

Pathootty Vs. District Collector

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Court : Kerala

Decided On : Jun-15-2004

Reported in : 2004(3)KLT348

Judge : J.B. Koshy and; K. Thankappan, JJ.

Acts : Land Acquisition Act, 1884 - Sections 18

Appeal No. : O.P. No. 25039 of 2002 etc.

Appellant : Pathootty

Respondent : District Collector

Advocate for Def. : C. Vathsalan, Government Pleader

Advocate for Pet/Ap. : T. Krishnan Unni and; P.K. Vijayan, Advs.

Disposition : Petition dismissed

Judgement :

J.B. Koshy, J.

1. When an application under Section 18 of the Land Acquisition Act (in short 'the Act') is filed, whether the Collector can simply make a reference, without verifying whether there is valid reference or not, leaving that matter also to be decided by the reference Court merely because claimant asserts that all requisites of Section

18 are complied with, is the question of law to be considered in these Writ Petitions. These cases are referred to the decision of the Division Bench by an order of reference passed by the learned Single Judge (Mr. Justice R. Rajendra Babu) doubting the view taken by another Single Judge of this Court in *Assain v. Land Acquisition Officer*, 2003 (1) KLT 863. It is not disputed that an interested person can apply for reference under Section 18(1) only if the award amount is received under protest and claim is filed within the time prescribed under Section 18(2). Section 18 of the Act is as follows:--

'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 to be 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, Sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

4 essential pre-requisites for making a reference under Section 18 are:

(1) Interested party who is applying for reference has not accepted the award (award amount is received under protest).

(2) Application must be in writing with a request to make a reference.

(3) It should contain the grounds of objection.

(4) It should be filed within the time prescribed under Section 18(2).

2. If these conditions are not satisfied, Collector is bound to reject the reference application. Even if an application is rejected wrongly, claimants cannot approach the Civil Court by filing an application under Section 18 directly. If the 4 conditions mentioned above are not satisfied, Collector cannot make a reference to the Civil Court. The express requisites in Section 18(1) entrusted an obligation on the part of the Collector to make the reference if the conditions prescribed in the Section are satisfied. He is statutorily bound to make a reference and if he refuses to make a reference, a writ of mandamus can be issued. We are concerned only with condition No. 1 in this judgment regarding acceptance of the award. In this connection Section 31 (1) and (2) of the Act are also relevant. They are as follows:

31. Payment of compensation or deposit of same in Court.-- (1) On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they, shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under Section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person unlawfully entitled thereto'.

If the award amount is accepted without protest, no reference can be made by the Collector. But there is no prescribed form in making protest. An endorsement in the receipt with the remark that 'received under protest' is sufficient. It has been repeatedly held that an oral protest is enough. But it is the duty of the Collector to see before making reference that award amount was received under protest. But in Assam's case (supra) the learned Single Judge was of the view that when the party asserts that the amount was received under protest, it is not for the Collector to decide whether award was accepted without protest or not. He has to make the reference and leave the question to be decided by the Court. This view was taken by the learned Judge following the decision of the Punjab and Haryana High Court in Karnail Singh v. State of Punjab (AIR 1983 Punjab & Haryana 160). In Kannan v. Land Acquisition Officer, 1997 (1) KLT 768, one of us (Koshy, J.) held that if the award amount is not received under protest, or if the application is filed beyond time limit, the Land Acquisition Officer has no duty to send the same to the Court under Section 18.

3. In *Special Tahsildar v. Kallu*, 2000 (3) KLT 71, a Division Bench of this Court held that whether application under Section 18 was filed in time or not is to be considered by the Collector and not by the reference Court. Court was of the opinion that only a valid application can be referred by the Collector.

4. Apex Court in *Wardington Lyngdoh v. Collector, Mawkyrwat*, AIR 1995 SC 2340, held that the receipt of the amount under protest is condition precedent to make an application under Section 18. Apex Court in paragraph 5 held as follows:--

'5. It will thus be clear that the persons interested in the land are entitled to receive compensation awarded by the Collector under Section 11 under protest and entitled to object to the compensation determined by the Collector. No person who had received the amount otherwise than under protest should be entitled to make the application under Section 18. In other words, the receipt of the amount under protest is a condition precedent to make an application under Section 18 within the limitation prescribed under the proviso to Sub-section (2) of Section 18 together with the grounds on which the objections

have been taken'.

It is true that even if Collector refers the matter, reference Court is duty bound to see that statutory conditions laid down in Section 18 have been complied with and it is only a valid reference which gives jurisdiction to the Court and if there is no valid reference, reference Court can decline to answer the reference as held by the Apex Court in Mohammed Hasnuddin v. The State of Maharashtra, AIR 1979 SC 404. But that does not mean that Collector can make a reference if he is convinced that amount was not received under protest even if the claimants assert otherwise. Same view, was expressed in Land Acquisition Officer v. Shivabai and Ors., (1997) 9 SCC 710. The Supreme Court observed as follows:--

'It is now settled position in law that the claimants who receive compensation under protest and who make application under Section 18(1), alone are entitled to seek a reference; third parties, who have been impleaded, have no right to claim higher compensation by circumventing the process of reference under Section 18. Under these circumstances, the reference itself is without any jurisdiction and barred by limitation'.

5. In State of Punjab v. Smt. Harcharan Kaur, AIR 1975 P & H 66 (FB), a Full Bench of the Punjab and Haryana High Court dealt with the situation where the Collector made the award on 14th March, 1956, payment was made to the claimant on 15th March, 1956 which was accepted without protest. On 24th April, 1956, the claimant made an application for reference under Section 18 of the Act. Question arose whether the application for reference was maintainable. It was held in paragraph 10 of the judgment that if the person had accepted the payment without protest, the application for reference must be rejected Without going into the merits thereof.

6. In Joseph v. Special Tahsildar, 2001 (1) KLT 958 (FB), it was held by the Full Bench of this Court that written protest is not necessary and even an oral protest is enough. But Full Bench held as follows:--

'It is evident from the two cases mentioned above, (i) Wardington and (ii) Shivabai that, on a consideration of the scheme of the provisions of Section 31 read with

Section 18 of the Act, the Court came to the conclusion that no person who has received the amount otherwise than under protest would be entitled to make an application under Section 18. In other words, the receipt of the amount under protest is a condition precedent for making an application for reference under Section 18 within the limitation prescribed.

Full Bench after considering the large number of cases held that

'An application seeking a reference under Section 18 of the Act is not maintainable, unless the applicant proves that he had received the payment under protest. It would therefore, follow that if the compensation was received without protest, application seeking a reference under Section 18 will not be maintainable'. (Paragraph 25 at page 969 mentioned);

After considering the first two provisions of Section 31(2) it was held by the Full Bench as follows:--

'The protest contemplated by the first two provisos to Section 31(2) of the Act must be lodged at the time of receiving the payment. Undoubtedly, such a protest as to the sufficiency of the amount can be lodged prior to the receipt of the payment. If, however, a protest is lodged for the first time after receiving the payment, or for the first time in the application seeking reference under Section 18 of the Act, it would not be a valid protest as contemplated by the first two provisos to Section 31(2) of the Act'.

7. Proviso to Section 31(2) is as follows:--

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act. to pay the same to the person lawfully entitled thereto.'

Therefore receipt of the award amount under protest (oral protest is enough) is a sine qua non for making a valid reference. Collector is not acting as a post office when he receives an application for reference under Section 18. It is a bounden duty of the Collector to see that reference is made only if application is filed in time and the amount received under protest. If Collector is not satisfied with regard to the same, he cannot be compelled to send the reference as per the statutory provisions merely because claimants assert otherwise. In such circumstances, we are of the view that this Court cannot compel the Collector to go against the mandatory statutory provision. In view of the above legal position we are of the view that the decision in *Assain v. Land Acquisition Officer*, 2003 (1) KLT 863, is not laying down correct legal position.

8. If the Collector wrongly refuses to make a reference, even though conditions of Section 18 were complied with and there is circumstance to show that claimants made oral protest, party can approach this Court for a writ of mandamus to compel the Collector to make a reference.

9. Now we will consider whether there is any evidence to show that the amount was received by the claimant under protest or not in these two cases and whether Collector wrongly refused to refer the matter. Admittedly, in both the cases there was no written protest. Then the question is whether there is oral protest at the time of receiving the amount. In W.P.(C) 26417/2003 notice was issued in pursuance of award No. 21/1999 dated 5.8.1999 directing the parties to appear on 11.8.1999 for receiving the amount. The cheque was received on 11.8.1999. It is not stated in the receipt that the amount was received under protest either orally or documentary. Counter foils were produced before us. Exts.P4, P5 and P6 applications dated 8.9.1999 were filed in time. But mere filing of the applications in time will not give rise to presumption that compensation was received under protest. There should be some evidence to show that compensation was received under protest. For example, if they made an application for payment itself stating that they are accepting the amount under protest it can be presumed that, the award amount was received under protest. In this case no such application was given requesting to give the amount under protest. In certain cases on the same or on the next date of the receipt of award amount, application for reference may be

made. In such cases Court may presume that contention of the claimants that award amount was received under protest is more believable. (See: Ajit Singh and Ors. v. State of Punjab, (1994) 4 SCC 67). Here the applications were filed about three weeks after receipt of the award amount. Even in the reference applications or reminders it was not stated that the award amount was received after making any oral protest. We have presumed the counter foils of receipt books. In some of the receipt behind it back it is stated that (cheque received under protest.). In certain receipts it is stated that cheque was received without protest. In certain counter foils it is stated that cheque was received under protest. Counter foils of the receipt books with regard to payment of petitioners in W.P.(C).26417/2003, it is also written that cheque received without protest. In the above circumstances, we are of the view that petitioners were not able to prove that cheque was received under protest. In such circumstances, it is not necessary for the Collector to refer the matter. In O.P. 25039/2002, petitioner got notice to collect award amount of Rs. 90,909/- on 28.3.2000. He received the cheque on that day itself. Ext.P2 was proved by the petitioner as copy of the treasury cheque issued to him. In the reverse side of Ext.P2 the word something can be read as (with objection) is seen written and scored off. But the counter foils of the receipt which was shown to us by the Government Pleader did not contain any such remarks. Exts.R2(a) and R2(b) are the photocopies of counter foils of Exts.P2 and P2(2). In the counter affidavit averment of the petitioner that cheque was received under protest orally was denied. In the reply affidavit it is stated that original 'D' form cheque was received on 28.3.2000. It was presented before the Punnool Service Co-operative Bank Ltd., on 4.4.2000. At that time, according to the petitioners, endorsement as seen in Ext.P2(2) was made. Even if such an entry is made in Ext.P2(2) whether cheque was presented to his bank as contended by the petitioner the words that entry was scored off by him in Ext.P2(2) itself. So after receiving the cheque without protest, even if it was presented to the Bank after writing in the reverse of the cheque and then scoring it off, it cannot be stated that cheque or the award amount was received under protest. Respondent strictly opposed the genuineness of such endorsement as written by the petitioner. Ext.P3 dated 17.4.2000 and Ext.P5 dated 20.10.2000 are representations given by the petitioner as the matter was not referred. In those representations, there is no statement to the effect that

the amount was received under protest. There is no material to show that amount was received Under protest. Therefore, in both the cases, we are unable to issue a writ of mandamus to compel the Collector under Section 18(1), as the award amount was received without protest.

10. Since no valid applications for reference under Section 18 were made, in view of the larger Bench of Supreme Court in Union of India and Anr. v. Hansoli Devi and Ors. and State of Tripura and Anr. v. Roop Chand Das and Ors., AIR 2002 SC 3240, there is no bar on the petitioners to apply under Section 28A if other conditions in Section 28-A are satisfied for re-determination of compensation.

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