

Sukhdeo and Others, Etc. Etc. Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Sep-13-1991

Reported in : AIR1992All142

Judge : S.K. Dhaon and ;K.K. Birla, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 11, 12(2), 18, 18A, 18(2), 19, 21, 28A and 28A(1); Land Acquisition (Amendment) Act, 1963 - Sections 5; Land Acquisition (Amendment) Act, 1984; [Limitation Act, 1963](#) - Sections 12; Code of Civil Procedure (CPC), 1882; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 53

Appeal No. : Civil Misc. Writ No. 26646 of 1991

Appellant : Sukhdeo and Others, Etc. Etc.

Respondent : State of U.P. and Others

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : D.N. Yadav, Adv.

Judgement :

ORDER

S.K. Dhaon, J.

1. The common question to be decided in these petitions is : what is the date of the award within the meaning of S. 28A of the [Land Acquisition Act, 1894](#) (hereinafter referred to as the Act)? As the fate of these petitions turns upon a mere interpretation of the statute, we do not consider it necessary to call for a counter-affidavit. With the consent of the Standing Counsel, we have heard these petitions with a view to dispose them of finality. We are accordingly doing so by a common judgment.

2. The material facts in these petitions are substantially the same. Treating the Writ petition filed by Smt. Parbati and another as the leading case, we have taken the material facts therefrom. They are these. By virtue of an award given under S. 11 the petitioners accepted the compensation offered under protest. One Surendra Singh, whose land had been acquired under the same notification under which the petitioners' land was acquired, in a reference made under S. 18, was awarded a higher sum as compensation by the VIIIth Additional District Judge, Varanasi, on 6th May, 1989. On 1st February, 1991, the petitioners acquired knowledge of the said award of the Court, on 7th February, 1991, they made an application under S. 28A.

3. By similar but different orders, which are being impugned in these petitions, the Special Land Acquisition Officer (hereinafter referred to as the SLAO) has rejected the applications of the petitioners on the ground that the same were filed beyond the period prescribed in S. 28A and were not accompanied by certified copy of the award given by the Court.

4. Section 28A has been inserted into the Act by Land Acquisition (Amendment) Act, 1984 (No. 68 of 1984) (hereinafter referred to as the Amending Act). Prior to the enforcement of the Amending Act, any person interested, who felt dissatisfied, inter alia, by the amount of compensation offered by the Collector under S. 11, could make an application to the said officer within a specified time requiring reference being made to the Court for adjudication (S. 18). An applicant, referred to in S. 18, alone was entitled to receive a higher compensation, if awarded by the Court. Thus, a person, though not satisfied with the amount of compensation offered by the Collector, having failed to apply for a reference under S. 18 had not

only to rest content with the amount offered but it was also deemed that he had accepted the offer.

5. In *Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer*, AIR 1961 SC 1500 the facts are these. An award was signed and filed on 25th March, 1951. No notice of this award was given to the appellant as required by S. 12(2) and it was only on or about 13th January, 1953, that he received information about the making of the said award on 25th February, 1953, the appellant filed an application under S. 18 requiring that the matter may be referred for the determination of the Court. The Deputy Land Acquisition Officer took the view that the application made by the appellant was beyond time under the proviso to S. 18 and he rejected it. Interpreting the words 'within six months from the date of the Collector's award' as used in clause (b) of the proviso to sub-sec. (2) of S. 18 their Lordships pose the question as to whether the literal and mechanical way of construing the aforesaid clause is justified in law? Their Lordship observe that it is obvious that the effect of this construction is that if a person does not know about the making of the award and is himself not to blame for not knowing about the award, his right to make application under s. 18A may be rendered ineffective. It is observed that if it is reasonably possible to construe the said provision to avoid such a consequence it will be legitimate for the Court to do so. It is held that the knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice the expression 'the date of the award' used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. It would be unreasonable to construe the words 'from the date of the Collector's award' used in the proviso to S. 18 in a literal or mechanical way.

6. The words in sub-sec. (1) of S. 28A, which are relevant to the present controversy, are : the persons interested may, notwithstanding that they had not made an application to the Collector under S. 18, by written application to the Collector, within three months from the date of award of the Court, require that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the Court. The proviso has relevance and it may be extracted :--

'Provided that in computing the period of three months within which an application to the Collector shall be made under this subsection, the date on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.'

It is thus clear from a reading of sub-sec. (1) of S. 28A along with the proviso that it is mandatory that the written application must be filed within three months from the date of the award : Failure to do so within the time prescribed will be fatal in so far as the application is bound to be rejected as having been made beyond time. It is obvious that in S. 28A the award referred to is the award of the Court upon a reference made under S. 18. It is apparent that S. 28A carves out an exception to the provisions of S. 18.

7. The Amending Act has introduced no change at all in the Ss. 19 to 21 of the Act. S. 19 provides that while making the reference the Collector shall state for the information of the Court certain facts, one of them being the names of the persons who, according to him, are interested in the land. Section 20 enjoins that the Court shall cause a notice to be served upon all persons interested in the objection. Section 21 states that the scope of inquiry shall be restricted to a consideration of the interest of the persons affected by the objection. The term 'objection' in S. 21 has the same meaning as given in S. 18. It is evident that a person affected by the objection is not the same person as a person interested in the land. Therefore, a person who does not prefer his objection to the award within the time limit prescribed in S. 18, is not a person interested in the objection within the meaning of S. 20(b) and, therefore, not a person affected by the objection within the meaning of S. 21. Section 53 applies the Code of Civil Procedure to proceedings before the Court in so far as the provisions contained therein are not inconsistent with anything contained in the Act. In this Section too the Amending Act has not made any substantial change. The only change made is that for the Code of Civil procedure of 1882, the Code of Civil procedure, 1908 has been substituted. From the conspectus of the relevant provisions it is apparent that in proceedings before the Court, under the law, the petitioners could not be treated as persons interested in the objections. Therefore, in law they were not parties to the proceedings before the Court. If they were not parties to the proceedings, they

were not entitled to be given a notice by the Court either of the fact of the giving of the award or of the date on which the award was to be given.

8. In sub-sec. (1) of S. 28A the crucial words, are as already indicated, 'the date of the award' The same words were interpreted by the Supreme Court in Raja Harish Chandra's case (AIR 1961 SC 1500) (*supra*). The draftsman was aware that the Supreme Court discarded the literal meaning to be given to the said words and had emphasised that the date of the award will be either the date on which notice has been received by the party or the date on which actual or constructive knowledge of the award is acquired by the person concerned. The draftsman was also aware of the reason given by the Supreme Court for not accepting the literal construction of the crucial words. It should, therefore, be presumed that the Parliament accepted the interpretation given by the Supreme Court to the crucial words which are under consideration in the present case. It follows that the expression 'date of the award' in S. 28A means either the date of the receipt of the notice of the award or the date of the knowledge of the award either actual or constructive.

9. Before the amending Act the offer of the amount of compensation by the Collector under S. 11 and the acceptance thereof either express or implied became a closed transaction. It would not be reopened by the Collector as he had not been empowered to do so. The statute had not conferred any power of review upon the Collector. The adequacy of the amount offered by the Collector could be challenged by an individual, who felt aggrieved, by invoking the statutory right given under Section 18. The Amending Act by inserting Section 28A has, in substance, given a statutory right to a person aggrieved by the amount of compensation offered by the Collector and who has not made an application under S. 18 to get the matter reopened by the Collector on the fulfilment of the conditions as mentioned in Section 28A. Correspondingly, the Collector has been given a right to review his earlier order, upon fulfilment of the conditions enumerated in Section 28A, including the condition of observance of period of limitation prescribed thereunder, on the basis of a new material, namely, the award of the Court, which has come into existence subsequently. The provision of review, as contained in Section 28A, is in reality and in substance a remedial measure. The

purpose is that a person should get a fair and just compensation for his property of which he is being deprived. It is trite law that, if permissible, a remedial statute should be liberally construed in favour of the person for whose benefit such a statute has been enforced. The effect of the Court should, therefore, be to 'suppress the mischief and advance the remedy.'

10. In *Collector of Central Excise, Madras v. M/s. M. M. Rubber and Company* (1991)2 JT(SC)587: (1991 AIR SCW 2486), it is observed that the Courts have uniformly laid down as a rule of law that for seeking the remedy the limitation starts from the date on which the order was communicated to a person or the date on which it was pronounced or published under such circumstance that the party affected by it had a reasonable opportunity of knowing of passing of the order and what it contains. The knowledge of the party affected by such a decision either actual or constructive is thus an essential element which must be satisfied before the decision can be said to be concluded and binding on him. Otherwise the party affected by it will have no means of obeying it or acting in conformity with it or of appealing against it or otherwise having it set aside the application of this rule, so far as the aggrieved party is concerned, is not dependent on the provisions of the particular statute, but it is so under the general law.

11. We now come to the question whether it is imperative that an application under S. 28A should be accompanied by a certified copy of the award of the Court. No such intention is discernible either expressly or impliedly. In the proviso substantially the provisions as contained in Section 12 of the [Limitation Act, 1963](#) are to be found. Therefore, if an applicant chooses to file a certified copy of the award along with the application he will be entitled to exclude the time spent in obtaining the copy. However, an application for a certified copy has got to be filed within a period of three months from the date of the receipt of the notice of the award or the date of knowledge of the award either actual or constructive. An application filed within time but unaccompanied by a certified copy of the award cannot be treated even as irregular. It will be a valid application. If the Collector so likes, or if a party wants he may grant time to file a certified copy. For a quicker and expeditious disposal of the application, it will be in the interest of the applicant himself that he should file a certified copy of the award along with his application.

The SLAO, therefore, failed to exercise the jurisdiction vested in him by law in rejecting the applications of the petitioners on the ground that they were not accompanied by certified copies of the award.

12. It appears that the petitioners invoked the provisions of Section 5 of the Limitation Act under a mistaken legal advice. It is now well settled that the word 'Court' in Section 5 of the Limitation Act signifies a 'Court' in stricto sensu. In *Sakuru v. Tanaji*, AIR 1985 SC 1279, relying upon the 3 earlier decisions, it is held that the provisions of the [Limitation Act, 1963](#) apply only to proceedings in 'Courts' and not to appeal or applications before bodies other than Courts such as quasi judicial Tribunals or executive authorities notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Code of Civil Procedure or Criminal Procedure. The inclusion of the proviso in Section 28A by the Parliament also indicates that the aforesaid legal position has been accepted.

13. In the affidavits filed by the petitioners in support of their applications under Section 5 of the Limitation Act before the SLAO it is clearly averred that they acquired knowledge of the award of the Court for the first time just a few days before making of the applications under Section 28A. Apparently the correct legal position was not brought to the notice of that officer and he proceeded on the assumption that the applications had been made beyond time as the same had obviously been filed long after the expiry of a period of three months from the date on which the award was pronounced by the Court. Whatever may be the reason, the impugned orders were passed under a misconception of law. They are, therefore, not sustainable.

14. These petitions succeed and are allowed. The impugned orders are quashed. The SLAO shall dispose of the applications on merits and in accordance with law and in the light of the observations made above.

15. There shall be no order as to costs. Petitions allowed.