

(1999) 07 KL CK 0024
In the High Court Of Kerala
Case No : O.P. No. 13729/99

Vasu Salian

APPELLANT

Vs

The Special Tahsildar

RESPONDENT

Date of Decision : 05-07-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 18, 18(2), 28A, 28A(1)

Citation : (1999) 07 KL CK 0024

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : K.G. Gowri Shankar Rai, for the Appellant; N. Reghuraj, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—Petitioner's land was acquired and an Award was passed on 16th July 1998. Notice of Award as contemplated u/s 12(2) of the Land Acquisition Act (hereinafter referred to as "the Act") was not served on the Petitioner. When Petitioner came to know about the Award, Ext. P-1 application dated 10th February 1999 was filed u/s 18 for referring the matter for enhancement of compensation. By Ext. P-2 it was rejected on the ground that the application was filed after six months of the date of Award. But it is also stated that Petitioner was not served with any notice of Award and he was absent and not represented in the Award enquiry as whereabouts of the Petitioner was reported to be not known. Since the address was not known the amount was kept as "Revenue Deposit" and when Petitioner came to know about the same, he requested for payment of the amount on 3rd February 1999 and received the same on the same day under protest. On 10th February 1999 Petitioner filed Ext. P-1 petition within seven days of the knowledge of the Award and receipt of amount under protest.

2. Learned Government Pleader submits that u/s 18, if there is notice of Award, application should have been filed within six weeks of notice of Award and if no

notice was served it should be filed within six months from the date of Award, Therefore, since Ext. P-1 petition was not filed within six months from the date of Award, the application is time barred and Ext. P-2 order is correct. Section 18(2) reads as follows:

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 other 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.

Learned Government pleader also pointed out the decision of the Supreme Court in Tota Ram v. State of U.P. JT 1997 (6) S.C. 231 that for the purpose of Section 28A, limitation of three months starting from the date of Award of the reference court or the date of knowledge is irrelevant.

3. u/s 28A, a second opportunity is given to persons interested in the land acquisition, but failed to file an application u/s 18, to request for redetermination of compensation on the basis of Award, of reference court in respect of other land covered by the same notification. Wordings in Section 18(2)(b) and proviso to Section 28A(1) are different. They reads as follows:

18(2)(b) in other 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.

28A. Re determination of the amount of compensation on the basis of the Award of the Court;

(1)

Provided that in computing the period of three months within which an application to the Collector shall be made under this Sub-section, the day on which the Award was pronounced and the time requisite for obtaining a copy of the Award shall be excluded.

Here only time for obtaining certified copy alone is specifically excluded. But unlike an application u/s 28A where it was held that date of knowledge is immaterial, u/s 18 date of knowledge is material. If notice of Award is not served and one is absent in the Award enquiry, he can apply for reference u/s 18 within six months from the date of knowledge of the Award and Section 18(2)(b) is differently worded. In State of Punjab Vs. Mst. Qaisar Jehan Begum and Another,

and in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, the Apex Court clearly held that limitation of six months under second part of clause (b) of Section 18(2) runs from knowledge, of the contents of Award. Here, within a week of the knowledge of the Award and receipt of the Award amount under protest Petitioner filed Ext. P-1 petition. Therefore, I set aside Ext. P-2 and direct the Land Acquisition Officer to refer the matter to the Civil Court u/s 18 of the Act.

The Original Petition is allowed.