

(1967) 10 AP CK 0010
In the Andhra Pradesh High Court
Case No : Writ Petition No. 2163 of 1966

Yousuf Begam

APPELLANT

Vs

The State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 16-10-1967

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 9(3)

Citation : AIR 1969 AP 10

Hon'ble Judges : Basi Reddy, J

Bench : Single Bench

Advocate : Hussein Ali Khan, for the Appellant; Govt. Pleader, Jahangir Ali and Ali Khan, for the Respondent

Judgement

1. This is an application under Article 226 of the Constitution, filed by Yousuf Begum, seeking an appropriate writ, order or direction for quashing the award made on 18-3-1966 by the Special Deputy Collector, Land Acquisition, Hyderabad District (the 2nd respondent to this writ petition) in Case No. O/1136/LA/66, with a further prayer that the petitioner may be made a party to the proceedings before that authority and a direction be issued to that authority to pass a fresh award, and further to pass any order or direction as this Court may deem fit.

2. The main grievance of the petitioner is that although she is "a person interested in the land" which was compulsorily acquired by the Government under the provisions of the Land Acquisition Act, 1894 for construction of offices and staff quarters for their new Railway Zone, and as such, was entitled to a notice of the land acquisition proceedings under sub-section (2) of Sec. 9 of the Land Acquisition Act, yet the 2nd respondent proceeded with the enquiry without giving any notice to her and made the aforesaid award on 18-3-1966. Consequently, her contention is that the award is a nullity and should be directed to pass a fresh award, after giving due notice to the petitioner along with others who may be interested in the land.

3. The brief history of this case is as follows: The lands in question were the

inam lands granted in favour of the late Syed Shah Ali Raza Husseini, who was the Sajjada of Dargah Mir Mohammed Saheb, and the inam lands measuring 248 bighas were granted as Maded Maash in favour of the Sajjada through the Muntaquab dated 21st Shahrewar, 1324 Fasli. The petitioner claims to be the grand-daughter of late Syed Rahmatullah Hussaini, the brother of late Syed Shah Ali Raza Hussain. Her case is that after the death of Sued Shah Ali Raza Hussain and Rahmatullah Hussaini, the succession enquiry pertaining to the said inam lands was initiated and the lands were taken under the supervision and management of the Collector, District Atrah Balda, Sarf-e-Khas pending disposal of the enquiry. Later on the lands were alleged to have been transferred by mistake to the Muslim Wakf Board, Andhra Pradesh, for management. After the completion of the succession enquiry, the succession to the inam lands at Malkajgiri village was granted in the names of Faizunnisa Begum, the daughter of Shah Ali Raza Hussain and the petitioners as successor of late Rahmuttullah Husaini, and his daughter Tajunnisa Begum was held entitled only to a share in accordance with the personal law. Faizunnisa Begum died issueless on 31-7-1959 and the petitioner filed a claim for succession which was allowed on 26-6-1961 and she was held to be the inamdar as the heir of the deceased Faizunnisa Begum. However, on appeal by her material aunt Fajunnisa Begum, the case was remanded for re-trial and the lands remained under the supervision of the Muslim Wakf Board. After remand, the question was decided in favour of Tajunnisa Begum. The petitioner filed a writ petition in the High Court (Writ Petition No. 211 of 1966) and the writ petition was disposed of on the basis of a compromise entered into between the petitioner and Tajunnisa Begum. By that order of this Court dated 12-8-1966, the petitioner herein was held to be the main inamdar in respect of the inam lands. in question and Tajunnisa Begum was held to be a shareholder. Thus, so far as the rights between the petitioner and Tajunnisa Begum were concerned, the order of the High Court decided the rights inter se.

4. Thereafter, according to the petitioner, she came to know that some time in the month of October, 1966, an area of 69 acres and 16 guntas of the said inam lands forming S. Nos. 392/1, 393/1, 396 to 400 situated in Malkajgiri village, Hyderabad East Taluk, had been passed by the 2nd respondent fixing the amount of compensation at Rs. 1,10,176-55 P. It would appear that before the 2nd respondent, Syed Nadeemuddin (3rd respondent herein) and the Wakf Board, Andhra Pradesh (4th respondent herein) had put in their claims. While Syed Nadeemuddin claimed compensation in respect of 12 acres and 20 guntas as a permanent lessee under the original inamdar, the Wakf Board claimed compensation in respect of the lands including these 12 acres and 20 guntas. The Land Acquisition Officer made two references to the City Civil Court, Hyderabad at Secunderabad - O. P. No. 2 of 1967, which is a reference under Sections 30 and 31(2) of the Land Acquisition Act for apportionment, and O. P. No. 6 of 1967, which is a reference u/s 18 of the Land Acquisition Act, and the amount of compensation was sent to the Civil Court.

5. The petitioner's case is that she came to know about this award only in October and so she made an application to the 2nd Respondent on 28-10-1966, enclosing with the application a copy of the order passed by the High Court in Writ Petition No. 211 of 1966 and requesting the 2nd respondent to pay the compensation amount to her and to her shareholder Tajunnisa Begum, Subsequently an application with full details was filed before the 2nd respondent on 23-11-1966 with the same prayer. The 2nd respondent, however, sent a memo dated 30-11-1966 to the petitioner intimating to her that the request could not be acceded to as she was not a party to the land acquisition proceedings. She was informed that the compensation amount could not be paid to her: not could a reference be made to the Civil Court u/s 18 at her instance regarding the quantum of compensation. She was also informed that a reference had already been made to the Civil Court and the matter was pending there in respect of the claims put forward by respondents 3 and 4 herein.

6. Thereafter, the petitioner filed an application before the Chief Judge, City Civil Court, Hyderabad at Secunderabad, under Order 1, Rule 10 read with Section 151, Civil P.C. and u/s 53 of the Land Acquisition Act praying that she may be impleaded as a party in O. P. Nos. 2 and 9 of 1967 which were pending before that Court. That application was dismissed by the Chief Judge, City Civil Court, by an order dated 12-4-1967, on the ground that a person who had not appeared before the Land Acquisition Officer and whose name was not mentioned in the reference made to the Civil Court, could not be added as a party to the proceeding before the Court nor could she urge her claim to compensation in that reference. Before filing the above application, the petitioner had filed the present writ petition with the prayers mentioned above.

7. There is considerable force in the contention of the petitioner that by virtue of the order passed by the High Court in Writ Petition No. 221 of 1966, the petitioner is indubitably a person interested in the lands in respect of which compensation had been awarded by the 2nd Respondent. The petitioner's case is that had the Land Acquisition Officer made reasonable enquiries, he could have found out that the petitioner and Tajunnisa Begum were interested in the lands and as such were entitled to notice u/s 9(2) of the Act. However that be, as things now stand, the petitioner is certainly a person entitled to be heard in the matter of appointment of the compensation when the matter reaches a civil Court. But it is well settled that the absence of notice under any of the provisions of the Land Acquisition Act, does not render an award made by the Land Acquisition Officer a nullity. It is equally well settled that unless and until a reference is made to the Civil Court by the Land Acquisition Officer, the Civil Court has no jurisdiction to entertain the claims of parties who have not sought a reference and whose claims are not the subject-matter of a reference. In such cases while the award itself is not void, it is open to the person interested in the land to move the Collector to make a reference to the Court under Sec. 18 of the Act further where no notice u/s 9(3) of the Act was served on such a person, the period of limitation prescribed by Section 18(2)(b) does not stand in the way. IN

the present case, however, no question of limitation can arise because it is the petitioner's case that she came to know about the award only in October 1966 and she filed an application before the Collector shortly thereafter.

8. In this connection a decision of a Divisional Bench of the Patna High Court consisting of Ramaswami C. J., and Untwalia J. in *Shivdev Singh Vs. The State of Bihar and Others*, is apposite. Dealing with the contentions similar to the one raised in this Writ Petition, the learned Judges observed as follows:

"Coming to the third and the last point urged on behalf of the petitioner, it is to be noticed at the outset that it is not disputed that the requirements of the provisions of Sections 4, 5A and 6 of the Land Acquisition Act were complied with. The argument put forward on behalf of the respondents is that even assuming that the petitioner was a person who was entitled to a special notice u/s 9(3) of the Land Acquisition Act, the proceeding for the acquisition of the land and the award cannot be held to be illegal and ultra vires for the mere failure of the Collector to serve such a notice on the petitioner The order of acquisition or the act of taking possession cannot be challenged in a reference to Court either u/s 18 or Section 30 of the Land Acquisition Act. This also finds support from the rules as to the amount of compensation provided in Section 25 of the Act. In my opinion, the petitioner, even if not served with a notice u/s 9 of the Land Acquisition Act, could claim such compensation if he was entitled to any, by asking the Collector to make a reference to the Court u/s 18 of the Act. He could do so within 6 months from the date of the Collector's award as provided for under Sec. 18(2)(b).

I may also observe that on proof of the fact that he was not served with a formal notice u/s 9(3) of the Act or had no notice or knowledge of any proceeding under the Land Acquisition Act, he would not be bound by the period of limitation provided for in Clause (b) of sub-section (2) of Section 18."

9. That being the true legal position, in the present case the award passed by the 2nd respondent on 18-3-1966 cannot be quashed by this Court by a certiorari. The award stands, although the petitioner is entitled to seek a reference to the civil Court on an application to be made by her to the 2nd respondent u/s 18 of the Land Acquisition Act in that regard.

10. As already noticed, the two references made by the 2nd respondent are now pending before the Chief Judge, City Civil Court, Hyderabad at Secunderabad as O. P. Nos. 2 and 6 of 1967.

11. I would, therefore, allow this writ petition only to this extent, namely, that a direction will issue to the 2nd respondent (Special Deputy Collector, Land Acquisition, Hyderabad District) to entertain the application to be filed by the petitioner u/s 18 of the Act, if it is made within two months from this date and make a reference thereon to the Chief Judge, City Civil Court, Hyderabad at Secunderabad, within two weeks thereafter. IN the case of such an application, no question of limitation arises in this case, firstly because the statement of he

petitioner that she came to know of the passing of the award only in know of the passing of the award only in October 1966 remains uncontradicted, and secondly, as pointed out by the Division Bench of the Patna High Court, no question of limitation arises when a notice u/s 9(3) of the Act was not in fact given to a party who is entitled to it. Moreover, the instant case is eminently a just and proper one for the Collector to entertain the application and make a reference u/s 18 of the Land Acquisition Act so far as the petitioner is concerned.

12. A direction will issue to the Chief Judge, City Civil Court, Hyderabad at Secunderabad, not to proceed with the enquiry in O. P. Nos. 2 and 6 of 1967 for three months from this date, so that the petitioner may have responsible time to approach the 2nd respondent and the latter may make a reference to the Court u/s 18 of the Land Acquisition Act. If such a reference is made, all the three matters will be heard together by the learned Judge. The writ petition is allowed to the extent indicated above but, in the circumstances there will be no order as to costs.

13. Petition partly allowed.