

(2015) 09 KAR CK 0252
In the Karnataka High Court
Case No : C.R.P. No. 100041/2014 (LR)

The Special Land Acquisition Officer and The Assistant
Commissioner

APPELLANT

Vs

Appasaheb Babu Bogar and Others

RESPONDENT

Date of Decision : 28-09-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 12, 12(2), 18, 18(2)(b), 45
Post Office Act, 1898 — Section 28, 29

Citation : (2015) 09 KAR CK 0252

Hon'ble Judges : K.N. Phaneendra, J.

Bench : Single Bench

Advocate : K.S. Patil, H.C.G.P., for the Appellant; Prashant S. Kadadevar,
Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Phaneendra, J.—The State has come up with this Revision Petition calling in question the order passed by the I Addl. Senior Civil Judge, Belgaum in Misc. Application No. 36/2011.

2. I have heard the arguments of the learned High Court Government Pleader and also the counsel for the respondents and carefully perused the order of the trial Court and also the records.

3. The undisputed factual aspects are that the lands of the respondents in Sy. No. 97/1 measuring 16 guntas and Sy. No. 97/5 measuring 2.30 acres which were standing in the name of the father of the respondents by name Babu Gundappa Bogar were acquired by the State Housing Board for residential purposes. The award has been passed by the Land Acquisition Officer on 01.12.2009 fixing compensation at Rs. 11,38,496/-. After passing of the award on 28.04.2010 according to the State, notices were served through Village Accountant wherein the Village Accountant has gone to the residential address of the said Gundappa Bogar and as the said person has refused to receive the

same, the Village Accountant has prepared a detailed panchanama and affixed the notice to the shed belonging to the said Babu Gundappa Bogar. The said Babu Gundappa Bogar has received the compensation amount under protest.

4. The said Babu Gundappa Bogar has received compensation amount under protest. The said Babu Gundappa Bogar after receiving the amount died on 15.2.2011. The respondents 1 & 2 are no other than the children of deceased Babu Gundappa Bogar. It is also not in dispute that after the death of Babu Gundappa Bogar, the respondents claiming that notice and award have not been properly served on their father, they applied for the certified copy of the order on 26.5.2011 and received the copies on 30.06.2011 and made an application before the Land Acquisition Officer on 30.6.2011 seeking indulgence of the Land Acquisition Officer to make a reference to the Reference Court u/s. 18 of the Land Acquisition Act. The said application came to be rejected by the Land Acquisition Officer vide order dated 5.9.2011. Calling in question the said order passed by the Special Land Acquisition Officer, the respondents have preferred an application before the I Addl. Senior Civil Judge, Belgaum in Misc. Application No. 36/2011. The trial Court after contest by the State, allowed the said petition on 27.08.2013 referring the matter back to the Land Acquisition Officer with a direction to make reference in respect of the petition schedule properties within two months from the date of the order passed by the trial Court.

5. The learned High Court Government Pleader strenuously argued for the petitioner - State contending that the father of respondents have received the money. It is deemed that the award passed by the Land Acquisition Officer was well within his knowledge. In spite of that, though he has taken the money under protest, he has not cared to file any application during his lifetime seeking reference u/s. 18 of the Land Acquisition Act. Therefore, whatever the rights vested with the deceased had already lost even during his life time itself. Therefore, the legal representatives have no right to file any application before the Land Acquisition Officer after such a long delay. He further contends before this Court that the respondents' claim the right under a Will alleged to have been executed by her father, but the said Will has not been probated. Therefore, unless the Will is probated, they cannot go before the Land Acquisition Officer or before the court for any Reference. Lastly, the learned High Court Government Pleader contended that though some opportunity was granted by the trial Court, the State has not led any evidence in order to establish the service of notice as well as award on the father of the respondents and to show the constructive service of award. Therefore, it is a fit case where the matter has to be remitted to the trial Court for disposal after providing opportunity to the State to prove the service of notice and the award as per Section 12 of the Land Acquisition Act.

6. Per contra, the learned Counsel for the respondents strenuously contends that, sufficient opportunity has been given to the State, they have not utilised the same and none have been examined to prove the panchnama alleged to have been given by the Village Accountant and no address proof has been furnished

by the State pertaining to the shed on which notice alleged to have been affixed. Further, he has contended that the State has not shown to the court that notice and award has been served on the deceased or any other person on his behalf and there cannot be any constructive notice of the award at all because affixture of notice is not amounting to service of award. Therefore, relying upon the decision between Premji Nathu Vs. State of Gujarat and Another, , he submit that, the petition is devoid of merits and the same is liable to be dismissed.

7. The factual aspects and also the dates as mentioned above are not in dispute between the parties. The legal aspect is also accepted that Section 12 of the Land Acquisition Act mandates that the Collector after passing of the award has to serve notice and the award against whom the award has been passed. Section 12(2) of the Land Acquisition Act reads as follows:

"12(2). The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

8. The learned Counsel has drawn my attention to Section 45 of the Land Acquisition Act which describes "Service of Notices". The proviso attached to Section 45(3) of the Land Acquisition Act, clearly establishes that-

"If the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and [registered under Sections 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898)] and service of it may be proved by the production of the addressee's receipt."

9. Here, in this case, there is no mention in the panchanama drawn by the Village Accountant marked before this Court as per Ex. P4, which is the endorsement given by the Land Acquisition Officer to the respondents herein stating that the notice has been served by way of affixing the same to the shed belonging to the father of the respondents. But there is no mention in the said order that whether any steps have been taken for issuance of notice to the last known address and that address is the correct address of the father of the respondents sent under registered post or even by way of certificate of posting that would have been the best document to show before the court that notice and award have been served. Even the said order does not disclose whether there was any attempt made by the competent authority to serve the notice of the award on any of the relatives of the father of the respondent. Therefore, at any stretch of imagination, it can be said that the notice and award was either effectively served personally on the person against whom the award was passed or no materials have been placed that the notice and award have been constructively served on the father of the respondents.

10. In this regard, in the decision cited above between Premji Nathu Vs. State of Gujarat and Another, , the Hon"ble Apex Court has observed with reference to the Limitation for making reference u/s. 18(2)(b) of the Act, which reads thus-

"Appellant served with notice of passing of award - Notice however not accompanied with copy of award - Appellant as such, though served with notice, could not have effectively made reference - application for reference made after obtaining copy of award beyond 6 weeks of receipt of notice - cannot be said to be barred by limitation. Benefit of judgment also extended to other similar landlords who have not filed appeals."

11. The above said ruling makes it amply clear, even if a notice isolately bereft of award was served on the person against whom the award has been passed is not sufficient service of award itself. It only amounts to service of notice. Section 12(2) of the Land Acquisition Act contemplates service of award on the person against whom the award has been passed.

12. In the above cited decision, the Hon''ble Apex Court has also relied upon another good old decision of the Hon''ble Apex Court in the case of State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, , wherein the Hon''ble Apex Court has observed that-

"It seems clear to us that the ratio of the decision in Harish Chandra case is that the party affected by the award must know it, actually or constructively, and the period of six months will run from the date of that knowledge. Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under Section 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not."

13. In view of the above said decision, it goes without saying that knowledge of the fact that an award has been made to the party against whom the award has been passed is not sufficient. Even for the sake of considering the question of remanding the matter to the trial Court, the learned High Court Government Pleader has drawn my attention to the mahazar sought to be proved before the trial Court by the State which is at page No. 49 of the trial Court records, wherein the panchanama only refers to the affixture of the notice and there is no mention either in the panchanama or any document that the contents of the award either constructively or personally made known to the person against whom the award has been passed. Therefore, it can never be said that there is any actual service of award or constructive service of award or the knowledge of the contents of the award can be imputable to the person against whom the award has been passed. Therefore, the trial Court has rightly come to the conclusion that the notice has neither been accompanied with the award nor it has been served on the person against whom the award has been passed.

14. When such being the case, even if the matter is remanded to the trial Court and even if the document panchanama is marked, it would serve no purpose. Therefore, I am reluctant to agree with the arguments of the learned High Court

Government Pleader.

15. Mere taking of the award amount by the father of the respondents, in my opinion does not amount to service of notice, it can only be inferred that the person might have the knowledge of passing of the award while taking the money under protest, but it cannot be said that he was having the knowledge of the contents of the award. If at all the award has been served upon the parties, contents made known to them, they had chances of getting the matter referred to the Reference Court or be satisfied with the award of the Land Acquisition Officer. Therefore, unless and until it is shown to the court that the person against whom the award has been passed, had sufficient personal knowledge about the contents of the award, it cannot be said that he can exercise the right of Reference even without looking into the contents of the award. Therefore, in my opinion, the said argument of the learned Counsel that taking of money amounts to constructive service of award on the father of the respondents and the same arguments are not tenable.

16. Last, but not least, the learned High Court Government Pleader has argued that Will alleged to have been executed in favour of the respondents by their father has not been probated. That becomes very consequential so far as this case is concerned, because there is no dispute by the State that the respondents are not the legal representatives of the deceased even in the absence of the Will, they get all rights as they have stepped into the shoes of the original owner. Therefore, such an order in my opinion is not tenable. Looking from any angle, I do not find any reason to interfere with the order passed by the trial Court. Hence, the Revision Petition filed by the State deserved to be dismissed.

Accordingly, the Civil Revision Petition is dismissed.