

(2005) 04 RAJ CK 0057

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 362 of 2005

Trilochan Singh and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 05-04-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 18, 18(1), 18(2), 29(2)
Limitation Act, 1963 — Section 5

Citation : (2005) 2 RLW 1321 : (2005) 3 WLC 439

Hon'ble Judges : N.P. Gupta, J

Bench : Single Bench

Advocate : Vijay Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

N.P. Gupta, J.—Heard learned counsel for the appellant.

2. The learned Trial Court has dismissed the application for reference on various grounds, including the fact, that the appellant has failed to prove that he is entitled to compensation for the one Kila of land, treating it to be irrigated land, and on the other ground that the application for reference is barred by time.

3. Since the question of limitation cuts at the root of the matter, therefore, I am not inclined to go into the other aspects of the matter. The relevant facts for deciding the question of limitation are, that the appellant's 15 Bighas of land was acquired, out of which, compensation was awarded for 14 Bighas of land, treating it to be irrigated, while compensation for 1 Bigha of land was awarded, treating it to be un-irrigated land. It is not in dispute, that the award was passed on 28.1.1992. It is also not in dispute, that the application for reference was moved on 14.8.92. The case of the appellant is, that when the award was passed, he was not present, and he did not receive any notice of passing of the award, and the application for reference was moved on coming to know of the award. According to the appellants, they came to know of the award on 2.8.92.

Thereafter, they obtained the copy, and filed the application for reference.

4. The learned Trial Court has found, that the maximum period of time, where the application for making reference could be filed, is six months, while the application in the present case has been filed clearly after six months, therefore, it is time barred.

5. It is Contended by learned counsel for the appellant, that an application u/s 5 of the Limitation Act was filed along with the application for making reference, and therein, it was clearly contended, that the appellant did not know about the award, and the application for reference was made on coming to know of the award, which constituted sufficient cause, and therefore, application for reference could not be dismissed.

6. I have considered the submission. For ready reference, provisions of Section 18 of the Land Acquisition Act may be quoted, which read as under:

"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 persons 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 case, 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."

7. A bare look at the provisions of Section 18(2), specially its proviso shows, that it contemplates two separate periods of limitation, and gives two separate starting points of limitation, inasmuch as, one starting point is from the date of making of the award, the other is from the date of receipt of notice from the Collector u/s 12. However, for the first category, the limitation prescribed is six weeks from the date of award, while in the second category, the limitation prescribed is six weeks from the receipt of notice from the Collector, but then, yet outer provision has been made, by providing, "or within six months from the date of Collector's award, whichever period shall first expire". Thus, by enacting this provision, notwithstanding making the provision, providing limitation of six weeks, an outer limit of time has been prescribed for making application for reference, inasmuch as, even in cases, where the person concerned does not

receive any notice from the Collector, u/s 12(2), and six months expire, or six months expire before expiry of six weeks from the date of receipt of the notice, still the period, which first expires, i.e., six weeks from receipt of notice from the Collector, or six months from the date of Collector's award, is the period available for making application for reference. It is a different story that in the present case notice u/s 9 was given to the khatedars, their objections were heard who submitted them in cyclostyle forms then collectively documentary evidence was received and then the award was made. In such circumstances, maximum period of limitation would be six months. In my this view I am fortified with the judgment of Hon''ble Supreme Court Poshetty and Ors. v. State of A.P. (1996(8) SC 250) wherein Hon''ble the Supreme Court has held as under:-

"..... where he was not present within six weeks from the date of receipt of notice under Sub-section (2) of Section 12 or within six months from the date of Collector's award whichever period shall first expire. In other words the proviso to Sub-section (2) of Section 18 prescribes the limitation within which the application for reference under Sub-section (1) of Section 18 is required to be made and failure thereof puts an end of the rights of the claimants to seek a reference u/s 18. This Court has clearly held that communication of the award is not a pre condition...."

8. Taking up the contention about the appellant having filed application u/s 5 of the Limitation Act, in my view, in view of the judgment of Hon''ble the Supreme Court in Officer on Special Duty v. Shah Mani Lal Chandulal (1996(2) SC 278), the provisions of Section 5 of the Limitation Act cannot be attracted to this application for making reference u/s 18. A look at this judgment shows that therein in para-18 and 19, it was held as under:-

"18. Though hard it may be, in view of the specific limitation provided under proviso to Section 18(2) of the Act, we are of the considered view that Sub-section (2) of Section 29 cannot be applied to the proviso to Sub-section (2) of Section 18. The Collector/LAO, therefore, is not a court when he acts as a statutory authority u/s 18(1). Therefore, Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to Sub-section (2) of Section 18. The High Court, therefore, was not right in its finding that the Collector is a court u/s 5 of the Limitation Act.

19. Accordingly, we hold that the applications are barred by limitation and Collector has no power to extend time for making an application u/s 18(1) for reference to the court."

9. Thus, I do not find any error in the order of the learned Trial Court dismissing the reference on the ground of limitation.

10. The appeal is, therefore, dismissed summarily.