

Antony Vs. State of Kerala

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Court : Kerala

Decided On : Sep-14-2004

Reported in : 2005(1)KLT583

Judge : J.B. Koshy and; J.M. James, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 18 and 18(2)

Appeal No. : O.P. No. 28202 of 1999(G)

Appellant : Antony

Respondent : State of Kerala

Advocate for Def. : K. Lakshminarayanan, Government Pleader

Advocate for Pet/Ap. : S.V. Balakrishna Iyer and; P.B. Krishnan, Advs.

Judgement :

J.B. Koshy, J.

1. This Original Petition has been referred to the Division Bench by a learned Single Judge of this Court (Justice Mr. Pius C. Kuriakose), for a second look at the observations of a Division Bench of this Court in Kamalakshy v. District Collector (1998 (2) KLT 898) holding that the decision of the Full Bench of the Madras High Court in Venkatasami Naidu v. State of Madras (1964 MLJ 262 = AIR 1964 Mad.

434) has been impliedly overruled in view of the recent decision of the Supreme Court in Land Acquisition Officer v. Shiva Bhai ((1997) 9 SCC 710).

2. Before answering the question referred to us, we will consider the facts of this case. Petitioner received notice on 4.5.1989, issued under Section 12(2) of the Land Acquisition Act (for short 'the Act') regarding the passing of Ext.P2 award in respect of the property acquired from him, fixing the market value of the land at Rs. 519.40 per Are. He accepted the amount under protest, as to the sufficiency of the amount. Within the time prescribed, he also requested for enhancement of compensation by letter dated 1.6.1989. Petitioner, in the above letter, stated that the market price of the land at the time of acquisition was Rs. 1,500 per cent and at least that rate should be allowed to him. But, his case was not referred under Section 18 of the Act. The ground taken by the Government was that there was no request under Section 18 of the Act, for making a reference. We asked the Government Pleader to produce the files, so that we can peruse the letter dated 1.6.1989 written by the petitioner. The operative portion of the letter reads as follows:

3 . Counsel for the petitioner submitted that in the letter the petitioner has made a clear request that he should be awarded an amount of Rs. 1,500 per cent, on the ground of prevailing market value in the locality. It is the contention of the petitioner that the above letter should be construed as a request for reference that merely because the word 'refer' is not used, it cannot be rejected. Section 18 reads 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 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, Sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.'

Four essential prerequisites for making a reference under Section 18 are:

(1) Interested party, who is applying for reference, has not accepted the award amount, or has accepted the same only under protest, as required under Section 31(2) of the Act.

(2) There must be an application 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).

The Full Bench of this Court in the decision reported in Joseph v. Special Tahsildar (2001 (1) KLT 958 (F.B.)) held that before making reference, the Collector should be satisfied that the ingredients of Section 18 are satisfied and making of a protest is mandatory. But the protest can also be an oral protest. In O.P. No. 25039/2002 (Thoduvayil Pathootty v. District Collector, Kannur) the Division Bench also held that unless these mandatory conditions are satisfied, Collector is not competent to make a reference.

4. The Full Bench of the Madras High Court in Venkatasami Naidu's case (supra) (1964 MLJ 262 = AIR 1964 Mad. 434), held that when protest letter is filed in time, it implies a request for reference. The relevant portion of the letter from the claimant in that case, showing receipt of the award amount under protest, is quoted as follows:

'As you have not taken into account our objections and the record produced by us and as you have not included the value of the trees, the amount now determined by you is very low. We hereby make known to you that we are not in a position to

accept that amount as compensation.'

Considering the said letter, the Madras High Court held as follows:

'Reading between the lines one can easily see that the appellants did want proper compensation being awarded to them. One can reasonably draw the inference that they wanted the Tahsildar to take appropriate steps to secure that end as otherwise there will be no meaning for that letter at all. In a recent case, W.A. No. 150 of 1963 (Mad.), we had similar situation. The statement, in a letter to the Tahsildar in that case was that the market value of the land was really higher than what has been estimated. We held that the implication of that letter was that the respondent did not accept the estimate and that he sought for a reference to Court. In the present case, the position is even clearer. The appellants have expressly stated they are not accepting the compensation. We have no hesitation in holding that the implication of this letter is that they have asked for a reference under Section 18 of the Act.'

5. The Apex Court, in *Land Acquisition Officer v. Shivabai* ((1997) 9 SCC 710) held that limitation under Section 18 starts from the date of receipt of the award notice. If compensation is accepted, in the absence of anything to the contrary, it should be presumed that compensation is received without any protest. The Apex Court also held that claimants who receive the award amount under protest and who makes an application under Section 18 are alone entitled to seek reference. In that case the amount was not received under protest. But, subsequently, a request for reference was made. The Supreme Court held that since the amount was received without any protest, there cannot be any valid reference. From the above decision it is clear that for making a reference the amount should be received under protest and there should be an application for reference. Therefore, the view of the Madras High Court may not be correct, because a mere protest is not enough for making a reference, there should also be a request for reference. The Division Bench of this Court in *Kamalakshy's case* (supra) also held that two conditions are to be fulfilled, viz. (1) the person interested has not accepted the award and (2) there should be a written application to the Collector by the party who accepted the award amount under protest, requiring the Collector

to refer the matter for determination of the Court with reference to the amount of compensation, etc. We are in respectful agreement with the above view taken by the Division Bench of this Court.

6. Here, the question to be considered is whether the request in this case can be treated as a request for reference. There is no dispute that the amount was received under protest. The application dated 1.6.1989 is well in time; There is a clear request in that letter that compensation amount should be increased. The ground for increase was that market value of the land at the time of acquisition was Rs. 1,500 per cent. Hence it was requested that compensation may be enhanced at least to that extent. When the award has been passed, the Land Acquisition Officer has no power to increase the compensation. In *Special Tahsildar, Land Acquisition v. K. Reddy* (AIR 1990 A.P. 124) it was held that if the claimant receives the award amount and expresses that the compensation determined is not adequate and commensurate to the prevailing market rate, it is simpliciter that the applicant is seeking a reference under Section 18. Access to Court is an important right vested in every citizen and if judicial intervention is required, Courts strive to redress grievances according to what is perceived to be principles of justice, equity and good conscience (see *M.V. Elisabeth v. Harwan Investment & Trading* (1993 Supp. (2) SCC 433)). Even though the Court is bound by the mandates of statutes, it can take a liberal and realistic view in such cases.

7. The claimant is not a legally literate person. He received the amount under protest and, by a letter, he requested for enhancement of commensurate to the market value of the land prevailing at the time of acquisition. That can only be taken as a request for reference. We reiterate that for making a reference all the three conditions have to be complied with, i.e. the amount should have been received under protest; an application for reference should have been filed; and the application filed should be within the time prescribed. A mere endorsement in the cheque that amount is received under protest, or a mere receipt of the amount under protest, or an oral protest that the amount is received under protest, is not enough and cannot be construed as an application for reference. There should be an application or a written request to refer the matter to the Court, for enhancement of compensation, with grounds for the same. After receipt of the

amount under protest, if an application is received for enhancement of compensation, within the time prescribed under Section 18(2), with grounds for the same, it can be construed that the applicant is seeking a reference under Section 18 of the Act.

8. In this case, the application filed within the time limit, after receiving the amount under protest, seeking enhancement of compensation in tune with the market value of the land at the time of acquisition, is only an application for reference. We are of the opinion that the letter written by the petitioner, dated 1.6.1989, is to be construed as an application for reference under Section 18 of the Act.

In view of the above, we allow this Writ Petition and issue a writ of mandamus directing respondents 2 and 3 to make the reference to the civil Court under Section 18(1) of the Act according to law.

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