

(2013) 11 BOM CK 0090

In the Bombay High Court

Case No : Civil Revision Application No. 329 of 2013

Sunil Dattatray Nigade (Deshmukh) and Others

APPELLANT

Vs

Special Land Acquisition Officer for Morba and The State of
Maharashtra

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Citation : (2014) 2 ALLMR 370 : (2014) 3 BomCR 207 : (2014) 1 MhLj 361

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : C.G. Gavnekar, for the Appellant; Jayshree B. Kurup "B" Counsel for the State, for the Respondent

Final Decision : Allowed

Judgement

R.M. Savant, J.—Admit, with the consent of the learned counsel parties taken up for hearing. Heard the learned counsel for the parties. The revisionary jurisdiction of this Court u/s 115 of the CPC is invoked against the order dated 23/11/2012 passed by the Sub Divisional Officer, Sub Division Panvel by which order the Application filed by the Applicants for making a Reference u/s 18 of the Land Acquisition Act 1894 ("the said Act" for short) came to be rejected on the ground of limitation.

2. The Applicants are the heirs of one Smt. Sushila @ Sunita Dattatray Nigade who was the co-owner of the land which was the subject matter of acquisition, along with her brother Narayan Wamanrao Deshmukh and other brothers. The said land was inherited by them from their deceased father Waman Anandrao Deshmukh. The said Sushila after her marriage started residing at Sherval, Taluka Khandala, District Satara. The said Sushila expired on 14/1/1987 leaving behind the Applicant Nos. 1 and 2, and their brother Milind who died on 5/2/2010 who left behind Applicant Nos. 3 to 5 as his legal heirs.

3. The lands in question situated at village Padge, Taluka Khalapur District

Raigad, were notified for acquisition u/s 4 of the said Act on 10/9/1987 and the public purpose was for Morbe Dam Project. The said Sushila was the co-owner of various Survey Numbers being Survey Nos. 10, 14, 19, 20, and 23 in village Padage Tal. Khalapur, Dist. Raigad. The declaration u/s 6 of the said Act was issued on 20/6/1988 and was published in the official gazette on 30/6/1988. Notices u/s 9(3)(4) came to be issued on 14/11/1988, however, the same were not served upon the Applicants or their mother Sushila as the said Sushila had left the village and had expired in the year 1987. The Award u/s 12 in respect of the said lands came to be declared on 12/7/1990 in Special Acquisition Case No. 235. It appears that the other family members being the heirs of the original owner accepted the compensation under protest except Shushila and filed an application for matter being referred to u/s 18 of the said Act.

4. It is the case of the Applicants that the Applicant No. 1 during the course of making inquiry in respect of the lands which were belonging to Sushila at village Chowk that he discovered that the lands in question were acquired and the Award in respect thereof was declared on 12/7/1990. The Applicant No. 1 thereafter took steps to obtain certified copy of the Award and obtained the same on 18/7/2012, after which he immediately filed an application along with other applications on 3/8/2012 to the Respondent No. 1 for making a Reference u/s 18 of the said Act, which application was enclosed with the necessary court fee stamps. The Respondent No. 1 has rejected the said application for the reasons which have been mentioned herein above by the order dated 23/11/2012. The principal ground on which the application has been rejected is that, there is a delay of more than 20 years in filing the application considering the date of the Award. As indicated above it is the said order dated 23/11/2012 which is the subject matter of the above Civil Revision Application.

5. Heard the learned counsel for the parties. The learned counsel appearing on behalf of the Applicants Shri Gavnekar would contend that Section 18 of the said Act postulates the time withing which an application for reference being made has to be filed. The said provision carves out two categories. The first category is of a person who is present when the Award is made, and the second category is of a person who is not present in respect of which category the period of six months from the Award is presented. The learned counsel for the Applicants would contend that the Applicants belong to the second category and since the Applicants have acquired knowledge of the Award on 11/7/2012, the application as filed cannot be said to be barred by limitation. The learned counsel would contend that the References in respect of other branches of the family are as yet pending before the District Court. Raigad Alibag.

6. On behalf of the Respondents the learned AGP would support the impugned order and would contend that the case of the Applicants that they have acquired knowledge of the Award on 11/7/2012 for the first time cannot be accepted in the teeth of the fact that other branches have accepted the compensation under protest and had also filed the applications for Reference being made. The learned

AGP would contend that since there is a delay of more than 20 years, no indulgence can be shown to the Applicants.

7. Having heard the learned counsel for the parties I have bestowed my anxious consideration to the rival contentions. In the context of the issue which arises for consideration in the above Civil Revision Application, it would be apposite to refer to Section 18 of the said Act and the same is reproduced herein:-

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 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 proviso to Section 18 of the said Act controls the aspect as to when an application for making a Reference can be filed. The said provision has been subject matter of interpretation by the Apex Court and the Apex Court has held that in respect of proviso (b) the period of 6 months for making of an application for reference cannot be the date of making of the Award but would be the date of the knowledge actual or constructive of making of the Award by the Collector. A useful reference can be made to the Judgment of the Apex Court reported Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, . Paragraph 6 of the said Judgment is relevant in the context of the issue in the present Civil Revision Application and the same is reproduced herein under:-

There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, "is an essential element which must be satisfied before the decision can be brought into force. 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 s. 18 in a literal or mechanical way.

(emphasis supplied)

Hence the Apex Court has held that the words "from the date of the Collector's award" used in the proviso to Section 18 should not be construed in a literal or mechanical way and must mean the date when the Award is communicated to the party or is known by him either actually or constructively.

In the instant case it is an undisputed position that no notices were served upon the said Sushila. It is required to be noted that the said Sushila died in the year 1987 and she was residing at Satara whereas the subject lands are in District Raigad. The said Sushila had 1/7th share in the lands which were original owned by her father. In my view, therefore, the case of the Applicants that they acquired knowledge of the Award passed on 11/7/2012 commends acceptance. The Trial Court has rejected the said case of the Applicants on the ground that other branches have accepted the compensation and have filed the applications for reference and their references are pending. It would have been another matter if the compensation was to have been accepted by the Applicants, but such is not the case here. Even in the Affidavit in Reply the stand taken is on the basis of delay and not on the basis that the Applicants are now estopped from making an application for reference. In my view, therefore, the impugned order dated 23/11/2012 is required to be quashed and set aside and is accordingly quashed and set aside and the Application dated 3/8/2012 is accordingly allowed. The Respondent No. 1 is directed to make a reference u/s 18 of the Land Acquisition Act in so far as the Applicants are concerned. Since Application has been returned, the Applicants are permitted to file the said returned application with the Respondent No. 1 who accordingly would make a reference. The Civil Revision Application is accordingly allowed to the aforesaid extent with the parties to bear their respective costs of the Civil Revision Application.