
(1973) 01 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 1773 of 1970

T. Malathi Amma	Vs	APPELLANT
The Land Acquisition Dy. Collector, Ernakulam and Another		RESPONDENT

Date of Decision : 09-01-1973

Acts Referred:

Kerala Land Acquisition Act, 1961 — Section 11, 12, 12(1), 12(1), 12(2)

Citation : (1973) KLJ 309

Hon'ble Judges : P. Govindan Nair, J;K. Sadasivan, J

Bench : Division Bench

Advocate : K. Chandrasekharan, T. Chandrasekhara Menon and N.N. Sukunapalan, for the Appellant;

Judgement

P. Govindan Nair, J.—The question is whether Ext. P2, an order passed by the District Collector, Ernakulam, the 2nd respondent, declining to make a reference to the court regarding the compensation awardable for the acquisition of 63.2 cents of land in Sy. No. 2622/1 of Ernakulam Village which belonged to the petitioner, is liable to be quashed. The learned Single Judge before whom the case came up for hearing has passed the following Order of Reference:

63.2 cents of land in Survey No-2622/1 of Ernakulam village belonging to the petitioner was acquired by an award dated 28-11-1963 passed by the first respondent, the Land Acquisition Deputy Collector, Ernakulam. This land stood registered in the name of the petitioner's mother; and the petitioner got it under a partition in her tarwad. Notices were issued to both the petitioner and her mother under S. 8 of the Cochin Land Acquisition Act which corresponded to S. 9 of the Kerala Land Acquisition Act, 1961. The petitioner made a claim demanding Rs. 2,000/- per cent as land value. After due enquiry, the first respondent passed the award fixing the land value of Rs. 1,000/- per cent. Admittedly it was not made in the presence of the petitioner or her representative. But a notice Ext. P1 dated 11/1964 was sent to the petitioner stating that award No. 544/63 in respect of the said land had been passed by the

first respondent on 28-11-1963 fixing a compensation of Rs. 80,154,42 and that the amount may be received by her from the first respondent's office on 24-1-1964 on production of the title deeds showing her right in the land. The petitioner received the amount under protest. But no further action was taken. The Government took possession of the land on 11-1-1968. On 12-11-1968, the petitioner filed an application for referring the case to the appropriate court for determination of her claim for enhanced compensation. The application was rejected by the second respondent. The District Collector, by his order Ext. P2 dated 22-12-1969 on the ground of limitation. This writ petition has been filed to quash Ext. P2 and to direct the respondents to refer the case to the appropriate court.

2. The only question for decision is whether the application has been made within the prescribed period. The relevant provision is Sub-section (2) of S. 20 of the Kerala Land Acquisition Act, 1961. That sub-section reads:

20 (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 personally 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 under Sub-section (2) of S. 12 or within six months from the date of the Collector's award, whichever period shall first expire.

Admittedly the petitioner or her representative was not present when the award was passed; and therefore clause (a) of the proviso is not applicable. S. 11 and 12 of the Act show that the award has to be made on a day to which the enquiry is fixed, and that notice of the award shall be given to all interested persons who are not present personally or through their representatives. Persons present personally or through representatives, when making the award, are not entitled to any notice. Obviously Ext. P1 was a notice issued under S. 12(1) of the Act. However it was not argued before me that in view of the said notice, the first part of clause (b) of the above proviso would apply to the case. The only contention advanced on behalf of the respondents was that the application preferred was beyond "six months from the date of the Collector's award", and that it was, therefore time-barred under the second part of clause (b). But on behalf of the petitioner, it was contended that the date of the Collector's award is not the date which the award bears, but it is the date of actual or constructive knowledge of the applicant of the essential contents of the award, and that Ext. P1 does not amount to such a notice. There is support for the proposition that the date of the award for the purpose of reckoning the period of limitation for a reference application is the date of actual or constructive knowledge of the applicant of the essential contents of the award in the decisions of the Supreme

Court in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, and in State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, , The further controversy is whether, on the facts of the case; the petitioner can be said to have constructive knowledge of the essential contents of the award when he received the notice Ext. P1. In support of his contention that Ext. P1 would not amount to such a notice, counsel for the petitioner relied on a Division Bench decision of this Court in Kochappi Achuthan Vs. M. Sulochana, . He pointed out that the notice sent in that case was precisely of the same nature of Ext. P1, and therefore, the rule of limitation mentioned in the second part of clause (b) of the proviso to S. 20(2) of the Act would not apply.

3. I am unable to accept the above contention. The above decision only dealt with the question whether such a notice would amount to conveyance of actual knowledge of the essential contents of the award. It has not dealt with the question whether it would give constructive knowledge. For determining that question, it is necessary to have the relevant facts, which the above decision does not give. I find it difficult to hold that in a case where notice under S. 9 of the Act was sent to a person and he made a claim for compensation for his interest in the land, such a notice would not be constructive knowledge of the essential contents of the award. The notice would state the particulars of the land proposed to be acquired, and the claimant should show in the statement to be filed by him the nature of his interest in the land and the amount and particulars of his claim to compensation. Such a notice was given to the petitioner and a claim was filed by her in this case. The award was passed after hearing her advocate in the enquiry. The notice Ext. P1 refers to the case number, the award number and the survey number of the land that is acquired, and informs the petitioner that in respect of that matter an award has been passed on the date mentioned therein awarding her the compensation shown in the said notice. It also states that it is a notice under S 12 (1) of the Act. In my view, even if Ext. P1 does not satisfy the requirements of S. 12 (1) of the Act, it certainly gives constructive knowledge of the essential contents of the award to the petitioner; and the application for reference made beyond six months from the date of receipt of the said notice would be time barred. If it were otherwise, there would be no limitation, unless and until a copy of the award or a notice containing all the essential particulars of the award is served on the person interested in the land, even though the award had been passed and the land acquired had been taken possession of by the Government several years ago.

4. I am afraid that the view that I take may not agree with some of the observations contained in the Division Bench decision of this Court. I, therefore, adjourn this case for being heard by a Division Bench.

2. It has been settled by two decisions of the Supreme Court that in order that the latter part of S. 18(2)(b) of the Land Acquisition Act, 1894 may be attracted a mere passing of the award is not sufficient but it is necessary to posit that the person entitled to apply had knowledge either "actual or constructive of the

essential contents of the award passed by the Collector. The decisions are in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, and in State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, .

3. S. 20(2)(b) of the Kerala Land Acquisition Act, 1961 (hereinafter called the Act) with which we are concerned and which is identically worded as S. 18(2)(b) of the Land Acquisition Act, 1894 is in these terms:

20. Reference to Court. (1)....

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made

(a)...

(b) in other cases, within six weeks of the receipt of the notice from the Collector under sub-section (2) of S. 12 or within six months from the date of the Collector's award, whichever period shall first expire.

4. The petitioner had filed a claim statement in answer to a notice under S. 9 of the Act and the award in this case was passed on 28-11-1963 , The petitioner was not represented before the Collector at the time when the award was made. A notice dated 1-1-1964 purporting to be under S. 12(2) of the Act, Ext. P1, was issued on the petitioner on 15-1-1964. This notice merely stated the total amount of compensation payable to one Narayani Amma and the petitioner Malathi Amma for the acquisition of the land in Sy. No. 2622/-1. The petitioner did not apply for a reference till 12-11-1968. The application of 12-11-1968 was rejected by Ext. P2 order by stating "You are informed that as the petition referred to above for Court reference under S. 20 being time barred could not be referred to Court." In Para. 3 of the petition, it is stated that the details of the land value fixed, the value of the building etc. and as to whether Narayani Amma or Malathi Amma was entitled to receive the money have not been stated in the notice. This is so, is evident from the notice itself and naturally there is no contradiction of these statements in the counter-affidavit.

5. An award, it is clear from S. 11 of the Act, must state the true area of the land, the compensation which in the opinion of the Collector shall 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.

6. Interpreting this provision, this Court held in the decision in Manavallabhan Karnamulpad Vs. State of Kerala and Another, that value of improvements form part of the compensation payable on an acquisition and the value of improvements must be separately stated as also the land value. To the same effect is the decision of a Division Bench of this Court in Kochappi Achuthan Vs. M. Sulochana, . Both these decisions dealt with notice? similar to Ext. P1 purporting to have been issued under S. 12(2) of the Act. In the earlier decision

this Court held that such a notice cannot be deemed to be a notice under S. 12(2) in the eye of the law. It was further held that the essential contents of an award were not known either actually or constructively to the person concerned. The Division Bench ruling is also to the effect that the essential contents of the award had not been made known. We think that these decisions are in accordance with the principles that have been stated in Para. 5 of the judgment of the Supreme Court in *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, .

7. A person seeking a reference must state as is specified in sub-s. (2) of S. 20 of the Act the grounds on which objection to the award is taken. The only way in which objection can be taken either to the land value or to the value of improvements is by stating that what has been awarded is insufficient or inadequate. For so stating he must know how much had been awarded for these items separately. Apart from these, it cannot be said that the area acquired is an essential part of the award. This has been enumerated as one of the things to be stated in the award, by S. 11 of the Act. So also in cases of apportionment if there are more claimants than one, the amount due to each of those claimants must be specified. In all these regards, Ext. P1 is wanting. The area has not been stated. The land value has not been stated. The value of improvements has not been stated nor has it been stated how much is payable to the petitioner, Malathi Amma and how much to the other person mentioned in Ext. P1 notice, Narayani Amma. In these circumstances it is impossible to hold that the petitioner had actual knowledge of the essential contents of the award in this case by virtue of Ext. P1 notice. No circumstances have been placed before us by which we can hold that she had constructive knowledge of the contents of the award. We do not think that a notice under S. 9 of the Act is sufficient to import constructive knowledge of the contents of the award. An award need not necessarily contain the same details as mentioned in the notice. A notice under S. 9 of the Act would never contain the value at which the land is proposed to be acquired nor the value of improvements.

8. It was not urged before us that the notice Ext. P1 is sufficient to attract the first part of S. 20(2)(b) nor was it so urged before the learned judge who made the order of reference. We think that the notice does not contain the essential requirements because it does not state the essential details of the contents of the award.

9. The application made by the petitioner cannot be said to be beyond the time prescribed by S. 20 of the Act. The rejection of that application by Ext. P2 order cannot be sustained. We set aside Ext. P2 order and direct that a reference be made to the court pursuant to the application made by the petitioner. This petition is disposed of on the above terms. There will be no direction regarding costs.