

(1994) 07 MP CK 0022
In the Madhya Pradesh High Court
Case No : M.P. No. 373 of 1988

Shriyana Kumar Jain and Others	Vs	APPELLANT
State of Madhya Pradesh and Another		RESPONDENT

Date of Decision : 25-07-1994

Acts Referred:

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

Citation : (1995) 40 MPLJ 100 : (1995) MPLJ 100

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : S.S. Bansal, for the Appellant; K.N. Gupta, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

T.S. Doabia, J.

This is a petition filed under Article 227 of the Constitution of India. The grievance of the petitioners is that their application seeking reference u/s 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), has been withheld contrary to law. The Collector had rejected the prayer on the ground that the application was barred by limitation.

Before dealing with the arguments raised by the petitioner, it would be appropriate to cite the provisions of Section 18 of the Act. This section reads as under :-

"18. Reference to Court. - (1) Any person interested who has not accepted the award may, by written application to the Collector for the determination of the Court whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested, or the amount of costs allowed.

(2) The application shall state the grounds on which objection to the award is

taken :

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.

(3) Any order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the Collector were a court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure, 1908 (5 of 1908)."

It is apparent that application u/s 18 of the Act was filed by three persons. It is also admitted fact that when the award was passed, none of the claimants was present. This is apparent from the order of the Collector. The award was passed on 2nd of August, 1985. Application seeking reference was filed on 20-8-1987. This was, as noticed above, rejected on the ground that this was beyond the period of limitation.

Section 18 of the Act was interpreted by the Supreme Court of Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, and it was laid down therein that the limitation would start from the date of award if the claimants are present and if they are not present, from the date of knowledge. The observations made by the Supreme Court are as under :-

"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."

It was further observed :-

"The knowledge of the party affected by the award, either actual 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 same view was expressed by the Supreme Court in the case reported as State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, The relevant observations are as under :-

"... the party affected by the award must know it, actually or constructively, and the period of six months will run from the date of that knowledge. Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party u/s 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly when a party is present in court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award."

In the present case, the award was not made by the Collector in the presence of the petitioners. As a matter of fact, two of the petitioners namely Virendra Kumar and Nirmal Kumar were not given even any notice. As such, the rejection of the petitioners' application u/s 18 of the Act cannot be sustained.

Apart from this, the question as to whether the reference is barred by limitation or not is a matter which is to be decided by the District Judge and the Collector is not competent to decide the same. He has to simply refer the matter to the District Judge. For this, the view expressed by a Full Bench of Punjab and Haryana High Court in the case of Sher Singh Vs. Union of India, may be seen. The relevant portion is as under :-

"It is thus manifest that the correctness of the rival claims on either side has to be decided in a proper forum. This is obviously the Court of the District Judge which can adequately pronounce upon the question whether a reference was duly made to the Collector and, if so, regarding the validity. This is now well settled by the decision of the Full Bench in Swatantra Land and Finance Private Ltd. Vs. The State of Haryana, holding that it is open to the District Judge to go behind the reference and examine its validity."

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"As has already been observed herein the petitioner at the very threshold is being denied even an adjudication of his claim that he had preferred a reference u/s 18 and the respondents had failed in their statutory duty to forward the same. It is manifest that the valuable substantive right conferred upon the landowners for claiming enhancement of compensation u/s 18 of the Act cannot be eroded or set at naught by petty procedural wrangles."

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Ultimately, it was concluded :-

"Accordingly, we would herein direct that on a proper application (precisely detailing his claim of having filed an application u/s 18 of the Act) made by the writ petitioner to the Collector, the latter shall refer the same to the District Court which will then proceed to decide the contentious dispute betwixt the parties, whether the stand of the petitioner herein is correct or otherwise. In the event of the matter being decided in favour of the writ petitioner, the District Court would inevitably proceed to try and adjudicate on the reference u/s 18 of the Act."

Therefore, looking from any point of view, there is merit in the submission of the learned counsel for the petitioners. This petition is allowed. The Collector shall refer the matter to the District Judge for disposal in accordance with law u/s 18 of the Act.