
(2009) 04 GAU CK 0017
In the Gauhati High Court

Sujit Kumar Das and Others

APPELLANT

Vs

Land Acquisition Collector

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1994 — Section 11, 18, 3, 30, 8

Citation : (2009) 5 GLR 812

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

C.R. Sarma, J.—This application under Article 226 of the Constitution of India has been filed for issuance of a writ directing the respondent to refer the L.A. Case No. 1/SN/94 to the learned Land Acquisition, Judge, West Tripura, Agartala u/s 18 of the Land Acquisition Act, 1994 ("the Act") and for setting aside the order dated 31.3.1998 passed by the Land Acquisition Officer, West Tripura, Agartala.

2. I have heard Mr. S. Talapatra, learned senior Counsel assisted by Smt. P. Das, learned Counsel appearing for the petitioners and Mrs. A.S. Lodh, learned Counsel appearing for the respondent.

3. To appreciate the rival contentions of the parties, I may, briefly, refer to the facts of the case as emerged from the pleadings of both the parties.

The petitioners along with their full brothers, namely, Ajit Kumar Das, Tarit Kumar Das and Subhas Chandra Das were the joint owners and possessors of a plot of land measuring 21/5 acres covered by various dag numbers and patta numbers within the District of West Tripura. Out of the said land, a piece of and measuring 8/97 acres was acquired by the respondent for construction of LPG Bottling Plant. The respondent, in his capacity as the Land Acquisition Officer, after completing the assessment, while making the award entered the names of some strangers without any basis and without the knowledge of the petitioners.

Thereafter, the respondent, at his own, referred the matter to the Land Acquisition Judge for determining the title of the land in question. The said reference u/s 30 of the Act, was registered as Misc. (L.A.) No. 1 of 1995 and the learned Land Acquisition Judge passed the order on 15.9.1995 declaring the petitioners as the owners and possessors of the acquired land in question. As the petitioners title to the acquired and was in question, the petitioners could not file the petition u/s 18 of the Act, within time from 2.11.1994, i.e., the date of the award made by the respondent. The reference u/s 30 of the Act, being disposed of on 16.11.1995, declaring the title and ownership of the petitioner over the acquired land, the copy of the said order was received by the petitioners on 26.10.1995 and the petition u/s 18 of the Act, was filed on 16.11.1995 seeking a reference for proper determination of the compensation. But the respondent did not refer the matter u/s 18 of the Act. This compelled the petitioners to approach this Court by filing a writ petition seeking a direction to the respondent to refer the matter to the L.A. Judge u/s 18 of the Act. The writ petition was registered as Civil Rule No. 234 of 1997 and the same was dismissed on the ground of delay.

4. Being aggrieved, the petitioners filed a writ appeal which was registered as Writ Appeal No. 16 of 1998. The Division Bench by order dated 23.2.1998 passed the following order:

23.2.1998 Heard Mr. S. Talapatra, learned Counsel for the appellant and Mr. T.D. Majumder, learned Government Advocate.

With the consent of the learned Counsel for the parties we have finally decided the case.

Being dissatisfied by the Collector's award dated 21.9.1994 the appellants herein filed application for reference before Collector dated 16.11.1995, inter alia, stating that being ignorant of the fact, that the Collector's award was required to be challenged immediately after it was made they waited for the outcome of a reference made by the Collector on his own for the apportionment u/s 30 of the Land Acquisition Act. The appellant further explained the delay which had occurred between 15.9.1995 when the order of the court u/s 30 was made and the date of the filing of the application seeking reference u/s 18. It appears that the Collector did not address to the explanation of the petitioners seeking reference after lapse of time and passed no orders either refusing to condone the delay or for making the reference.

Aggrieved petitioners approached this Court before the learned Single Judge with prayer that the Collector be directed to make the reference. Appellants appended the copy of their application which they filed before the Collector for seeking reference u/s 18 with the prayer also for condonation of delay. Copy is annexure-IV. It however appears that the learned Single Judge did not notice the said application. Be that as it may, we understand that: the petitioner being a semi literate and residents of rentote areas may not have been aware of the distinction between a reference u/s 30 and reference u/s 18. The fact, that

reference had already been made by the Collector himself u/s 30, may have generally misled them to believe that the reference for enhancement of the award of the compensation was not required to be sought by them. However, after the reference u/s 30 was decided by the court they could genuinely feel that they were also required to ask for a reference u/s 18 for seeking enhancement of the compensation which was awarded by the Collector. The reasons given by petitioner in their application (Annexure-IV) to the civil rule explaining the reasons of the delay to our mind appears plausible.

Under the circumstances, we feel that the Collector should have addressed to that application and was in duty to pass requisite orders thereon keeping in mind the circumstances mentioned therein.

We accordingly allow the appeal and set aside the judgment and order of the learned Single Judge and direct the Collector to pass an order on petitioners application keeping in mind our observation made herein above and the provisions of Section 18 (i.e., in case petitioners have not accepted the compensation awarded by the Collector to them or have accepted the same under protest) their application shall be allowed until he disagrees with the explanation for some very strong reason.

With the above observations and directions, the appeal is allowed.

5. Thus by the said order while allowing the appeal and setting aside the judgment and order of the learned Single Judge, the court directed the Collector to pass an order on the petitioners' application keeping in mind the observations made by the Division Bench. On receipt of the laid order from the Division Bench, the respondent vide order dated 31.03.1998 disposed of the petition u/s 18 of the Act, holding that the order of award was passed on 21.9.1994 and the same was brought to the notice of the interested parties on 22.9.1994 and that the petitioners failed to file the application u/s 18 of the Act, within the statutory period of 6(six) weeks.

6. In the counter affidavit submitted on behalf of the respondent it was averred that as there was dispute regarding right and title in respect of the acquired land, the matter was referred to the Land Acquisition Judge u/s 30 of the Act, and the learned Land Acquisition Judge passed the order on 15.9.1995 and that the award being passed on 21.9.1994 the petition u/s 18 of the Act, was not filed within the stipulated period of 42(forty-two) days from the date of award.

7. Mr. Talapatra, learned senior Counsel appearing on behalf of the petitioner taking this Court through the provision of Section 18 of the Act, submitted that in spite of filing the petition u/s 18 of the Act, and in view of the order passed in the writ appeal the Land Acquisition Officer committed illegality by failing to refer the matter to the learned Land Acquisition Judge. The learned senior Counsel further submitted that the Land Acquisition Officer committed error by failing to properly appreciate the observations made by the Division Bench. It is submitted that the Division Bench considered and appreciated that the petitioners being

semi literate and residents of remote areas could not fine the distinction between reference u/s 30 and u/s 18 of the Act, and that in view of the reference u/s 30 of the Act, made by. the Land Acquisition Officer, could genuinely feel that they were required to ask for reference u/s 18 of the Act, for seeking enhancement of compensation, which was awarded by the Land Acquisition Collector and that the reasons given by the petitioners in their application (Annexure-IV) was found to be plausible but the Land Acquisition Officer committed error by holding that the reference was not made within the stipulated period. Admittedly the stipulated period was 6(six) weeks from the date of the award. A careful perusal of the order dated 23.2.1998 passed by the Division Bench would lead to believe that the Division Bench, accepted the reasons cited by the petitioners and while allowing the writ appeal directed the Land Acquisition Collector to pass an order on the petitioners, application (application u/s 18 of the Act) keeping in mind the observations made by the Division Bench and the provisions of Section 18 (i.e., in case petitioners have not accepted the compensation awarded by the Collector to them or have accepted the same under protest) requiring the land Acquisition Officer to allow the application unless disagreed with the explanation for very strong reason.

8. The Land Acquisition Officer by the impugned order observed that the award was made on 21.9.1994 and the same was communicated to the petitioner on 22.9.1994 and that petitioners did not make any contention before him that they had presumed the Section 30 reference as Section 18 reference. It was also observed that the petitioners being literate persons in the employment of the Government had sufficient knowledge to differentiate the distinction between Section 18 of the Act, and Section 3 of the Act. This finding of the Land Acquisition Officer was contrary to the observations made by the court in the writ appeal. Therefore, as the said matter was set at rest, the Land Acquisition Officer committed error by re-opening that the petitioners did not raise any contention before him that they presumed that the Section 30 reference was a reference u/s 18 itself. As pointed out by the learned senior Counsel, the Land Acquisition Officer while rejecting the petitioners' application by the impugned order did not cite any strong reason for his disagreement in disallowing the application.

9. Mrs. A.S. Lodh, learned Counsel appearing on behalf of the respondent submitted that as the petitioners had already accepted the awarded money they were debarred from seeking benefit u/s 18 of the Act. In reply to this contention, the learned senior Counsel drawing the attention of this Court to the pendency of the application u/s 18 of the Act, submitted that the filing of the petition u/s 18 of the Act, itself amounted to raising a protest against the quantum of the award and that receipt of the awarded money (against which a protest was lodged) during the pendency of the petition under .Section 18 made no difference and as such the receipt of money was a receipt with protest. In the case of Ajit Singh and Others Vs. State of Punjab and Others, , the Apex Court held:

Inasmuch as the appellants have filed an application for reference u/s 18 of the

Act, that will manifest their intention. Therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation.

10. In view of the said decision, I find sufficient force in the contention of the learned senior Counsel. Therefore, it is held that receipt of the award money during pendency of the application u/s 18 of the Act, amounted to "receipt with protest" and as such the said receipt could not stand as a bar or estoppel for seeking enhancement of the award.

11. Mrs. Lodh, learned Counsel appearing on behalf of the respondent further submitted that under the provisions of Section 18 of the Act, there being no scope for condonation of delay the Land Acquisition Officer committed no error by refusing to refer the application u/s 18 of the Act, on the ground of delay. In support of her contention, she has relied on the decision held by the Apex Court in the case of Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others,

12. In the above referred case, the Apex Court held that there was distinction between the Collector and the court and the Collector Land Acquisition Officer had no power to condone the delay in making reference. In view of the specific provision regarding the statutory period contained in Section 8 of the Act, there can be no dispute that the Collector had no power to extend the prescribed period of filing the application.

13. The second point raised by the learned senior Counsel for the petitioner was that in view of the reference u/s 30 regarding identification of the title holders and the owners of the acquired land, the award made by the Collector by the order dated 21.9.1994 was not an award in the eye of law. It is submitted that the award became complete only on 15.9.1995 on which date the learned Land Acquisition Judge declared that the petitioners were the actual title holders and owners of the acquired land entitled to draw the awarded amount. The learned senior Counsel submitted that the copy of the said order was ordered to be handed over only on 26.10.1995 and that the petitioners having filed the application u/s 18 of the Act, on 16.11.1995, the application aforesaid was not barred by limitation. Drawing the attention of this Court to the provisions of Section 11 of the Act, the learned senior Counsel submitted that under the said provision of the Act, the Land Acquisition Officer/Land Acquisition Collector was required to make the award notifying the respective interests of the persons claiming the compensation and the true area of the land, the compensation which in his opinion should be allowed for the land and 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. It is submitted that, as the Land Acquisition Officer, while passing the order dated 21.9.1994, could not definitely mention the apportionment of the compensation and indicate the actual title holders and the owners, the said award dated 21.9.1994 did not attain the finality and the award became final only on 15.9.1995 when the learned Land

Acquisition Judge declared the petitioners to be the owners and title holders and entitled to get the award. A careful reading of Section 11 of the Act, indicates that the award should include the apportionment of the compensation among all the persons known or believed to be interested in the land. That the petitioners were entitled to get the compensation amount was finally decided by the learned Land Acquisition Judge only on 15.9.1995 and copy of the said order was directed to be furnished on 26.10.1995. In the order dated 21.9.1994 two categories of persons were mentioned to be entitled to get the award. The first category belonged to the category of "jotedar" and the second category belonged to the category of "occupier". The petitioners were shown as "occupiers". The jotedars were neither the owners nor the title holders. The persons shown as occupiers cannot be the owners or title holders in the eye of law. The fact, that the petitioners who were shown in the category of occupiers were entitled to get the award to the exclusion of the others was made clear only by the order dated 15.9.1994. Therefore, it can be held that the award in favour of the petitioners attained the finality only on the said day. So, the application filed on 16.6.1995 appears to be within time.

14. In view of the above order dated 15.9.1995 passed by the learned Land Acquisition Judge in Misc. (L.A.) Case No. 1 of 1995 coupled with the observations made by the Division Bench vide order dated 23.2.1995 passed in Writ Appeal No. 16 of 1998, find sufficient merit in this writ petition warranting interference with the impugned order dated 31.3.1998 passed by the Land Acquisition Collector, West Tripura, Agartala.

15. For the reasons as stated above, this writ petition is allowed. The impugned order dated 31.3.1998 passed by the Land Acquisition Collector, West Tripura, Agartala is set aside and the Land Acquisition Collector/Land Acquisition Officer is directed to refer the application submitted by the petitioners u/s 18 of the Act, to the Land Acquisition Judge, West Tripura, Agartala for adjudication on the quantum of amount payable to them. As the matter is pending since long, the exercise shall be completed by the Land Acquisition Collector/Land Acquisition Judge, West Tripura, Agartala within a period of 90 (ninety) days from the date of receipt of the certified copy of this judgment. No costs.