

Kanchchid Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Apr-29-1999

Reported in : 1999(3)AWC1978

Judge : Binod Kumar Roy and;Onkareshwar Bhatt, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 2(2), 4(1), 12(2), 18 and 18(1) and (2); [Limitation Act, 1963](#) - Sections 5; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115

Appeal No. : C.M.W.P. No. 32032 of 1993

Appellant : Kanchchid

Respondent : State of U.P. and Others

Advocate for Def. : P.K. Bisaria, S.C.

Advocate for Pet/Ap. : Pankaj Mithal, Adv.

Judgement :

Binod Kumar Roy and Onkareshwar Bhatt, JJ.

1. Whether in the peculiar facts and circumstances of the instant case, the Collector was justified in rejecting the petitioner's application filed under Section 18(1) of the Land Acquisition Act as being barred by limitation? and whether the

Collector under Section 18 of the Act has jurisdiction to condone the delay occurred in preference of the application for reference? are the two questions for our adjudication in this writ petition.

1.1. Firstly the prayers of the petitioner. The petitioner's first prayer is to quash the order dated 17.5.1993 passed by Respondent No. 2 the Special Land Acquisition Officer (Joint Organisation), Bulandshahr as contained in Annexure-1 rejecting his application dated 18.8.1992 filed for reference under Section 18 of the Land Acquisition Act (hereinafter referred to as the Act) on account of limitation stating that whereas the Award was made on 25.10.1991 and the notice under Section 12(2) of the Act was served on the petitioner on 2.2.1992 and thus the Reference application is barred by limitation and that the application filed under Section 5 of the Limitation Act seeking condonation of delay has also got no merit. His another prayer is to command respondent No. 2 to make the reference to the District Judge, Bulandshahr.

The Facts :

2. The petitioner's case is as follows : On issuance of the Notification under Section 4(1) of the Act acquiring 4 Biswas of his land bearing Plot No. 95, Khata No. 119 Village Baran, he filed his objection before the Special Land Acquisition Officer claiming compensation at the rate of Rs. 1.500 per square yard in terms of the circle rate of the area notified by the Collector for charging stamp duty before the making of the award by the Collector. At that time, the petitioner was not present for the reason that the date or the expected date of giving the award was not notified. No notice under Section 12(2) of the Act was served on him. He came to know of the award for the first time on 7.8.1992 and filed Reference Application on 18.8.1992, i.e., to say, within six weeks period from the date of knowledge and as such, it was well within the period of limitation as provided under Section 18(2) of the Act. A petition seeking condonation of delay was also filed by way of abundant precaution. The Reference Application was illegally rejected by the respondent No. 2, who had no jurisdiction to do so, rather he was duty bound to refer the application to the District Judge, who alone was competent to decide it and hence this writ petition.

The Submissions :

3. Sri Pankaj Mithal, learned counsel appearing in support of this writ petition, contended that the application filed for Reference under Section 18 of the Act was illegally rejected by respondent No. 2. In fact he lacked jurisdiction to do so and it was for the District Judge to consider the reference, whether it was barred by limitation and if so, whether for the reasons stated in the limitation application the delay was fit to be condoned. He also submitted that the question of limitation was required to be adjudicated after taking of the evidence.

In order to support his submission, he placed reliance on three Single Judge judgments of Punjab and Haryana High Court in (i) Dharam Pal v. Collector Land Acquisition Urban Development, Punjab and another, 1987 LACC 217 ; (ii) Jeet Singh v. Land Acquisition Collector. 1991 LACC 376, decided by the same learned single Judge and (iii) Balbir Singh v. State of Haryana, 1992 LACC 303. He also placed reliance on a decision of the Supreme Court in Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer and another, AIR 1961 SC 1500.

4. Sri P.K. Bisaria, learned Standing Counsel, on the other hand, contended as follows : As the reference was barred by limitation, the Collector could not refer it to the District Judge for adjudication. The petitioner has not brought on the record copy of the service report to show that there was no valid service of notice under Section 12(2) of the Act in the eye of law. The petitioner has also not brought on the record the order sheet of respondent No. 2 to show that the Award was made on such a date which was not fixed from before. The words 'the determination of the Court' occurring in Section 18(1) of the Act means determination in regard to merits and not in regard to such a Reference Application which is barred by limitation. In any event the Collector lacked jurisdiction to condone the delay. The fault lay squarely with the petitioner inasmuch as he never prayed before the Collector that an opportunity be granted to him to adduce evidence rather he contended with his affidavit attached with his petition.

To support his submissions he also placed reliance on a decision of the Supreme Court in Officer on Special Duty (Land Acquisition) v. Shah Manilal Chandulal, 1996 (1) LAL 436 : (1996) 9 SCC 414.

Our Findings :

5. Section 18 of the Act reads thus :

'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 under Section 12, subsection (2), or within six months from the date of the Collector's award, whichever period shall first expire.'

6. The Supreme Court in Officer of Special Duty (Land Acquisition) (supra), relied by Sri Bisaria has considered the aforesaid provision. Paragraphs 3, 8, 9 and 10 of its judgment are reproduced as follows :

'3. Section 18(1) envisages that any interested person who has not accepted the award may, by application in writing to the Collector, require him to refer the dispute raised in the application for the determination of the Court. Under subsection 2 (2), the grounds on which objection to the award is taken have to be stated in the application. However, under the proviso to sub-section (2) 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 under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire. It would thus be clear that if the interested person was present at the time the Collector made the award, he should make the application within six weeks from the date of the award of the Collector. In other cases, it should be made within six weeks after the receipt of the notice from the Collector/L.A.O. under Section 12(2) or within six months from the date of the Collector's award, whichever period shall first expire.'

* * * * '8. The right to make application in writing is provided under Section 18(1). The proviso to sub-section (2) prescribes the limitation within which the said right would be exercised by the claimant or dissatisfied owner. In *Mohd. Hasnuddin v. State of Maharashtra*. (1979) 2 SCC 572, this Court was called upon to decide in a reference under Section 18 made by the Collector to the Court beyond the period of limitation, whether the Court can go behind the reference and determine the compensation, though the application for reference under Section 18 was barred by limitation? This Court had held that the Collector is required under Section 18 to make a reference on the fulfilment of certain conditions, namely, (i) written application by interested person who has not accepted the award ; (ii) nature of the objections taken for not accepting the award ; and (iii) time within which the application shall be made. In para 22 after elaborating those conditions as conditions precedent to be fulfilled, it held that the power to make a reference under Section 18 is circumscribed by the conditions laid down therein and one such condition is a condition regarding limitation to be found in the proviso. The Collector acts as a statutory authority. If the application is not made within time, the Collector will not have the power to make reference. In order to determine the limitation on his own power, the Collector will have to decide whether the application presented by the claimant is or is not within time and specify the conditions laid down under Section 18.'

* * * * '9. It would thus be clear that one of the conditions precedent to make a valid reference to the Court is that the application under Section 18(1) shall be in writing and made within six weeks from the date of the award when the applicant was present either in person or through counsel, at the time of making of the award by

the Collector under clause (a) of proviso to subsection (2). The Collector, when he makes the reference, acts as a statutory authority.

10. In *State of Punjab v. Satinder Bir Singh*, (1995) 3 SCC 330, a Bench of two Judges (to which one of us, K. Ramaswamy, J., was a member) was to consider whether the application for reference under Section 18 was barred by limitation and the direction issued by the Court for making reference was valid in law. The Collector made the award on August 1, 1970. The notice under Section 12(2) was received by the respondent on September 22, 1970 and he received the compensation under protest on September 29, 1970. The application for reference under Section 18 was made on January 21, 1971. The Collector rejected the application as being barred by limitation. The High Court in revision under Section 115, Civil Procedure Code, similar to Gujarat Amendment, allowed the revision holding that since the notice did not contain all the details of the award, notice under Section 12(2) was not valid. Therefore, there was no limitation. This Court reversing the view had held in paragraph 7 that the form of notice was not material since the respondent appeared and received the notice on September 22, 1970 and received the compensation under protest on September 29, 1970. The limitation began to run from the date of receipt of the notice and by operation of clause (b) of the proviso to sub-section (2) of Section 18 since the application was not made within six weeks from the date of the receipt of the notice, the application was barred by limitation prescribed in Section 18(2). It does not depend on the ministerial act of communication of notice in any particular form which the Act or Rules have not prescribed. The limitation began to operate from the moment the notice under Section 12(2) was received as is envisaged by Section 18(2). Accordingly the order of the High Court was set aside.'

6.1. In this very case, the Supreme Court has also proceeded to hold that the Collector under the Act is not a Court so as to have jurisdiction to decide the question of condonation of delay. The judgments rendered by the learned single Judges of the Punjab and Haryana High Court are contrary to the express ratio decidendi laid down by the Supreme Court and are thus of no help of Mr. Mithal.

7. We are thus of the considered view that the law in this regard has been categorically laid down by the Supreme Court that if an application for Reference is not made within the prescribed time, then the Collector will not have power to make Reference and in order to determine the limitation on his powers, the Collector will have to decide whether the application presented by the claimant is or is not within time.

8. In *Raja Harish Chandra Raj Singh (supra)*, relied upon by Sri Mithal, the Supreme Court had categorically ruled that Section 12(2) of the Act makes it obligatory on the part of the Collector to give immediate notice of his Award to such of the persons as are not present personally or by their representatives when the award is made and the expression 'the date of the award' used in proviso (b) to Section 18(2) must mean the date when the award is either communicated to the party or is known by him either actually or constructively. This decision is of no help to the petitioner rather is against him. The notice under, Section 12(2) of the Act was served on the petitioner on 2.2.1992 and it clearly means that he had constructive knowledge of the award in question.

9. The petitioner has also not come to file his own affidavit to support his case. The affidavit which has been attached with the writ petition is by one Satish Chandra, who is not a co-villager of the petitioner, though he claims to be his Pairokar, The statement in paragraph 5 of the writ petition that the petitioner had no knowledge of the award in the beginning and that no notice under Section 12(2) of the Act from the Collector was served on him has not been stated by the deponent to be based on information derived from the petitioner which he believes to be true. What he has stated is that these statements are true to his personal knowledge which cannot be accepted. There is a statutory presumption of correctness and regularity of the official acts. The order in question clearly recites, that the notice under Section 12(2) of the Act was served on the petitioner on 2.2.1992.

10. Unfortunately the petitioner has not brought on the record copy of the service report to show the invalidity and/or non-service of the notice served on him under Section 12(2) of the Act which, on the finding of respondent No. 2, was served on

2.2.1992.

11. The petitioner has also not brought on the record unfortunately the order sheet to show that the Award, dated 25.10.1991, was not pronounced on a date fixed from before. In this regard, Mr. Mithal submitted that in Uttar Pradesh no order sheet is being maintained by the Land Acquisition Officers. Such a submission, not being based on any pleading, is difficult to be accepted. Admittedly the petitioner had filed his objection earlier. We will presume that some date must have been fixed by the Land Acquisition Officer.

12. We hold that the petitioner has not been successful in showing that the statement aforesaid has been incorrectly made by respondent No. 2. Accordingly, we refuse to rely on the affidavit of the deponent.

13. For the reasons aforesaid, we do not find any merit in the submissions of Mr. Mithal rather we hold that the impugned order was correctly passed by respondent No. 2.

The Result :

14. Consequently this writ petition is dismissed but in the peculiar facts and circumstances we make no order as to cost.

15. The office is directed to hand over a copy of this order within two weeks to Sri P.K. Bisaria, for its intimation to the authority concerned.

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