notice, then he shall entertain the reference and take further appropriate action in accordance with the law.

14. Rule is made absolute accordingly in all the above Revision Applications with no order as to cost.