
(1994) 09 BOM CK 0018

In the Bombay High Court

Case No : Civil Revision Application No. 165 of 1994

Super Construction Company

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 28-09-1994

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 18, 18
Limitation Act, 1963 — Section 5

Citation : (1995) 2 BomCR 436 : (1995) 97 BOMLR 944

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Advocate : S.G. Hartalkar, M.S. Hartalkar and S.R. Borulkar, for the Appellant;
M.W. Padgoakar, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

B.P. Saraf, J.—This revision application is directed against the communication dated 2-7-1993 from Special Land Acquisition Officer (15), Pune to the petitioner, intimating him that his reference application u/s 18 of the Land Acquisition Act, 1894 was rejected as being barred by limitation.

2. Heard the learned Counsel for the petitioner as well as the Counsel for the respondents. The learned Counsel for the petitioner submits that the reference was not barred by limitation. It was filed within six weeks from the knowledge of the award. It is stated by the learned Counsel that the notice u/s 12(2) issued to the petitioner was not an effective notice as it did not contain the essential contents of the award including the reasons or the basis on which the quantum of compensation had been fixed. It was only on receipt of the copy of the award from the Collector on 3-5-1993 that the petitioner had an effective notice of the award. The period of limitation in such a case has to be calculated from such date and not from the date when the notice merely intimating about the making of the award was sent to the petitioner. Reliance is placed in this connection on the decision of the Division Bench of this Court in Mangilal Jawanmal and Others

Vs. The Special Land Acquisition Officer (I), Thana, .

3. I have considered the submissions of the learned Counsel. Perused the Division Bench decision of this Court referred to above, wherein it has been clearly held by this Court that the mere service of the notice u/s 12(2) would not amount to fixing the party with the knowledge of all the essential contents of the award. The phrase "within six weeks of the receipt of the notice" occurring in the first part of proviso (b) to section 18(2) must be interpreted to mean within six weeks from the receipt of effective notices, meaning thereby from the receipt of the knowledge of the essential contents of the award by the claimants including the reasons or the basis on which the quantum of compensation has been fixed as also the other particulars mentioned above.

4. Applying the ratio of the above decision, it is clear in the instant case that the petitioner had an effective notice of the award only on 3rd May, 1993. If limitation is calculated from that date, the reference application is apparently within time. In that view of the matter, I find that the order of the Special Land Acquisition Officer intimated to the petitioner by the impugned communication is erroneous and not tenable in law.

5. Moreover, even in a case where the Special Land Acquisition Officer comes to a prima facie finding that the reference application is barred by limitation, it is incumbent on his part, before dismissing the application on that ground, to give an opportunity of hearing to the claimant to show cause as to why it should not be rejected as barred by limitation. In that event, the claimant may get an opportunity to satisfy the officer concerned that on a proper interpretation of the provisions of the Act dealing with the period of limitation, the reference application is within time or in the alternative may file an application showing cause for the delay and praying for condonation thereof. It may be mentioned here that the controversy whether the provision of the Limitation Act including section 5 thereof applies to proceedings under the Land Acquisition Act or not is no more res integra in view of the latest Full Bench decision of this Court where it has been held that the said provisions are applicable to the proceedings under the Land Acquisition Act also.

6. In any view of the matter, considering the facts and circumstances of the present case it is evident that the reference application was not barred by limitation. Accordingly, I set aside the impugned communication dated 2nd July, 1993 of the Special Land Acquisition Officer and direct him to treat the reference application as within time and dispose of the same on merits.

7. In the result, this revision application is allowed. Under the facts and circumstances of the case, there shall be no order as to costs.

8. Issuance of certified copy of this order is expedited.