

(2004) 04 GAU CK 0022
In the Gauhati High Court
Case No : Civil Rule No. 352 of 1997

Sujit Kumar Das and Others	Vs	APPELLANT
State of Tripura and Another		RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2005) 1 GLR 314 : (2004) 3 GLT 686

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : S. Talapatra, for the Appellant; S. Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

T. Vaiphei, J.—This is an application under Article 226 of the Constitution of India filed by the petitioner for directing the respondents to refer the L.A. Case No. 1/ SN of 95 pending before the Collector, Land Acquisition (LA), West Tripura District, Agartala to the learned Land Acquisition (LA) Judge, West Tripura District, Agartala u/s 18 of the Land Acquisition Act (hereinafter referred to as "the Act").

2. I have heard Mr. S. Talapatra, learned counsel for the petitioner as well as Mr. S. Chakraborty, learned counsel for the respondents.

3. The facts of the case as emerged from the pleadings of the petitioner are that he along with his brothers, namely, Ajit Kumar Das, Tarit Kumar Das and Subhas Chandra Das who were the joint owners of certain land appertaining to khatian No. 718/1, 718/2, 718/3, 718/4, 718/5, 718/6 having a total area of 21.51 acres situated within Bishalgarh mojuja, West Tripura District and that a portion of the said land measuring 8.94 acres were acquired for construction of LPG Bottling plant by the Indian Oil Corporation Limited. Thereafter, for acquiring a portion of the said land i.e. 0.51 acre appertaining to CS plot Nos. 31/P, 32/P, 33/P, 34/P for expansion of the said Project, a notice u/s 9 of the Act was issued on 15.5.1995.

The petitioners, thereafter, filed 2 applications on 20.5.1995 for striking out the names of strangers, whose names appeared in the said notice and claimed the market value of the said land @ Rs. 10 lakh per kani, i.e. about 25 lakh per acre. The said applications are at Annexure-2. The petitioners also state that the LA Collector by his award dated 12.7.1995 awarded compensation of Rs. 1,01,898/- for the said land. It is the further case of the petitioners that on the basis of the judgment dated 15.9.1995 passed by the learned LA Judge in LA Case No. 1 of 95, the names of the said strangers were struck off on 4.7.1996 by modifying the above order and that on 4.7.1996, they received the-said amount with objection. It is further stated by the petitioners that on 14.7.1996, they filed an application u/s 18 of the LA Act for referring the case to the learned LA Judge, West Tripura District, Agartala for enhancement of the compensation amount awarded to them by the LA Collector contending that the market value determined by the LA Collector was inadequate.

4. It is the case of the petitioners that their application was not acted upon by the LA Collector on account of delay. According to them, the delay in filing the application u/s 18 of the Act was unintentional and was prevented by the inaction of the respondents in not striking out names of other strangers and that when the names of the said strangers were struck off, they could only file the application on 14.7.1996 u/s 18 of the Act. The petitioners submit that the failure of the LA Collector in not acting upon their application u/s 18 of the Act is arbitrary and unreasonable.

5. The State respondents contested the writ petition and filed their counter affidavit in which they virtually denied all the allegations of the petitioners. The respondents admitted that the land was acquired for construction of LPG Bottling plant, but denied that the petitioners ever filed the application dated 20.5.1995 and that such application was ever received in the office of the LA Collector. The respondents asserted that the petitioners themselves appeared before the LA Collector in the course of hearing u/s 11 of the Act on 20.5.1995 and demanded Rs. 1 lakh per kani only as the market value of the acquired land and that after hearing, the LA Collector by his award dated 5.7.1995 determined the market value of the acquired land @ Rs. 60,000/- per kani. The respondents denied that the LA Case No. 1 of 95 before the LA Judge was in respect of the land under reference in this case, which is absolutely different from the land involved in the said case, which was a dispute between the land owners for title of land. The respondents also denied that the petitioners received the awarded amount with objection. The respondents pointed out that as per the letter dated 23.6.1997 at Annexure R/2, the SDO had intimated that no prayer u/s 18 of the Act was ever made by the petitioners and that the compensation amount was received by the petitioners without any protest. The respondents, however, admitted that the application dated 10.7.1996 u/s 18 of the Act was received by the LA Collector on 16.7.1996, but no action could be taken since the report on payment of awarded money was not received from the concerned SDO. According to the respondents, since the petitioners never submitted any application on 14.7.1996,

the question of referring the case u/s 18 of the Act or of condoning the delay in filing the said application did not arise.

6. From the pleadings of the parties, it becomes apparent that the LA Collector has awarded compensation of Rs. 1,01,898/- to the petitioners for acquiring 0.51 acre of the land for the purpose of expansion of the LPG Bottling plant constructed by the Indian Oil Corporation Limited and that dissatisfied with the determination of the market value by the LA Collector, the petitioners filed an application u/s 18 of the LA Act for referring the inadequacy of the compensation amount to the learned LA Judge for adjudication. However, the moot point is whether any award was made by the Collector on 12.7.1995. The answer to this question will determine the outcome of this writ petition. Mr. S. Talapatra, learned counsel for the petitioners submit that by modifying the award dated 12.7.1995 on 4.7.1996, by which the names of the strangers were struck off from the LA proceeding, the application for reference u/s 18 of the Act was filed within time. On the other hand, Mr. S. Chakraborty, learned counsel for the respondents submits that since no evidence was produced by the petitioners to show that the award dated 12.7.1995 was modified on 4.7.1996, the application u/s 18 of the Act is hopelessly time-barred. In order to appreciate the rival controversy involved in this writ petition, it is necessary to refer Section 18 of the Act, which reads thus -

"18. Reference to Court - (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 measurement of the land, the amount of the compensation, the persons 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."

From the above provision, a reference u/s 18 of the Act arises on an application by any interested party to the Collector and that the Collector is under statutory duty to make the reference if the applicant satisfies the various requirements as provided under Sub-sections (1)(2) of the said section. If the applicant satisfies all the requirements including the period of limitation mentioned therein, the Collector has no discretion in the matter, but to refer the matter to the learned

LA Judge for his decision thereon. The proviso (1) to section 18(2) of the Act restricts the period of limitation for filing of application for reference to six weeks from the date of the award of the Collector if the referee was present or represented before the Collector at the time of making the award. The proviso (b) to Section 18(2) of the Act, however, restricts the period of limitation within six weeks of the receipt of the notice from the Collector u/s 12(2) of the Act or within six months from the date of the Collector's award, whichever is earlier. In the instant case, it is not the case of the petitioners that they were not present or represented before the Collector at the time of making this award or that they did not receive any notice from the Collector u/s 12 of the Act. Whatever may be case, it is clear from the above that the period of limitation for making reference u/s 18 of the Act expire after six months from the date of the award of the Collector. Even though the question of applicability of Section 5 of the Limitation Act, 1963 has not been properly and fully decided by the Apex Court, I may quote with advantage the observation made by the Apex Court in Smt. Sushila Devi Vs. Ramanandan Prasad and Others, in the context of the same provision as under :-

"We do not see how Section 5 could be invoke inconnection with the application made on October 17, 1965 by the first respondent. u/s 5 of the Limitation Act an appeal or application may be admitted after the prescribed period if the appellant or applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. The Collector to whom the application was made was not a court though Section 15 of the Act vested him with certain specified powers under the Civil Procedure Code, also the kind of application that was made had no time-limit prescribed for it and no question of extending the time could therefore arise."

In the light of the above observation of the Apex Court, I am of the considered view that there is no provision in Section 18 of the Act for condoning a delay in filing an application for the said reference and, consequently, once the period of limitation prescribed in the aforesaid Section has expired, the Collector has no power to condone the delay.

7. It is, however, contended by Mr. S. Talapatra, the learned counsel for the petitioner that the award dated 12.7.1995 having been modified on 4.7.1996, the period of limitation would start running from the date of modification of the award i.e. from 4.7.1996 and not from 12.7.1995. Section 11 of the Act contemplates the making of an award. Section 12 enjoins the Collector to file such award in his office. The second limb of Section 12(1) provides that on such filing in the office of the Collector, the award becomes conclusive evidence between the Collector and the persons interest. The finality arises as to the area of land, the value of the land and the apportionment of compensation among the persons interested. However, the mere signing of the award by the Collector is not conclusive; it has to be filed u/s 12(1), which alone will put the stamp of finality of the award. The expression "shall be filed" connotes the idea of

permanent preservation as a public record. The meaning of the expression "file" is "to place in due manner among the records of a court or public officer". No particular form is prescribed for filing an award. It is only the physical act of, receiving the award in the Collector's office for keeping therein as part of the records of that office, that constitutes "filing". Once an award is filed, there is no power to amend it but before that is done, it is open to the Collector to even destroy the award already signed by him and substitute another in its place (see *Madho Ram v. Collector, Baramula*, AIR 1962 J&K 37).

8. From the foregoing discussions, it becomes apparent that if the award/ order passed by the Collector on 12.7.1995 was already filed in his office, he could not have validly modified or amended the same. To resolve the controversy, the file relating to the land acquisition proceeding was sent for and was placed before me by the learned Government Advocate. On going through the file, the award was initially prepared on 5.7.1995 in the names of Ajit Kumar Das, Sunit Kumar Das, Bidyut Kumar Das, Tarit Kumar Das and Subhas Das, all sons of the late Jogendra Chandra Das. But there is no evidence from the notings that the award was announced or filed. There is also no evidence to show that the notice u/s 12(2) was issued to the petitioners prior to 10.7.1996. On the other hand, the subsequent noting dated 18.4.1996 (?) indicates that since Pradip Kumar Das was omitted from the proposed award, further inquiry was proposed. Thereafter, one officer was detailed to make the inquiry. It was only on 17.5.1996 that the award was modified as shown by the documents prepared in Special Form Nos. 17 and 18 by which the name of the said Pradip Kumar Das was included as the awardee with equal share. The letter dated 7.6.1996 sent by the Collector/ Land Acquisition to the SDO/Sadar, West Tripura further shows that payment of the compensation was to be made in terms of the modified award. The document in Form CG, which is the consolidated voucher for payment also reveals that the payment was made to and received by the petitioner on 4.7.1996. From the aforesaid facts and circumstances, the conclusion is irresistible that prior to 4.7.1996, the award prepared on 12.7.1995 was neither signed nor filed so as to attain finality in terms of Section 12 of the Act. Under the circumstances, the question of amending the award already filed does not arise so as to bar the Collector from modifying or destroying the award prepared on 12.7.1995. In the result, I hold that the period of limitation for filing an application for reference u/s 18 of the Act in the instant case would commence from the date of receiving notices by the petitioners u/s 12 of the Act and not from 12.7.1995. Since the application for reference was filed by them on 10.7.1996 i.e. within six weeks from the receipt of the compensation, their application is clearly within time.

9. It is, however, contended by Mr. S. Chakraborty, the learned Government Advocate that since the petitioners accepted the compensation amount without protest, they are not entitled to file an application for reference u/s 18 of the Act. There is no dispute at the bar that the petitioners did not indicate at the time of receiving the compensation amount that the same was received by them under protest. The question then is whether this conduct of the petitioners will bar

them from making an application for reference. Normally, a person who accepts the amount disentitles himself from making a claim for enhanced compensation since he must be deemed to have accepted the offer. However, the Apex Court considered the question in *Ajit Singh v. State of Punjab*, (1994) 4 SCC 67, and held that where the appellants, who received the compensation without protest, filed an application for reference u/s 18 of the Act, that would manifest their intention and that the protest against the award of the Collector was implied notwithstanding the acceptance of the compensation. In the light of the above observation of the Apex Court, there can be no doubt that the petitioners, who filed the application for reference u/s 18 of the Act soon after the receipt of the compensation, are not barred or estopped from filing such application and that the Collector is duty-bound to refer the matter to the Land Acquisition Judge for adjudication on the quantum of the compensation payable to them.

10. For what has been stated above, this writ petition is allowed. The Collector/Land Acquisition, West Tripura, Agartala is hereby directed to refer the application of the petitioners dated 10.7.1996 to the Land Acquisition Judge, West Tripura, Agartala for adjudication on the quantum of the amount payable to them. The exercise shall be completed by the LA Collector within a period of forty-five days from the date of receipt of this judgment. No order as to costs.