

(1958) 05 KL CK 0008
In the High Court Of Kerala
Case No : A.S. No. 118 of 1955 (T)

State of Travancore-Cochin

APPELLANT

Vs

Kuttippavu Amma and Others

RESPONDENT

Date of Decision : 19-05-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18, 30

Citation : (1958) KLJ 1012

Hon'ble Judges : T.K. Joseph, J;K. Sankaran, J

Bench : Division Bench

Advocate : N. Krishnaswami Iyengar Government Pleader For State, for the Appellant; K. Krishna Pillai and Pattom For Respondents 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Sankaran, J.—This appeal by the State is directed against the decree passed by the Additional District Judge at Trivandrum in Land Acquisition Reference No. 6 of 1951 on the file of his court. A plot of land, 84 cents in extent comprised in Survey No. 790 of Cheruvakkal Pakuthy, was acquired by the State on 1st April 1950. This property was owned in equal shares by a mother, Narayani Anuria Kuttipparu Amma, and her three sons Sivasankaran Nair, Appukuttan Nair and Parameswaran Pillai. The one-fourth share of Parameswaran Pillai was purchased by Sivasankaran Nair who thus became entitled to a half share in the property. The mother Kuttipparu Amma and her son Appukuttan Nair retained ownership of their respective one-fourth shares. This was the position at the time of the land acquisition proceedings and it was made clear in the written statements filed by Kuttipparu Amma and Sivasankaran Nair before the Land Acquisition Officer. Their claim for compensation was at the rate of Rs. 60 per cent. The Tahsildar prepared a valuation statement fixing the land value at the rate of Rs. 20 per cent besides the price separately fixed for the trees and building in the property.

The Land Acquisition Officer accepted the statement prepared by the Tahsildar and passed an award on the basis of the value estimated by the Tahsildar. It was a single award in favour of all the four sharers to whom the property originally belonged, and no apportionment was made on the basis of the undisputed claims which had been put forward by Kuttipparu Amma and Sivasankaran Nair. This award was objected to by Sivasankaran Nair alone who filed a petition before the Land Acquisition Officer within the time prescribed by section 18 of the Land Acquisition Act and prayed that the case may be referred to the District Court for a decision on the question of the enhanced value claimed for the land and also for apportioning the amount due to his half share in the property. The Land Acquisition Officer accordingly referred the case to the District Judge, Trivandrum, under sections 18 and 27 of the Travancore Land Acquisition Act (Act XI of 1089). Sections 18 and 27 of this Act correspond to sections 18 and 30 of the Indian Act (Act I of 1894). After taking the case on the file of the District Court, notices were issued to the State and also to the four persons to whom the property belonged. All these parties entered appearance. Sivasankaran Nair, at whose instance the case was referred to the District Court, was treated as the plaintiff in the case and the State was impleaded as the 1st defendant. Kuttipparu Amma, Appukuttan Nair and Parameswaran Pillai were arrayed as defendants 2 to 4. Defendants 2 and 3 filed written statements conceding that the plaintiff is entitled to a half share in the property. They also advanced a claim that they should get land value for their respective one-fourth shares at the rate of Rs. 60 per cent. The State contended that this claim was unsustainable in view of the fact that defendants 2 and 3 had accepted the award passed by the Land Acquisition Officer and had not applied for the case being referred to the District Judge u/s 18 of the Land Acquisition Act. The learned Additional District Judge overruled the objection raised by the State and passed a decree in favour of these defendants also. The land value fixed at Rs. 20 per cent by the Land Acquisition Officer was raised to double that rate and it was directed that compensation at this rate should be paid not only to the plaintiff for his half share of the property, but also to defendants 2 and 3 in respect of their respective one-fourth shares. It is against such a decree passed in favour of defendants 2 and 3 that the State has preferred this appeal. The position taken up by the appellant gains full support from the relevant sections in the Land Acquisition Act and also from a series of reported decisions where the identical question had come up for consideration. The Land Acquisition Act which empowers the State to make compulsory acquisition of property, has made provision for payment of adequate compensation to the owners of the property thus acquired. Special provisions have also been made for resolving the disputes that may arise in relation to the distribution of the amount of compensation or as to the quantum of the compensation. Such disputes have to be referred to the Civil Court for adjudication as provided for in sections 18 and 27 of the Travancore Act corresponding to sections 18 and 30 of the Indian Act. In dealing with such references the court is not exercising its normal jurisdiction u/s 9 of the Code of Civil Procedure, but only the special jurisdiction conferred by sections

18 and 30 of the Land Acquisition Act. A reference by the Land Acquisition Officer under either of these sections is a condition precedent to the exercise of the court's special jurisdiction to adjudicate upon the matters covered by the reference. The exercise of such a special jurisdiction must necessarily be subject to the conditions and limitations imposed by the Statute which has conferred the special jurisdiction on the court.

2. The award made by the Land Acquisition Officer is an offer made on behalf of the State, of the price agreed to be paid in respect of the property acquired. If the party in whose favour the award is made accepts the same, the matter becomes final and conclusive. In such a case there can be no reference to the civil court as contemplated by sections 18 and 30 of the Act. A reference u/s 18 can be asked for only by the party who does not accept the award made by the Land Acquisition Officer. Another condition to be satisfied by section 18 is that there must be a written application by such party to the Land Acquisition Officer requesting that the objections raised by the party may be referred to the civil court for adjudication. It is also clear from sub-section 1 of section 18 that such a reference can be asked for in respect of four matters, viz., (1) objections to the measurement of the land acquired, (2) objection to the amount of the compensation awarded, (3) objections to the finding regarding the persons to whom the compensation amount is payable, and (4) objection to the apportionment of the compensation amount among the several persons interested in the same. Sub-section 2 of the same section prescribes the period within which the application for reference under sub-section 1 has to be made. Two of the four matters covered by sub-section 1 of section 18 are dealt with u/s 30 also. Section 30 states that after the amount of compensation has been settled, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable, the Land Acquisition Officer may refer such dispute to be adjudicated by the District Court within whose jurisdiction the land is situate. Even though the same matter is dealt with under sections 18 and 30, there is one essential difference between the provisions made in these two sections. For a reference contemplated by section 30 it is not necessary that there must be a written application by any of the parties interested in the disputes mentioned in the section. If the Land Acquisition Officer thinks that he cannot give a proper and effective decision regarding such dispute, he can on his own initiative refer the matter to the District Court for decision. But if the Land Acquisition Officer chooses to give a decision on the point in dispute, he can do so by exercising his jurisdiction in respect of that matter. Where he has himself decided the points in dispute, the question of a reference u/s 30 will not arise. The party who is not prepared to accept the decision of the Land Acquisition Officer may then invoke the aid of section 18 by filing a written application requiring the matter to be referred to the District Court. Such an application must be filed within the time prescribed by sub-section 2 of section 18.

3. On receipt of an application satisfying the conditions prescribed by section 18

the Land Acquisition Officer is bound to refer the points raised in the application to the District Court for decision. Section 19 enumerates the particulars to be stated by the Land Acquisition Officer in his letter of reference addressed to the District Court. Section 20 states that the court shall before proceeding to determine the objections which formed the basis of the reference, cause notice of the date fixed for proceeding with the reference to be served (1) on the party who has applied for the reference, (2) on all other persons interested in the objection except such of them as have consented without protest to receive payment of the compensation awarded and (3) to the State. Then there is section 21 which expressly limits the scope of the inquiry by the court on a reference from the Land Acquisition Officer. That section states that -- "the scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection" raised by the applicant to the award made by the Land Acquisition Officer. Where the award is in favour of several persons having no separate and distinct interest in the property acquired, all of them may be said to be interested in the objection raised by one or more of them to the award made by the Land Acquisition Officer. In such a case the objection may be deemed to have been made on behalf of all. Similarly, if one of several persons having only a joint and undivided interest in the property acquired, is competent to represent the interests of all of them, the objection by him to the award and the consequent reference to the District Court would enure to the benefit of all of them. But the position will be entirely different if each of them has a distinct and separate interest in the property acquired and no one of them is entitled in law to represent the others, as in the present case. Each of the four persons interested in the property acquired in this case had a distinct and separate share in that property even at the time of the acquisition and this position was made clear in the statements filed before the Land Acquisition Officer. Each of them was therefore entitled to object to the amount awarded as compensation in respect of his or her share in the property. Acceptance by any one sharer of the compensation offered by the Land Acquisition Officer would make the matter final and conclusive so far as his share of the property is concerned. Such acceptance need not necessarily be in express terms. It may also be implied. When the statute has prescribed a time-limit for objecting to the award made by the Land Acquisition Officer and for requiring the matter to be referred to the District Court, the omission of the party interested in the award to take the necessary steps in that direction must tantamount to an implied acceptance by him of the award. He must therefore be deemed to be a person who has consented without protest to receive payment of the compensation awarded by the Land Acquisition Officer. He cannot be said to be a person interested in the objection raised by any of the other sharers claiming compensation at a higher rate and asking for a reference to the District Court, because, by his conduct he has agreed to surrender his share for the price calculated at the rate fixed by the Land Acquisition Officer in his award. The notice contemplated under sub-section (b) of section 20 need not be issued to such a person. The mere fact that notice of the inquiry started in respect of a

reference made at the instance of another party has been given also to a person who has not objected to the award and that such person also is made a party to the proceedings in the District Court, will not confer on him any new right to get any larger amount of compensation calculated on the basis of the higher rate that may be fixed by the District Court. To confer any such right on him will be to enlarge the scope of the inquiry, which, u/s 21 has to be restricted to a consideration of the interests of the persons affected by the objections raised in the application for reference. In the present case the application for reference was made only by the plaintiff who was entitled to a one-fourth share in his own right and who had also purchased the one-fourth share of another co-sharer, Parameswaran Pillai. The only two points raised in his application are that the compensation amount due to him should be separately awarded and that he should get compensation at the enhanced rate mentioned by him in his statement before the Land Acquisition Officer. These objections raised by him could only affect the half share to which he was entitled in the property acquired by the State. The interest of the other two sharers could not in any way be affected by the objections raised by the plaintiff. Their interest or the claims for enhanced compensation put forward by them for the first time in the District Court could not therefore be considered in the inquiry conducted in the reference which has its origin in the application by the plaintiff alone.

4. The question of the extent of the jurisdiction of the court dealing with a reference u/s 18 of the Land Acquisition Act has been considered in a series of cases. As early as in the year 1907 the question was considered by the Calcutta High Court in *Abubaker v. Peary Mohan Mukherjee* (I.L.R. 34 Cal. 451) and there it was ruled that in a proceeding under the Land Acquisition Act, a party who had raised no objection to the apportionment of compensation made by the Collector must be taken to have accepted the award in that respect. It was further held that under sections 18, 20 and 21 of the Land Acquisition Act all that the court can deal with is the objection which has been referred to it and that it cannot go into a question raised for the first time by a party who had not raised that question by way of objection to the award and had not asked for a reference u/s 18. The principle of this decision was accepted and followed in *Govinda Kumar Roy v. Devendra Kumar Roy* (12 Cal. W.N. 98), *Mohammed Safi v. Haran Chandra* (12 Cal. W.N. 985), *Prabhal Chandra v. Peari Mohun* (12 Cal. W.N. 987) and *Gangadhara Sastri v. Deputy Collector of Madras* (22 M.L. J 379). In *Rohan Lal Vs. Collector of Etah*, the compensation amount had been apportioned as between the zamindar and his occupancy tenants. The tenants accepted the award, while the zamindar asked for a reference on the ground that the price fixed by the Land Acquisition Officer was too low. The zamindar claimed the whole of the enhanced amount of compensation inclusive of the share due to the occupancy tenants who were satisfied with the lower value fixed by the Collector. The Zamindar's claim to get the tenant's share out of the enhanced amount of compensation was repelled and it was pointed out that the gain arising out of the tenants' acceptance of the Collector's award was a gain in favour of the State.

and that the zamindar who had objected to the award could get the benefit of the enhancement only in proportion to his interest in the property. The principle underlying this decision was affirmed by the Privy Council in AIR 1932 102 (Privy Council) and also by a Full Bench of the Calcutta High Court in Collector of Dacca Vs. Gholam Kuddus Choudhury and Others, . The Madras High Court also ruled in Sri Rajah Vyricherla Narayana Gajapati Raju Bahadur Varu Vs. Perla Annapurnamma Garu and Others, that in a reference made at the instance of the Zamindar alone claiming enhanced compensation, the court has no jurisdiction to award enhanced compensation to the melvaram tenant who had accepted the Collector's award in respect of his interest in the very same property. The Privy Council had occasion to consider the scope of sections 18, 20 and 21 of the Land Acquisition Act in AIR 1930 64 (Privy Council) and there it was ruled as follows:

The jurisdiction of the courts under this Act is a special one and is strictly limited by the terms of these sections. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the "matter" referred, and the court has no power to determine or consider anything beyond it.

5. As against the trend of the consistent view taken in the above cases, a contrary view appears to have been taken by the Patna High Court in Tikait Nagendra Nath Sahi and Another Vs. Bhagwati Prasad Narayan Sahi and Others, . The objection in that case was in respect of the apportionment of the compensation amount between a zamindar and three mukarraridars. The zamindar and one mukarraridar had applied for reference u/s 18 within the prescribed time. The applications of the other two mukarraridars were out of time and hence it was contended that their claims could not be considered by the court. This contention was repelled and it was held that their claims could also be considered by the court while dealing with the claims of the zamindar and the other mukarraridar who had applied in time for a reference. The grounds stated in support of such a conclusion are that the court had power irrespective of any reference to investigate the claims of the two mukarraridars who had failed to apply in time and that the valuation of their interest could not be lost sight of or left undetermined while valuing the interest of the others. With all respect we have to state that these reasons do not commend themselves to us. To entertain a claim preferred beyond the time allowed by law is to ignore the period of limitation prescribed by statute. It cannot also be said that the claims of those who had applied in time cannot be considered independent of time barred claims of the others. The result of the failure to prefer the claim in time is to preclude the defaulters from claiming anything more than that granted to them by the award. But that does not mean that there will not be a diminution in the amount apportioned to them by the Collector If the claims preferred in time by the others ultimately succeed in the matter of apportionment, the result may be prejudicial to those who failed to prefer the claim in time. Naturally, therefore, these defaulters will be interested in supporting and defending the Collector's award

and for that purpose they too can participate in the reference proceedings in court. Such a participation also comes within the restriction imposed by section 21 which states that the reference proceeding "shall be restricted to a consideration of the interests of the persons affected by the objections". Those who have submitted to the Collector's award may be interested in maintaining it and to that extent they will be entitled to resist the objection raised against the award. A consideration of their interests in resisting the objection so as to protect their interests by maintaining the award is also permitted by section 21. The scope of sections 20 and 21 of the Land Acquisition Act was again considered by the Patna High Court in *Lila Mahton v. Sheo Govind* (A.I.R. 1956 Pat. 106), and there it was emphasised that the jurisdiction of the court under these sections is a special one and is strictly limited by the terms of the sections. Certain observations made by the court while dealing with this matter would appear to lend support to the respondents' contention in the present case that the nature of the Land Acquisition Officer's award and the subsequent reference made to the court is such as to entitle the court to consider the claim of the respondents also for enhanced compensation even though such a claim was put forward by them only in the District Court. In that case it was observed that the District Judge has no jurisdiction to go beyond the reference made by the Collector. It was further observed that the court acting under the Land Acquisition Act has no jurisdiction to look into the proceedings anterior to the reference by the Collector, however erroneously he may have acted in law or in fact, or both, in making the reference. We are unable to agree with these observations which appear to us to be too broadly stated. It is no doubt true that it is the reference made by the Collector that enables the court to go into the objections raised by the party at whose instance the reference is made. But that does mean that the court is concluded by the order of reference passed by the Collector. There is nothing in the Land Acquisition Act to indicate that the jurisdiction of the court is circumscribed by the reference order. Sections 18 and 30 of the Act have specified the conditions under which a reference is to be made by the Land Acquisition Officer. Section 19 enumerates the particulars to be stated by the Land Acquisition Officer in the form of a statement to be furnished along with the reference order. The court is certainly entitled to ascertain whether the reference made by the Land Acquisition Officer satisfies all these conditions-The court's jurisdiction is not confined to a mere consideration of the reference as it is made by the Land Acquisition Officer. The court's jurisdiction to enquire into the objections mentioned in the reference can arise only if the reference is a proper and valid one as contemplated by the Act. By a reference made u/s 18 of the Act the Land Acquisition Officer cannot compel the court to enquire into any of the matters mentioned in that section even in the absence of an application seeking such a reference by any of the parties to the acquisition proceedings. Similarly, the court cannot be compelled to go into such matters by making a reference overlooking the fact that the application for reference was filed out of time. Before proceeding with the enquiry on the basis of the reference order, the court is entitled to examine and to be satisfied whether there has been an application

filed within time asking for a reference to the court. Such a satisfaction can be had only by scrutinising the proceedings anterior to the reference made by the Land Acquisition Officer. It cannot therefore be said that the court has no jurisdiction to look into the proceedings anterior to the reference order. It is also clear from sections 20 and 21 of the Act that the inquiry to be conducted by the court is in relation to the objection to the award and which necessitated the reference. Thus it is obvious that the court has to focus its attention to those objections instead of confining its attention to the reference order. It is the duty of the court to find out whether the objections have been filed in strict compliance with the conditions laid down by section 18 and in such a scrutiny the reference order cannot in any way restrict or limit the jurisdiction of the court. Reference may be made in this connection to the decision of the Bombay High Court in *In re Land Acquisition Act* (I.L.R. 30 Bom. 275) where the view taken was that the court was bound to go into the question whether the application for reference u/s 18 was in time and whether the conditions laid down by that section have been complied with. This view was followed by the Allahabad High Court in *Sukhbir Singh v. Secretary of State for India in Council* (I.L.R. 49 All, 212) where it was held that the reference made by the Land Acquisition Officer was not a valid reference in view of the fact that there was no proper application before him, as is required by section 18. That court is seen to have taken a contrary view in *Secretary of State for India in Council v. Bhagwan Prasad* (I.L.R. 52 All. 96) where it was held that it is not open to the District Court to go behind the reference and that it was for the Collector to decide whether the conditions justifying a reference had been complied with. These conflicting views were examined by the Bombay High Court in *Chunilal Bhagwangi v. Kammal Lalchand* ((A.I.R. 1944 Bom. 200)) and in the judgment delivered in that case by Beaumont, C.J., he preferred to agree with the view expressed by Chandavarkar, J., in *In re Land Acquisition Act* (I.L.R. 30 Bom. 275) that it is the duty of the court to see that the statutory conditions have been complied with. The position was thus explained by the learned Chief Justice:

The Collector has power to make a reference on certain specified conditions. The first condition is that it shall be a written application by a person interested who has not accepted the award, the second condition is as to the nature of the objection which may be taken, and the third condition is as to time within which the application shall be made. It seems to me that the court is bound to satisfy itself that the reference made by the Collector complies with the specified conditions so as to give the court jurisdiction to hear the reference. It is not a question of the court sitting in appeal or revision on the decision of the Collector; it is a question of the court satisfying itself that the reference made under the Act is one which it is required to hear. If the reference does not comply with the terms of the Act, then the court cannot entertain it. I have myself some difficulty in seeing on what principle the court is to be barred from satisfying itself that the reference which it is called upon to hear is a valid reference.

This decision was followed by Chagla, C.J., in *G.J. Desai Vs. Abdul Mazid Kadri*

and Others, . That was a case where the Collector had refused to make a reference for the reason that the application of the party interested in that matter was out of time. Against that order the party filed a petition before the Bombay High Court u/s 45 of the Specific Relief Act for an order to compel the Collector to make a reference. The learned Judge who heard that petition took the view that the Collector was bound to make the reference without deciding the question whether the application was barred by limitation or not and that the said question had to be left for the decision of the Civil Court. Accordingly, he issued a writ of mandamus u/s 45 of the Specific Relief Act against the Land Acquisition Officer directing him to make a reference to the Civil Court. The appeal against that decision was heard by a Division Bench of the same Court. In the decision in the appeal it was held that the Collector was entitled to decide whether the application for reference was within time or not, and also to decline to make a reference if his decision is that the application is time-barred. In such a contingency the claimant can apply u/s 45 of the Specific Relief Act for an order to compel the Collector to make a reference. It was further held that if the court, on an independent consideration of the question of limitation, decides that question in favour of the applicant, it can issue an order compelling the Collector to make a reference. Incidentally, the respective jurisdictions of the Collector and also the civil court in dealing with an application for reference had to be considered and it was pointed out that the Collector has to exercise his jurisdiction in the first instance to examine and decide whether the application for reference satisfies the conditions laid down by section 18 of the Land Acquisition Act and that the civil court has jurisdiction to independently examine the same question at the later stage when the matter comes before it. In that case, this jurisdiction of the civil court was invoked in an application u/s 45 of the Specific Relief Act because it was a case of the Collector having refused to make a reference. In dealing with that matter it was pointed out that even if it was a case of a reference having been made by the Collector which was not a proper reference u/s 18.

It would be for the court to determine the validity of the reference because the very jurisdiction of the court to hear a reference depends upon a proper reference being made u/s 18, and if the reference is not proper, there is no jurisdiction in the court to hear it.

Here it may be stated that the jurisdiction u/s 45 of the Specific Relief Act is a special jurisdiction conferred on the High Courts of Calcutta, Madras and Bombay. But the significance of such a special jurisdiction conferred on these three High Courts has disappeared with the passing of the Indian Constitution. The power to issue a writ of mandamus is now possessed by all the High Courts in India by virtue of Article 226 of the Constitution and a party aggrieved by a Land Acquisition Officer's wrongful refusal to make a reference u/s 18 of the Land Acquisition Act can invoke the aid of this Article and seek an order to compel him to make a reference.

6. From the above discussion it is clear that the lower court acted without jurisdiction in considering the claim for enhanced compensation put forward by defendants 2 and 3 who had submitted to the award and thus accepted it and had not applied for a reference u/s 18 of the Land Acquisition Act. The plaintiff alone had applied for reference and these two defendants had separate and distinct shares in the property acquired and there was no dispute regarding that matter at any stage. Hence the mere fact that the Land Acquisition Officer had passed a joint award in favour of all of them will not in any way enable defendants 2 and 3 to take advantage of the reference made at the instance of the plaintiff alone and put forward a claim for enhanced compensation for the first time in the District Court. Since there was no dispute on the question of apportionment of the compensation amount among these parties the Land Acquisition Officer should have specified the amount due to each of these persons as per his award. Instead of doing so he has left that matter for the decision of the District Court by making the reference one u/s 27 (of the Travancore Act) also. The benefit that can accrue to defendants 2 and 3 out of such a reference is only to get the amount due in respect of their shares in the property apportioned out of the amount covered by the award but not to get any enhancement of that amount. In the result this appeal is allowed with costs and the additional amount decreed by the lower court towards the share of defendants 2 and 3 is disallowed. These defendants will suffer their costs and will pay the 1st defendant's costs in the lower court also.