

(2013) 05 GUJ CK 0027

In the Gujarat High Court

Case No : Special Civil Application No. 18187 of 2011

Zala Arjunsinh Bhojaji and 3

APPELLANT

Vs

Special Land Acquisition Officer

RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 17, 18, 19

Citation : (2013) 05 GUJ CK 0027

Hon'ble Judges : Jayant M. Patel, J;G.R.Udhwani, J

Bench : Division Bench

**Advocate : AV Prajapati, for the Petitioners No. 1-2.3, 3-4, for the Appellant;
Dhawan Jayswal, AGP for the Respondent(s) No. 1, for the Respondent**

Final Decision : Allowed

Judgement

G.R. Udhwani, J.—By this petition, the petitioners have called in question the order dated 13.05.2011 passed by the learned Principle District Judge, Mehsana in Misc. Civil Application No. 93 of 2010 rejecting the petitioners' application calling for the reference made by the petitioners, which was registered on 15.07.1998 on the file of the Land Acquisition Officer. For about 10 years of its registration, it was not forwarded to the Competent Court for decision u/s 18 of the Land Acquisition Act, 1894 ("the Act" for short). On pursuing the matter by the petitioners, the Special Land Acquisition Officer by its order dated 21.08.2008 referred the said cases to the Competent Court. However, the Deputy Registrar of the Civil Branch, District Court, Mehsana by letter dated 06.04.2009, sent back the said cases to the respondent with an observation that the reference having been made after 10 or 11 years was not within the period of limitation. The petitioners, therefore, moved above Misc. Civil Application on 22.07.2010 in the Court of the learned Principle District Judge, Mehsana praying to call for the Land Reference Cases from the Office of the Special Land Acquisition Officer. The learned Principle District Judge, while relying upon the decision in The Addl. Spl. Land Acquisition Officer, Bangalore Vs. Thakoredas,

Major and others, , came to the conclusion that in view of Article 137 of the Schedule to the Limitation Act, 1963, the reference having not been made within a period of 90 days by the Special Land Acquisition Officer, the application for such reference could have been made within next three years by the petitioners and that not having been done, the Misc. Civil Application was not maintainable. The petitioners are, therefore, before this Court. On notice being issued, the respondent has filed an affidavit-in-reply opposing the petition.

2. Learned counsel for the petitioners, while inviting attention of this Court to Section 18 of the Act, submitted that what all the petitioners were required to do was to file the reference u/s 18 of the Act within the prescribed period; which they did, but failed respondent-Special Land Acquisition Officer failed to forward the reference to the Competent Court.

2.1. Learned counsel for the petitioners would also submit that in so far as the State of Gujarat is concerned, the claimant/applicant himself was not obliged to move the reference Court in absence of reference by the Special Land Acquisition Officer.

2.2. Learned counsel for the petitioners would also submit that in The Additional Special Land Acquisition Officer, Bangalore Vs. Thakoredas, Major and others (supra), the Hon"ble Supreme Court was dealing with Section 18 of the Act, which was amended by the State of Karnataka obliging the applicant to apply to the Court for a direction to the Deputy Commissioner to make the reference if the same was not done by the Deputy Commissioner within a prescribed period of 90 days. It was submitted that in absence of any similar amendment to Section 18 of the Act by the State of Gujarat, the petitioners were not under such similar obligation. He, therefore, submitted that the impugned judgment and order be set aside and writ, as prayed for, may be issued.

3. Vehemently opposing the submissions made by the learned counsel for the petitioners, learned AGP for the respondent would submit that the Trial Court was justified in returning the application moved by the petitioners for want of specific provisions enabling the applicant to move the District Court. In its submissions, the District Court had, after taking into account the case of The Additional Special Land Acquisition Officer, Bangalore Vs. Thakoredas, Major and others (supra), reached to the above conclusion, and therefore, this Court may not interfere.

4. To appreciate the arguments advanced by the learned counsel for both the parties, it is material at this stage to refer to Section 18 of the Act, as it originally stood i.e. without amendment by the States, which is quoted for the reference hereinunder:

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 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.

5. It is also noticed that Karnataka State (vide Mysore Act 17 of 1961, Section 22 with effect from 24.08.1961) amended the provision obliging the Competent Officer to make a reference within a period of 90 days from the date of receipt thereof; failing which the claimant was obliged to move the Competent Court for calling the reference from the Competent Authority under the Land Acquisition Act. In so far as the State of Gujarat is concerned, the only amendment carried out to Section 18 was same as that of Maharashtra and in so far as Maharashtra is concerned, in sub-section (1) after the word "award", where it occurs for the first time, the words "or the amendment thereof" and after the word "award", wherever it occurs thereafter, the words "or the amendment" were inserted vide Bombay Act 35 of 1953, (Section 8 with effect from 06.06.1953; Maharashtra Act 38 of 1964, Section 2(f) with effect from 07.12.1964) and in so far as Nagpur (City) is concerned, certain amendment came to be made, which is not relevant for the purpose of this petition. Hence no discussion is required. It is, thus, clear that no amendment parallel to the one made by the State of Karnataka obliging the Competent Authority under the Land Acquisition Act to make a reference within a period of 90 days to the Competent Court; and on its failure; obliging the applicant to move the Court calling for such reference from the Competent Authority was made. In The Additional Special Land Acquisition Officer, Bangalore Vs. Thakoredas, Major and others (supra), the Hon'ble Apex Court after considering the amended provision (as amended by Karnatka) in Paragraph-2 of its judgment, held in Paragraph-3 that the application for reference was required to be made within 90 days, failing which the Court concerned was required to be moved and Article 137 of the Schedule to the Limitation Act, 1963 would apply.

6. In so far as the case on hand is concerned, as per sub-section (1) of Section 18 of the Act, the person interested, who has not accepted the award or amendment thereof, was required to move the Collector by written application seeking reference for determination of the Court and as per sub-section (2) of Section 18 of the Act, the application shall state the grounds on which objection to the award is taken and the reference was required to be made within six

weeks, if the person making it was present or represented before the Collector and 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. It is not in dispute that the petitioners complied with the said deadline and the application thus is in order. By-Section 19, the Collector was obliged to provide to the Court the information, in making reference, as under:

19. Collector's statement to the Court.-(1) In making the reference, the Collector shall state, for the information of the Court, in writing under his hand,-

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded u/s 11;

(cc) the amount paid or deposited under sub-section (3A) of section 17; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

7. Along with the above information, the Collector was obliged to attach the said statement attaching Schedule giving the particulars of notices served upon, and of the statements in writing made or delivered by the parties interested, respectively. After the above procedure is complied with, further procedure to deal with the reference by the Court is provided in Sections 20 to 28-A. Thus, there is nothing in the provisions obliging the applicant to make an application to the Competent Court on failure of the Collector to make a reference after such reference was received by the Collector, as required by Section 18 of the Act. In fact, Section 18 does not impose corresponding duty upon the Collector to make a reference within a particular time frame and thus, it is misconceived to say that by virtue of Article 137 of the Schedule to the Limitation Act, 1963, the petitioners were obliged to move the Court within a period of three years after he having sought the reference u/s 18 of the Act. Unfortunately, the Lower Court did not notice the above legal position and proceeded on misconception of law. The impugned order, therefore, cannot be sustained. Consequently, the impugned order is set aside but the reference if not made by the respondent to the District Court, shall be made by the respondent within one month from the date of receipt of order of this Court. The petition is allowed accordingly. Rule made absolute. Considering facts and circumstances, no order as to costs.

D.S. permitted.