

(1965) 09 BOM CK 0024

In the Bombay High Court

Case No : O. C. J. Land Acquisition Ref No. 39 of 1961

Special Land Acquisition Officer, Bombay and Suburban
District

APPELLANT

Vs

Natverlal Jamnadas Muni

RESPONDENT

Date of Decision : 03-09-1965

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11, 16, 18, 3(b)
Succession Act, 1925 — Section 212, 214

Citation : (1967) MhLj 505

Hon'ble Judges : N.A. Mody, J

Bench : Single Bench

Advocate : J.M. Gandhi instructed by Alreja and Co, for the Appellant; H.M. Seervai, Advocate-General instructed by Little and Co. for Spl. Land Acquisition Officer, for the Respondent

Judgement

N.A. Mody, J.—This is a Reference under the Land Acquisition Act under sections 18 and 31 (2) . It concerns an immovable property situated at Khetwadi, 12th Lane, Bombay. One Jamnadas Vanmalidas Muni was the owner of that property during his life-time. The Notifications under sections 4 and 6 of the Act were issued on April 20, 1957 and June 23, 1958, respectively. On September 29, 1958, notices under sections 9 and 10 of the Act were served on Jamnadas. On October 21, 1959, Jamnadas died. On the evidence before me I am satisfied, firstly, that he left no Will and, secondly, that he died a widower, leaving only one child, being a son, Natverlal, who has given evidence before me. About a month and a half later, on December 10, 1959, the S. L. A. O. made his Award. Under the Award, he has declared that the amount of compensation awarded by him should be paid to Jamnadas. It is an obvious conclusion that when the S. L. A. O. made that Award Jamnadas's death had not been brought to his notice. On December 16, 1959, Notice of the Award was issued, but even that Notice was issued in the name of Jamnadas. The Notice was, however, served on Natverlal. Immediately thereafter Natverlal carried on correspondence through his

attorneys with the S. L. A. O. and informed the S. L. A. O. about the death of Jamnadas and that he was his only heir and therefore entitled to the immovable property and therefore to the compensation in respect of the same. On January 11, 1960, Natverlal asked for a Reference u/s 18. By his Order dated June 8, 1961, the S. L. A. O. ordered that as Natverlal was unable to produce the requisite heirship certificate as required under the Government orders, the amount of compensation payable to Jamnadas should be deposited in the Court u/s 31(2) of the Act. Thereafter on July 5, 1961 the S. L. A. O. made this Reference both u/s 18 and section 31 (2) and has deposited in this Court the amount of compensation to the credit of this Reference.

2. A question having arisen whether Natverlal, the son, is entitled to claim and to be paid, the compensation as also the enhanced compensation, if any, that question must be decided on the relevant provisions contained in the Land Acquisition Act and the Indian Succession Act.

3. The general scheme under the Land Acquisition Act, in so far as is relevant for the determination of the present question, may first be considered. First, the Notifications under sections 4 and 6 of the Act have to be issued. Thereafter the Collector has to give Notice to persons interested as provided for u/s 9. Thereafter the Collector has to make an inquiry and thereafter an Award as provided for u/s 11. The provision of Item No. (III) of section 11 shows that it involves a determination by the Collector, to the extent he can, of the persons entitled to the compensation and if there be more persons than one entitled thereto, the different amounts to which those persons are entitled. Section 16 provides that when the Collector has made an Award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. It is important to note that the word used in section 16 is "take". It indicates that when the Collector has made the Award, he is entitled to take possession of the property, whether he has by his award decided or not who the person or persons were who were entitled to the property or to its possession and who were entitled to deliver possession. Even in cases where there is a dispute as to the title to the property or nobody comes forward to claim the property or there be a dispute as to who is the person entitled to hand over possession of the property, the Collector is entitled to take possession of the property. Sub-section (1) of section 18 provides that any person interested who has not accepted the Award may apply that a Reference be made to the Court as provided for in that sub-section. The phraseology used in that sub-section (1) is "any person interested". Section 3(b) defines that the expression "person interested" includes all persons claiming an interest in the compensation to be made on account of the acquisition of land under the Act. A reading of this sub-section makes it clear that every person who makes even a claim to an interest in the compensation is to be deemed as a person interested. By reason of that provision a person, no sooner he makes a claim, must be deemed to be a "person interested", even before he establishes his title to the claim made by him. Section 30 provides that when the amount of compensation has been

settled u/s 11, if any dispute arises as to the apportionment of the same or any part thereof, as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court. Section 30 would come into play when a dispute arises. The dispute can be of two categories. The first category would be where the dispute is concerning the apportionment of the amount of compensation or any part thereof. Under the second category would fall disputes as to the persons to whom the same or any part thereof is payable. On the plain phraseology of section 30, two questions arise: the first is whether, in order to bring the provision of section 30 into play, there must exist a dispute and because of the very nature of the word used being "dispute" whether there must be more than one party to that dispute. The second question is as regards the second category of dispute and the question is whether the word "persons" would include the singular. I will advert to these questions a little later.

4. Sub-section (1) of section 31 reads as under:

31. (1) On making an award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the Award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

5. Sub-section (2) of section 31, omitting the three provisos thereof, reads as under:

31. (2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference u/s 18 would be submitted.

6. The first part of sub-section (1) of section 31 contains a provision requiring the Collector to tender and then to pay the compensation awarded by him to the persons interested entitled thereto according to the Award. Thereafter that sub-section contains an exception which is contained in the words "unless prevented by some one or more of the contingencies mentioned in the next sub-section". That phraseology of sub-section (1) of section 31 itself makes it abundantly clear that the obligation on the part of the Collector to tender and pay the amount of compensation arises only when the Award has determined the person or persons interested entitled to the compensation. Where the Award does not finally and specifically determine the person or persons as interested in the compensation, sub-section (1) of section 31 cannot come into play at all. Now, the exceptions contemplated by sub-section (1) are stated in sub-section (2). Sub-section (2) will come into play when the amount of compensation is required to be deposited in the Court in the contingencies mentioned in that sub-section, which divide themselves into four broad categories. The four categories are: The first is if the persons interested entitled thereto according to the Award do not consent to

receive it The second is if there be no person competent to alienate the land. The third is if there be any dispute as to the title to receive the compensation. And the fourth is if there be any dispute as to apportionment of the compensation.

7. It is at this stage convenient to consider the provisions of section 30 along with the provisions of sub-section (2) of section 31 and to advert to the two questions as mentioned earlier arising u/s 30. If the word "dispute" used in section 30 is to be read as indicating that there must be two parties between whom the dispute arises, then when there is only one person making a claim before the Collector but the Collector is in doubt as to whether the claimant is entitled thereto, it would have to be held that there is no "dispute" within the meaning of section 30. In such an hypothetical case the second question would also arise u/s 30, namely, whether as the dispute is not between more than one person but the words used in the section are "as to the persons", the use of the plural would exclude the singular. The two questions are really facets of but one question because if the word "dispute" by itself pre-supposes two persons, it covers the second question, and if the word "persons" is construed as including the singular, it would tend to show that the word "dispute" by itself was not intended to apply only in cases where there was a dispute between more than one party. On a reading of sub-section (2) of section 31, it is clear that the hypothetical case contemplated above of only one person making a claim, but the Collector being unable or unwilling to decide it would not fall under any of the four categories of contingencies under sub-section (2) of section 31. The first category arises "if they shall not consent to receive it." The word "they" has reference to the following provision in sub-section (1), viz., "the persons interested entitled thereto according to the award". In the said hypothetical case there would be no "persons interested entitled thereto according to the award" and such a hypothetical case therefore cannot fall under the first contingency. The second category of contingency under sub-section (2) of section 31 would arise when there is no person competent to alienate the land. It pre-supposes a determination that there is no person competent to alienate the land and for that reason the hypothetical case where only one person makes a claim, but the Collector is unable or unwilling or has omitted to decide it would not fall under the second category. The words defining the third and the fourth categories are "if there be any dispute as to the title to receive the compensation or as to the apportionment of it". The word common to both these categories is "dispute". It is clear that the word "dispute" must be given the same meaning both u/s 30 and under sub-section (2) of section 31. If the word "dispute" is to be construed as being applicable only when there are more than one party to a dispute but not otherwise, the two sections will not provide as to what should happen when the Collector is unable or unwilling or has omitted to decide the question whether the sole claimant appearing before him is or is not entitled to the compensation. There is no other provision in the Act providing for such a contingency. The Act does not also otherwise provide for the machinery for the decision of that question and for the disposal of the amount of compensation by depositing the

same in Court or otherwise. On such a construction, however, sections 30 and 31 (2) would be construed as providing as to what is to happen when there is a dispute between more than one person and also the machinery in such cases as to what is to happen to the amount of compensation by providing that such deposit be made in the Court. It would therefore be unreasonable to ascribe to the Legislature an intention not to provide for the hypothetical contingency mentioned above. In my opinion, therefore, the word "dispute" as used in section 30 and in sub-section (2) of section 31 must be construed as covering the case where the Collector is unable or unwilling or has omitted to decide whether the sole claimant appearing before him is or is not entitled to the property acquired and the compensation thereof. That conclusion must be reached in spite of the fact that the natural meaning of the word "dispute" pre-supposes two persons and the word "persons" in plural has been used in section 30.

8. In this case as Natverlal was claiming, as the sole heir of his father, an interest in the compensation, he was a "person interested" and was therefore entitled to ask for a Reference u/s 18 and the Reference u/s 18 has therefore validly been made. Construing the word "dispute" as aforesaid, as the Award does not contain any decision as to the claim made by Natverlal, it must also be held that it falls within section 30 and therefore subsection (2) of section 31 would apply and that, therefore, the amount of compensation has been validly deposited in this Court to the credit of this Reference.

9. I have already stated that on the evidence led before me I am satisfied that Jamnadas died on October 21, 1959, that he died intestate and that Natverlal is the sole heir of Jamnadas. The question, however, is whether in these proceedings I can recognise the title of Natverlal. The answer to that question depends on the answer to another question, namely, what is it that Natverlal is claiming? Is he claiming the property which was acquired? Or, is he claiming title to the amount of compensation awarded and awardable in respect of the acquisition?

10. Section 212 of the Indian Succession Act provides that no right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction. As mentioned in sub-section (2) of section 212, that provision, however, does not apply in the case of Hindus. As Jamnadas was a Hindu, it is not necessary that Natverlal should obtain representation to the estate of Jamnadas. Section 214 of the Indian Succession Act, however, provides that no Court shall pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof. If Natverlal's claim in this case can be held to be a claim to the compensation awarded and awardable in respect of the acquisition and if the amount of compensation be held to be a debt, then the case would fall u/s 214 and it would be necessary for Natverlal to obtain representation to the estate of Jamnadas. Now, on the facts of this case,

Jamnadas died before the award was made. That is, to my mind, a vital factor to be borne in mind when deciding the point. He was a Hindu. Succession does not remain in abeyance. No sooner Jamnadas died, his heirs, or rather his sole heir, became at once entitled to his property. The title devolved on the heir no sooner Jamnadas died. It may be that in some cases in order to establish that title an heir may have to produce representation to the estate of the deceased. But as Jamnadas was a Hindu, no such representation is necessary in view of the provisions of section 212. Natverlal, therefore, obtained such title on October 21, 1959, that is, prior to the Award. The compensation is awarded only under the Award. Therefore, Natverlal became entitled not only to the compensation, but even to the immovable property itself before the Award was made. If, for example, before the Award, for any reason the property was de-notified from acquisition, it is the property itself which Natverlal would have got and not merely the amount of compensation in respect of the same. It is Natverlal who as the successor-in-title to Jamnadas became therefore entitled to appear before the S. L. A. O. to raise his contentions about the quantum of compensation and thereafter to receive the amount of compensation. It may be mentioned in passing that the Award is not the result of any judicial or quasi-judicial adjudication. The Award is merely an offer. The determination of the quantum of compensation is a purely administrative act. Undoubtedly, even in such an administrative determination certain provisions of the Land Acquisition Act enjoin upon the Collector to give certain notices and to go through a certain procedure which enure for the benefit of the owner of the property sought to be acquired and give him a chance to appear before the Collector and make his submissions as regards the quantum of compensation. But as the Award is the result of an administrative act, the fact that the Award named Jamnadas as the person entitled to the compensation does not in any way detract from the right of Natverlal to the immovable property as the heir of his father. As, in my opinion, Natverlal, because of the death of Jamnadas having occurred before the date of the Award, became entitled to the immovable property itself, the relevant provision of the Indian Succession Act is that contained u/s 212 and not the one u/s 214. By reason of his title to the immovable property which he acquired before the Award, Natverlal is, as a matter of a necessary consequence following from it, entitled to the amount of compensation. What he has to establish on the facts of this case is not merely that he is entitled to the amount of compensation but also that he was entitled to the immovable property itself before the date of the Award. That is what he has established and it is therefore not necessary for me to consider whether the amount of compensation is or is not a debt within the meaning of section 214 of the Indian Succession Act. I, therefore, hold that Natverlal is entitled to receive the amount of compensation in respect of the acquisition in this Reference.

11. At this stage the parties inform me that they are agreed that the S. L. A. O. should pay the sum of Rs. 7,384 as and by way of additional compensation, inclusive of the 15 per cent. solatium with interest thereon at the rate of 4 per

cent, per annum from January 12, 1960; the S. L. A. O. to make such payment on or before March 1, 1966.

12. By and with such consent, I therefore, order that the S. L. A. O. do pay to Natverlal, the claimant herein, on or before March 1, 1966, the said sum of Rs. 7,384 with interest thereon at the rate of 4 per cent, per annum from January 12, 1960 till the date of payment. There shall be no order as to costs. Natverlal shall be at liberty to withdraw the amount deposited in this Court by the S. L. A. O. to the credit of this Reference.