

(2001) 04 GUJ CK 0041

In the Gujarat High Court

Case No : First Appeal No"s. 4714 to 4717 of 1996

Spl. Laq Officer

APPELLANT

Vs

Nathaji Kacharaji, Died, thro" Heir Dhulaji Nathaji

RESPONDENT

Date of Decision : 04-04-2001

Acts Referred:

Citation : (2001) GLH 312

Hon'ble Judges : D.M. Dharmadhikari, C.J;M.R. Calla, J;J.M. Panchal, J

Bench : Full Bench

Advocate : S.N. Shelat, General, for the Appellant; Mohanbhai Desai, for the Respondent

Judgement

D.M. Dharmadhikari, C.J.—These appeals have been referred to the Full Bench on a legal question of limitation based on interpretation of provisions of section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act").In the course of hearing and decision of the first appeals,the Division Bench (coram: Y.B.Bhatt and C.K.Buch, JJ) finds that in view of several decisions of the Supreme court and Full Bench of this court which we shall hereinafter deal in detail, several decisions rendered by the Division Benches of this court are no longer good law and are required to be over-ruled.

2. Since the question referred is purely one of law and based on interpretation of provisions of section 18 of the Act, we need not discuss the facts of the first appeals. It is enough for our purpose to state that the applications made by the land owners to the Collector for seeking reference of the cases to the court on the quantum of compensation were held by the learned Judge of the lower court as having been filed beyond period of six months prescribed in later part of proviso (b) to sub-section (2) of section 18 of the Act. But the learned Judge, by a separate order made on 19.8.1994 treated them within time (vide exh. 31 of the record of the lower court).He held that the applications were not barred and that delay is condonable because the essential contents or copies of the award were not communicated to the land owners. The period of limitation commences

from the date of passing of the award. The learned counsel for the State has filed a chart to show that in all the cases, awards were made on 3.10.1974. Payment of compensation was made and possession was taken on 9.10.1974. The land owners were served with notice u/s 12(2) of the Act on 7.10.1974. They filed applications to the Collector for seeking reference to the court on quantum of compensation u/s 18 of the Act on 28.4.1988.

3. The Full Bench proposes to answer only the legal question of law of limitation in the light of the decisions of the Supreme Court. It would leave for decision other questions of law and issues arising in the first appeals to the Division Bench.

4. In order to consider whether several decisions of Division Benches of this court are required to be declared as no longer good law, as is the opinion of the Division Bench in its order of Reference dated 30.4.1998, it is necessary to examine critically relevant provisions of the Act.

5. Section 11 of the Act states that after holding inquiry regarding acquisition of land and claim of persons interested, the Collector shall make award of compensation which will contain:

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

The essential contents of the award of the Collector are above mentioned three particulars i.e. area of the land, quantum of compensation and apportionment of compensation amongst various interested persons.

6. Section 12 of the Act makes award of the Collector final. Sub-section (2) of section 12 requires the Collector to give immediate notice of his award to such other persons interested as are not present personally or by their representatives when the award is made. Provisions of sections 11 and 12 of the Act came up for interpretation before the Supreme Court in the case of *State of Punjab and Another Vs. Satinder Bir Singh*, . It was held:

"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)."

7. From the above dicta of the Supreme court, it is clear that notice by the Collector u/s 12(2) of passing of the award need only contain information regarding essential parts of the award mentioned in section 12(1) particularly the area of land, compensation offered and apportionment of compensation between the persons interested in land. It is not necessary that notice u/s 12(2) issued by the Collector should contain all details of the award including his consideration and his manner of determination of compensation. The Division Bench decisions of this court which lay down that notice u/s 11(2) by the Collector is not valid in cases where full contents of the award or copy thereof are not intimated to the parties concerned do not lay down correct law and are, therefore, required to be declared as no longer good law.

8. The Supreme court in the case of Poshetty and Others Vs. State of A.P., and Land Acquisition Officer Vs. Shivbai and others, , in construing the requirements of provisions u/s 12(3) of the Act, have held that communication of all contents including reasoning contained in the award or copy of the award is not a pre-condition for commencement of period of limitation. In Poshetty's case (supra), relying on its earlier decision in the case of State of Punjab vs. Satinder Bir Singh (supra), it was held that service of notice is a ministerial act and the Act does not contemplate supply of copy of the award. Same view was reiterated in the case of Shivabai (supra) by observing that it is now settled law that it is not necessary that the award or its copy should be served on the claimant along with notice u/s 12(2) of the Act. All the decisions of Division Benches of this court to which reference shall be made hereinafter which held that notice u/s 12(2) issued by the Collector to the land owner should contain copy of the award are also liable to be declared as no longer good law.

9. Section 18 of the Act which enables land owner to seek reference of the question of quantum of compensation and/or dispute about apportionment or entitlement of the same requires making of application for reference to the Collector within prescribed period of limitation. Section 18 reads as under:

"18. (1) Any person interested who has not accepted the award may, by written

application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measure of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(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."

The contents of sub section (2) of section 18 read with provisos (a) and (b) thereunder go to show that for the purpose of prescribing different periods of limitation, the legislature has envisaged three different eventualities. Under proviso (a), where a person making application for reference is present or represented before the Collector at the time when he made the award, the prescribed period of limitation is six weeks from the date of award of the Collector. The second contingency is contemplated in the first part of proviso (b) that is where the land owner or person interested has been served with notice of the award in accordance with sub section (2) of section 12. The period of limitation prescribed after service of notice is six weeks from the date of receipt of the statutory notice. The third eventuality is covered by latter part of proviso (b) where the land owner or party interested is neither present nor represented before the Collector at the time of making of the award nor he has been served with any notice u/s 12(2); in that situation, the period prescribed is six months from the date of award of the Collector.

10. The latter part of proviso (b) of section 18(2) containing six months period of limitation where land owner or person interested is neither present nor represented and has not received any notice u/s 12(2), came up for consideration before the Supreme court exhaustively in the case of Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, . The question before the Supreme court was - what construction to be placed on the expression from the date of the Collector's award" as used in the latter part of proviso (b) of section 18(2) in the matter of commencement of limitation of six months against a party who was neither present nor represented before the Collector and has not been served with notice of making of the award by the Collector u/s 12(2) of the Act. It is on that provision and in that context that the Supreme court observed:

"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..... 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 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 an 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 actual or constructive, being an essential requirement of fair play 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 unreasonable 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". (underlining for emphasis).

11. The above observations and decision of the Supreme court in the case of Raja Harish Chandra (supra) were followed and reiterated in the case of State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, . In the subsequent decision, it was further clarified that `actual or constructive knowledge" of the award would not mean mere knowledge of the fact that an award has been made. `The knowledge must relate to the essential contents of the award". The essential contents of the award should mean, as explained in the subsequent decision of the Supreme court ,contents of the award as referred to in section 11(1) i.e. area of the land, quantum of compensation and apportionment. In the case of Qaisar Jehan Begum (supra), evidence of the land owner was recorded and he stated that amount of compensation was not made known to him nor was he aware of the fact of award of compensation. He came to know about it from another person who was his power of attorney holder. What is to be noted from the decisions of the Supreme court in the cases of Raja Harish Chandra (supra) and Qaisar Jehan Begum (supra) is that those were the cases which covered the last

contemplated contingency in latter part of proviso (b) of section 18(2) i.e. where the land owner is neither present nor represented nor a notice was served on the land owner. In such cases, the limitation would commence from the date when the party -either actually or constructively- receives notice of essential contents of the award, meaning- area of the land, quantum of compensation and apportionment. It is nowhere laid down by the Supreme court that even for the purpose of contingencies covered by proviso (a) where the owner is present or represented or first part of proviso (b) where he has been served with notice u/s 12(1) of the Act, the period of limitation would begin only from 'actual or constructive notice of all contents of the award including reasonings and basis of the determination of the award'. The line of cases of the Division Benches of this court which take a contrary view, with respect, have committed mistake in wrongly applying the ratio of two decisions of the Supreme court in the cases of Raja Harish Chandra (supra) and Qaisar Jehan Begum (supra) to the cases falling under proviso (a) and first part of proviso (b) of section 18(2). Therefore, they do not lay down correct law and are required to be over-ruled.

12. Before taking up for consideration the correctness of several Division Bench decisions of this court, one more provision which is required to be noticed is section 28A of the Act . It enables any party who has not sought reference on the quantum of compensation from the Collector to the court to seek re-determination of the amount of compensation in respect of other land covered by the same notification concerning which the other land owner has been awarded enhanced compensation by the court on reference by Collector.

13. Section 28A reads as under:

"28 (1). Where in an award under this part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector u/s 11, the persons interested in all the other land covered by the same notification u/s 4, sub section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector u/s 18, by written application to the Collector within three months from the date of the award of the court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub section (2) may , by

written application to the Collector, require that the matter be referred by the Collector for the determination of the court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference u/s 18."

Under sub-section (1) of section 28A, a person seeking reference through the Collector of his case on the basis of award of another land owner covered by the same notification, has to make application within the prescribed three months' period of limitation from the date of award. The proviso to sub-section (1) of section 28A expressly allows exclusion of date of passing of the award by the court and time requisite for obtaining copy of the award of the court for computing the period of limitation. What is noticeable is that such exclusion of time of date of passing of the award and obtaining copy of the award is not to be found in section 18 of the Act which enables land owner to seek reference by making application to the Collector within prescribed period of limitation i.e. six weeks or six months as the case may be. Obviously, therefore, as has been rightly pointed out by the learned Judges of the Division Bench who have made this Reference to the Full Bench, the proviso below section 28A of the Act cannot be made applicable directly or by implication to the provisos to section 18 of the Act, as doing so would be violence to the provisions of section 18 under consideration.

14. It is also necessary to make a mention of the decision of the Supreme court in the case of Officer on Special Duty vs. Shah Manilal Chandulal, 37 (2) GLR 626, wherein, it has been held that Collector being not a 'court' as defined u/s 3(d) of the Act, provisions of section 5 of the Limitation Act of condonation of delay cannot be availed of by a party making application for reference u/s 18(2) of the Act.

15. A Full Bench of this court in the case of Memon Ibrahim vs. Officer on Special Duty, 35 (1) GLR 296 has also taken a similar view that the Collector has no power to condone delay in making application for reference u/s 18 of the Act.

16. Having thus considered relevant decisions of the Supreme court and the Full Bench of this court, we find that the following decisions of the Division Benches of this court are liable to be declared as no longer good law and are, therefore, required to be over-ruled.

17. The earliest Division Bench decision is reported in the case of Rasulkhanji Sardar Mohmed vs. H.P.Rathod, 16 GLR 911 (coram: J.B. Mehta and P.D. Desai, JJ). In that case, award was made on 5.1.1971. As the parties were not present and no date of pronouncement was fixed, notice u/s 18 was served on the party on 13.1.1971 stating in it the true area and total compensation amount. Reasons or grounds for making award were not communicated. Application for reference was made after six weeks on 16.4.1971. The Division Bench held the same to be within time as the petitioner made application for certified copy of the award on 22.1.1971 and obtained copy on 26.3.1971. The Division Bench relied on the

decision of the Supreme court in the case of Raja Harish Chandra (supra) which was clearly not applicable to the facts of the case. In that case, the party was served with notice u/s 18 of the Act and essential contents of the award i.e. area, quantum of amount and apportionment were duly intimated. The period of obtaining certified copy of the award, therefore, could not have been allowed to be excluded from computing the period of limitation. The decision of the Supreme court in the case of Raja Harish Chandra (supra) as has already been noticed above, was on interpretation of latter part of proviso (b) to section 18(2) and was not a decision on the first part of proviso (b). The Division Bench was, therefore, clearly in error in wrongly applying the ratio of the Supreme court decision in the case of Raja Harish Chandra (supra). The Division Bench decision in the case of Rasulkhanji (supra), therefore, is liable to be over-ruled as no longer good law.

18. The next case which, according to us, also appears to have been wrongly decided by applying the ratio of the case in Qaisar Jehan Begum (supra) is in the case of Rajat Hirabhai Motibhai and Others Vs. Deputy Collector, Land Acquisition and Rehabilitation, Panam Project, Godhra and Others, (coram: P.S. Poti, C.J. and I.C. Bhatt, J.). The judgment of the Division Bench proceeds on wrong factual premise and incorrectly applies the ratio of Qaisar Jehan Begum (supra). The parties were given intimation of passing of the award. It was held that not only the copy of the award but 'substance of the award was required to be communicated to the party which should include the essential part of the award making decision as well as reasons supporting such decision contained in the award'. This part of the judgment also proceeds on a wrong legal premise. Actual or constructive notice of essential part of the award means essential parts as required to be the contents of the award u/s 11 (i), (ii) and (iii). The Division Bench also failed to notice that under the proviso (a) of section 18(2) where a party is present or represented before the Collector, six weeks period of limitation is prescribed to enable the party to obtain copy of the award or ascertain contents of the award to formulate grounds and objections for seeking reference. Similarly, same period is prescribed in the first part of proviso (b) when intimation of passing of the award is given to the party. In both the eventualities contemplated in proviso (a) and first part of proviso (b), period of limitation is specifically fixed for the purpose of permitting the parties to ascertain contents of copy of the award to seek reference. There is no obligation that 'all the parts of the award are to be communicated which should include reasons and process for determination of particular quantum of compensation or deciding entitlement for the same in favour of the claimant or other party'. The decision of the Supreme court in the case of Qaisar Jehan Begum (supra) and the earlier decision of the Supreme court in Raja Harish Chandra (supra) relate to the latter part of proviso (b) and, therefore also, as has been clarified now by the later decision of the Supreme court, actual and constructive notice of award to the party, who is neither present nor represented nor served with a notice, means only such content as referable to section 11 of the Act. The decision of the

Division Bench in Rajat Hirabhai Motibhai (supra) also is required to be declared as no longer good law.

19. The next case, chronologically, is the Division Bench decision in the case of Damor Fataji vs. State of Gujarat, 1987 (2) GLH (Unreported Judgment) 6. The Division Bench takes the view that since copy of the award was not served along with notice u/s 18 of the Act on the concerned party, the application cannot be held as barred by limitation. This decision is obviously contrary to the decisions of the Supreme court in Poshetty vs. State of A.P. (supra), State of Punjab vs. Satinder Bir Singh (supra) and Land Acquisition Officer v. Shivabai and others (supra). The Division Bench ,therefore, clearly decided the above case contrary to law and deserves to be over-ruled.

20. The next case deserves to be similarly declared to be bad law. It is in the case of Ishabhai Umarbhai Vs. State of Gujarat and Another, (coram: P.R. Gokulakrishnan , C.J. and R.J. Shah, J). The said decision relies on the earlier Division Bench decision in the case of Rajat Hirabhai Motibhai (supra). There also, notice u/s 18 was served on the party but without copy of the award and all contents of the award were not communicated. The Division Bench relying on its earlier decision in Rajat Hirabhai (supra), came to the conclusion that since all reasons and grounds for making reference were not made known to the party in the notice u/s 18, the period of limitation had begun only when all contents of the award came to the knowledge of the owners.

21. Same view is taken by the same Division Bench (coram: P. R. Gokulakrishnan, C.J. and R.J. Shah, J.) in Gopalbliai Becharbhai Vs. State of Gujarat and Another, . It also deserves to be held as no longer good law because as held by the Supreme court, there is no requirement of notice u/s 18 of giving all contents of the award or copy of the award to the noticee.

22. The last decision and latest in point of time which prompted the Division Bench to make reference to the Full Bench is in the case of Kalidas N. Mehta vs. State of Gujarat, 1998 (1) GLH 634 (Coram: C.K. Thakkar and S. D. Pandit, JJ). In the said case, the owner was present before the competent authority on 18.9.1991. On that day, the award was not declared and he was told that it would be declared later on. On the next day i.e. 19.9.1991, he was present and he was informed that the award has been passed and the petitioner was awarded Rs. 8/- per sq.mt. The petitioner applied for certified copy of the award and after obtaining it on 26.2.1992, he filed an application for reference in March, 1992. The award was made on 19.9.1991. The application for reference made in March, 1992 was clearly barred by time. The Division Bench in that case fell into a grievous error in applying the decisions of the Supreme court in Raja Harish Chandra (supra) and Qaisar Jehan Begum (supra). As has been pointed out above, the above decisions of the Supreme court were on construction of latter part of proviso (b) of section 18(2). The ratio of those cases could not have been made applicable to the situation contemplated by proviso (a) in the case of Kalidas Mehta (supra). On the day when the award was passed, intimation was

given and the party was present. The period of limitation of six weeks therefore commenced from that date and the period of obtaining certified copy of the award could not have been excluded. The Division bench in this case also wrongly relied on the decision of *Tota Ram vs. State of U.P.*, (1997) 6 SCC, 280. We have carefully looked into that case and we find that the case of *Tota Ram* was based on provisions of section 28A of the Act quoted above, which are applicable to a person covered by the same notification of acquisition in which one of the owners on reference to the court obtained enhanced compensation and the other owners approached for reference on the basis of award of the court. Proviso to section 28A expressly provides exclusion of copying period in computation of limitation. The decision in the case of *Tota Ram* (supra) based on the provisions of section 28A could not have been made applicable in computing limitation to the case covered by proviso (a) of section 18(2) of the Act.

23. As has been discussed above, requirement of actual or constructive notice of essential contents of the award in the case covered by latter part of proviso (c) could not have been made applicable to the case clearly covered by proviso (a) or first part of proviso (b) of the said section. The Division bench decision in *Kalidas Mehta* (supra), therefore, also is required to be declared as no longer good law and deserves to be over-ruled.

24. It is necessary to notice two latest decisions which are consistent with the view expressed by the Supreme court on the question of limitation u/s 18 of the Act. The first is rendered by Keshote, J. in 1999 (1) GLH 707 and the second is the Division Bench decision (coram: M.R. Calla and R.P. Dholakia, JJ) in the case of *Musebhai Jivanbhai Jivani vs. Special Land Acquisition Officer* 41 (1) GLR 91. It is also interesting to note that Full Bench of the Andhra Pradesh High Court in the case of *Maddela Narsimlu v. the Special Deputy Collector*, AIR 1991 SC AP 123, has rightly dissented from the views of this court referred in several decisions rendered of which we have made specific reference hereinabove and declared them no longer good law.

25. We, therefore, answer the legal question of limitation referred to us in the manner aforesaid. We declare that the decisions reported in:

- (1) 16 GLR 912 (*Rasulkhanji Sardar Mamohmad Khanji v. H.P. Rathod and another*);
- (2) *Rajat Hirabhai Motibhai and Others Vs. Deputy Collector, Land Acquisition and Rehabilitation, Panam Project, Godhra and Others*, ;
- (3) 1987 (2) GLH 6 (*Damor Fataji v. State of Gujarat and others*);
- (4) *Ishabhai Umarbhai Vs. State of Gujarat and Another*, ;
- (5) *Gopalbliai Becharbhai Vs. State of Gujarat and Another*, and
- (6) 1998 (1) GLH 634 (*K.N.Mehta vs. State of Gujarat and others*).

are no longer good law. They are, therefore, over-ruled in view of the decisions

of the Supreme court as discussed above.

26. Let these First Appeals now be placed before the appropriate Division Bench for deciding the question of limitation and other issues, on merits. The costs of these appeals shall abide by the final result in the First Appeals.