
(2003) 12 AP CK 0047
In the Andhra Pradesh High Court
Case No : Writ Petition No. 7370 of 2000

Teegala Mallesham

APPELLANT

Vs

Mandal Revenue Officer, Narketpalli Mandal

RESPONDENT

Date of Decision : 02-12-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 18(2)

Citation : (2004) 1 ALD 263 : (2004) 1 APLJ 346

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V. Mallik, for the Appellant; Government Pleader for Land Acquisition, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The land of the petitioner in Sy.No.772 of China Narayanpur Village, Hamlet of Cheruvugattu, Narketpally Mandal, Naglonda District, admeasuring Ac.5-60 cents was acquired by the Government, for the purpose of providing house sites to the poor. Notifications under Sections 4(1) and (2) of the Land Acquisition Act (for short "the Act") were published on 23-1-1992. An Award was passed on 23-3-1992, fixing the market value of the land at Rs. 15,000/- per acre and extending the statutory benefits. The petitioner was paid the amount of compensation on 16-4-1992.

2. Not being satisfied with the amount of compensation, the petitioner sent an application, through registered post acknowledgment due, to the respondent, seeking reference u/s 18 of the Act to the Civil Court. The application was received on 18-5-1992. He did not comply with the request of the petitioner. Hence this writ petition.

3. In the counter-affidavit filed by the respondent, it is stated that the petitioner had given a statement on 18-3-1992 during the course of the award enquiry that he is agreeable to be paid compensation at the rate of Rs. 15,000/- per acre

together with solatium and that he does not challenge the resultant award in any Court of law. The 2nd contention put forward by the respondent is that the application is beyond the time stipulated u/s 18 of the Act.

4. Heard the learned Counsel for the petitioner and the learned Government Pleader for Land Acquisition.

5. It is not in dispute that the land of the petitioner was acquired by the Government for the purpose of providing house sites. Award was passed on 23-3-1992. Not being satisfied with the award, he made an application to the respondent to refer the matter u/s 18 of the Act.

6. The 1st objection for such a reference is that the petitioner had consented to receive the amount and has undertaken not to challenge the award. Section 11 of the Act prescribes the procedure for passing the award. The various aspects to be taken into account while passing the award are indicated therein. Sub-section (2) thereof empowers the Collector to pass an award without making further enquiry, if he is satisfied that all the persons interested in the land have agreed in writing on matters to be included in the award in the Form prescribed in the Rules made by the appropriate Government in this regard. The right of an individual to seek reference u/s 18 or 30 of the Act can be taken away, if only the procedure indicated in Section 11(2) is complied with. Section 11(2) reads as under:

"Notwithstanding anything contained in subsection (1) if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may without making further enquiry, make an award according to the terms of such agreement."

From a reading of the same, it is evident that the Award contemplated under this provision is to be passed in the form prescribed by the Rules made by the appropriate Government.

7. Government of Andhra Pradesh framed Rules called as the A.P. Land Acquisition (Negotiations Committee) Rules, 1992 (for short "the Rules") and issued the same through G.O. Ms. No. 1050 Revenue (LA.) dated 17-10-1992. These Rules can be said to be the one referred to in Section 11(2) of the Act. A detailed procedure is prescribed in the Rules. Negotiations Committee is to be constituted comprising several Members. The proposal is to emanate in the form from a requisition by the concerned authority in the prescribed form. After holding negotiations and causing inspection, an agreement in Form No. 3 is required to be entered into. Thereafter, an affidavit is required to be sworn to, by the interested persons in Form No. 4.

8. None of these steps are complied with, in the present case. The respondent relied upon a statement recorded from the petitioner on 18-3-1992 during the

course of award enquiry. Even if the said statement is true, as long as it does not conform to the Rules, the right of the petitioner to seek reference u/s 18 cannot be taken away. Hence, the 1st objection raised on behalf of the respondent cannot be sustained.

9. The 2nd objection is as to the delay in submission of the application. The time within which an application seeking reference u/s 18 is to be made, is specified in Sub-section (2) thereof. It reads as under:

"18. 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) 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 others 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 respondent relies upon Clause (a) of Sub-section (2). He would have been justified in doing so, if only the petitioner was present when the award was made. It is not in dispute that the petitioner was not present when the Award was made on 23-3-1992. The fact that the petitioner was paid the amount of compensation only on 16-4-1992 fortifies this. Mere participation in the award enquiry is not sufficient to attract the period of limitation specified in Clause (a) of sub-section (2). What is material is presence of the persons when the award is made. Hence Clause (b) gets attracted.

10. Under Clause (b) two circumstances are contemplated, if notice u/s 12(2) is served, the application can be made within 6 weeks and in other cases, within 6 months from the date of the award. The petitioner disputes the factum of receipt of any notice u/s 12(2). The record placed before this Court shows that the petitioner signed on a notice u/s 12(2), but it does not contain the date of receipt.

11. Viewed in the context of payment of compensation on 16-4-1992, it cannot be said that there is valid service of notice u/s 12(2) before the Award was made. In that view of the matter, the petitioner is entitled to be extended the benefit of 2nd part of Clause (b) of subsection (2) of Section 18 of the Act. In such an event, the application can be said to be made within the time.

12. The writ petition is, therefore, allowed and the respondent is directed to refer the matter in relation to the award dated 23-3-1992 insofar as it relates to the petitioner to a Civil Court within 2 months from the date of receipt of this order.

No costs.