

(2005) 11 KL CK 0047

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26872 of 2003

Siddique

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 24-11-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 152
Land Acquisition Act, 1894 — Section 13A, 18

Citation : (2006) 1 ILR (Ker) 299 : (2006) 1 KLT 227

Hon'ble Judges : J.M. James, J

Bench : Single Bench

Advocate : K.P. Mujeeb, N.N. Sugunapalan, for the Appellant; Aloysious Thomas, Government Pleader, for the Respondent

Judgement

J.M. James, J.—The authority of the Collector to correct any clerical or arithmetical mistake in the award passed by him or errors arising therein u/s 13-A of the Land Acquisition Act, in short "the Act", as well as the mode of service of notice, in the facts of the case, are under challenge by the writ petitioners, whose land had been acquired by the land acquisition authorities for public purpose.

2. The facts required for the disposal of the Writ Petition are that the property to an extent of 0.3658 hectares of land in R.S. No. 260/8, 9, 11, 12, 261/9, 11, 13, 261/15, 18, 262/8 of Trikkandiyur Village, Tirur Taluk, had been acquired for the construction of Tirur Bypass Road-I, Reach-Block No. 10. An award for Rs. 15,43,437/- had been passed in favour of the writ petitioners as per Award No. 10/2002 dated 12-3-2002, Ext.P1, by the second respondent, the Special Tahsildar, LA(G), Tirur. However, as per Ext.P2 dated 19-8-2002 the second respondent had corrected the award, altering and reducing the awarded amount from Rs. 15,43,437/- to Rs. 9,04,577/-. It is submitted that notice had not been served to the writ petitioners before making this correction. Therefore, the counsel submits that the correction of the award is not within the scope of the

second respondent; that the application of Section 13-A is not correct and also that notice had not been properly served before correcting the award.

3. I heard the learned Counsel for the writ petitioners, Mr. K.P. Mujeeb and the learned Government Pleader Aloysious Thomas. As an important question of law is involved, I have appointed Adv. Sri. N.N. Sugunapalan as amicus curiae. I have heard him.

4. For clarity of discussion, I reproduce below Section 13-A of the Act.

13-A. Correction of clerical errors, etc.--

(1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required u/s 18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority:

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.

5. Section 13-A had been inserted as per the amendment of the Act in the year 1984. A reading of the same shows that the correction of the award could be made not later than six months from the date of the award or before making reference u/s 18 of the Act. The section however say that the Collector could correct any clerical or arithmetical mistake in the award or errors arising therein.

6. Sri. Sugunapalan placed reliance on Union of India (UOI) and Others Vs. Pratap Kaur (Smt) (Dead) through Lrs. and Another, wherein it is laid down that an action of the Court, if not authorised by the appellate court by way of remand or direction, and if done independently, will not amount to correction of his own mistake and the same will not come u/s 13A of the Act. The counsel, therefore, submitted that applying the above principle and as contained u/s 13-A of the Act, a correction of clerical or arithmetical error shall be so done after giving notice to the affected parties.

7. Mr. Sugunapalan also placed reliance on State of Punjab Vs. Darshan Singh, and Jayalakshmi Coelho Vs. Oswald Joseph Coelho, in which arithmetical mistakes occurred from accidental slip or omission were considered and principles were laid down. In Darshan Singh case, cited above, the court held that the provision u/s 152 of the CPC is founded on the maxim "actus curiae neminem gravabit" i.e., an act of court shall prejudice no man. The maxim "is founded upon justice and good sense and affords a safe and certain guide for the administration of the law".

8. In the same judgment, the court also further said an unintentional mistake of the court, which may prejudice the cause of any party, must and alone could be rectified. In Master Construction Co. (P) Ltd. Vs. State of Orissa and Another, it

was observed that the arithmetical mistake is a mistake of calculation a clerical mistake is a mistake in writing or typing, whereas an error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the court, liable to be corrected.

9. In the case at hand, through the counter filed by the second respondent, it is submitted that the value of the reinforcement of R.C.C. of the building was wrongly written as 4,40,344/- instead of Rs. 44,034. Because of the misplacing of a decimal point, the complete error occurred in calculating the value of the building as Rs. 8,52,239 instead of actual value of Rs. 4,54,388. However, the age of the building was also wrongly stated as 5 years, for taking out the depreciation value, whereas the PWD authorities had noted that the age of the building was above 19 years. Thus, when the value of the building was refixed at Rs. 4,64,388, the actual compensation amount award had to be corrected as Rs. 9,04,577.

10. As stated above, the award was passed on 12-3-2002. Ext.P2 correction award was passed on 19-8-2002. The mistake was noted by the PWD authorities and they have reported the same to the second respondent, who subsequently corrected the same as seen from Ext.P2. This has been done within a period of six months. Therefore, the correction was only an arithmetical error. I do not find any mistake in correction of this award applying Section 13-A of the Act.

11. However, I find that "no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter". In the counter, the second respondent has stated that as the affected persons were not found in the residential building, the notice was served through affixture. I am unable to accept the contention that the petitioners had been served the notice through affixture. When the matter is prejudicially affecting the writ petitioners, it was necessary that they were heard before correcting the award which was detrimental to their interest. In *State of Punjab v. Darshan Singh*, (supra) the Apex Court held, interpreting Section 152 of the Civil Procedure Code, quoting the observation of the court from *Master Construction Co. (P) Ltd. v. State of Orissa*, supra, that the arithmetical mistake is a mistake of calculation, a clerical mistake is a mistake in writing or typing whereas an "error arising out of or occurring from accidental slip or omission is an error due to careless mistake on the part of the court, liable to be corrected". Adopting the principle that had been laid down by the Apex Court, as discussed above, although the Collector is authorised to correct the clerical error or arithmetical mistakes or errors arising therein, the same can only be done after giving notice to, and hearing, the affected persons. Same is not legally done in this case. I am not inclined to accept the contentions of the learned Government Pleader that the affixture of notice is sufficient. Hence I set aside Ext.P2 award passed by the second respondent dated 19-8-2002. I direct the second respondent to dispose of the matter after hearing the writ petitioners, basing on their objections, if any. This

shall be done within two months from the date of production of the copy of the judgment.

12. The counsel for the writ petitioners undertake that he would furnish the new addresses of the writ petitioners before the second respondent within two weeks from today or alongwith the copy of this judgment.

13. Before parting with this judgment I place on record my appreciation for the legal help extended by Adv. Mr. N.N. Sugunapalan, for analysing Section 13-A of the Act and Section 152 of Code of Civil Procedure.

The Writ Petition is closed as above.