

Haji Gh. Rasool Kitab Vs. Collector

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Court : Jammu and Kashmir

Decided On : Feb-08-1990

Reported in : AIR1990J& K72

Judge : R.P. Sethi, J.

Acts : [Land Acquisition Act, 1894](#) - Section 18; ;[Limitation Act, 1963](#) - Section 12

Appeal No. : C.R. 31 of 1988

Appellant : Haji Gh. Rasool Kitab

Respondent : Collector

Advocate for Def. : Nemo

Advocate for Pet/Ap. : J.S. Kotwal, Adv.

Judgement :

ORDER

R.P. Sethi, J.

1. Reference made by the Collector Land Acquisition under section 18 of the Land Acquisition Act, hereinafter referred to as the 'Act' was rejected by the District Judge, Bhadarwah vide the judgment impugned in this revision petition on the ground of the same being barred by time. It was further held that the reference

was not in conformity with the provisions of Section 19 of the Act because the Collector had failed to give particulars of the land, name of the parties, the amount awarded and the grounds on which the amount of compensation was determined as acquired under Clause (d) of Section 19 of the Act.

2. I have heard the learned counsel for the petitioner and perused the record.

3. Some of the facts giving rise to the filing of the present petition are that land measuring 6 marlas upon which the petitioner had constructed four shops and allegedly raised construction of a plinth level of a building was acquired by the respondent under the Act. The petitioner claimed a sum of Rs. 30,000/- for the land and Rs. 40,000/- for the shops and building raised by him. The petitioner was allowed compensation for land amounting to Rs. 6,300/- only and no compensation was awarded for the shops and building. It was contended that the petitioner was not present at the time of making the award and had no notice of the award nor was he represented at that time. The petitioner came to know about the award by the staff of the Public Works Deptt. when he was asked to surrender the possession of the shops and building. He went to the office of the respondent and was paid a sum of Rs. 7245/- as compensation and Jabirana for the land on 9-2-1985. An application under Section 18 of the Act for making the reference to the Civil Court was filed which was allowed by the Collector Land Acquisition but rejected by the trial Court vide the judgment impugned.

4. Under section 18 of the Act any person interested who has not accepted the award has a right to file an application to the Collector, requiring that the matter be referred by the Collector for the determination of the Court, regarding his objection to the measurement of the land, the amount of compensation, the person to whom it is payable or the apportionment of the compensation among the persons interested. Such an application has to be filed within six weeks from the date of the Collector's award if the person making it was present or represented before the Collector at the time when he made his award or within six months from the date of Collector's award if he was not present or represented as required under Clause (a) of the proviso to Section 18 of the Act.

5. A perusal of the provisions of Section 18 of the Act would show that the Collector is the sole authority to make the reference and under Section 19 of the Act who was not required to state the facts regarding the Limitation. In the order of reference the Collector is required to state the following information to the Court:

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 under Section 11; and

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

The object for providing the period of limitation is to avoid unnecessary delayed applications by the claimants on false pretexts and pleas provided they were present or represented or had the knowledge about the passing of the award. The right to get a reference made to the Court cannot be defeated by merely adopting a procedure preventing the claimants from availing of the legal remedy available. The authorities under the Act are under an obligation to take steps for seeking the presence at the time of making the award. No authority can be permitted to make the award in the absence of the party and without notice to him. Where the notice of the date on which an award is required to be passed is intimated to a party and he or his representative is present at the time when the award is filed, the reference application has to be filed within six weeks from the date of the award and in that case no time shall be excluded on any ground whatsoever. In cases where the notice of the dates on which the award is intended to be made is not communicated to the claimant, the Collector has to send notice of the award subsequently to the persons interested under Section 12(2) of the Act and where such notice has been issued, the claimant has six weeks time to file the application after the receipt of the said notice, and in all other cases such application has to be made within six months from the date of the award.

6. In computing the period of limitation it is not the actual date of the award which is relevant but the date of the knowledge of the award is material. Mere knowledge of the pendency of the acquisition proceedings under the Act is not sufficient. A literal and technical construction of the words, 'six months from the date of the Collectors award' would not advance the interest of justice. The orthodox interpretation of adhering to the actual date of the award for the purposes of computing the period of limitation and view taken by Bombay High Court in AIR 1954 Bom 419 and Kerala High Court in AIR 1958 Kerala 272 was disapproved by the Supreme Court in *Raja Haresh Chander Raj Singh v. Dy. Land Acquisition Officer*, AIR 1961 SC 1500 and after considering various authorities on the point it was held (at p. 1504 of AIR):

'..... The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice, of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. 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, in our opinion, therefore, it would be unreasonable to construe the words 'from the date of the Collector's award' used in the proviso to Section 18 in literal or mechanical way.'

It was further held (at p. 1505 of AIR 1961 SC 1500):

'A similar question arose before the Madras High Court in *Annamalai Chetti v. Col. J.C. Colete* (1883) ILR 6 Mad 189. Section 25 of the Madras Boundary Act, XXVIII of 1860 limited the time within which a suit may be brought to set aside the decision of the settlement officer to two months from the date of the award, and so the question arose as to when the time would begin to run. The High Court held that the time would begin to run only from the date on which the decision is communicated to the parties. 'If there was any decision at all in the sense of the Act,' says the judgment, 'it would not date earlier than the date of the communication of it to the parties; otherwise they might be barred of their right of appeal without any knowledge of the decision having been passed.' Adopting the same principle a similar construction has been placed by the Madras High Court in *Swaminathan v. Lakshmanan Chettiar*, ILR 53 Mad 491 : AIR 1930 Madras 490 on the limitation provisions contained in Sections 73(l) and 77(1) of the Indian Registration Act XVI of 1908. It was held that in a case where an order was not passed in the presence of the parties or after notice to them of the date when the order would be passed the expression 'within thirty days after the making of the order' used in the said sections mean within thirty days after the date on which the communication of the order reached the 'parties affected by it. These decisions show that where the right of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned.'

In *Gian Chand v. Union of India*, the Delhi High Court in AIR 1976 Delhi 83 at p. 85 held:

'.....the period of six months should commence either from the actual or constructive knowledge of the making of the Award. Mere knowledge of the pendency of the proceedings for the acquisition of the land or of the notification under Sections 4 and 6 of the Act or any public notice with regard to acquisition would not constitute either actual or constructive notice of the making of the Award. The proceedings for the acquisition are distinct from the knowledge as to the actual award and the date on which it is made.....'

In Ram Singh v. State, AIR 1976 Punj' Har 205, it was held (at pp. 208-209):

'Having regard to the scheme of the Land Acquisition Act a literal and mechanical construction of the expression 'six months from the date of the Collector's award' in proviso (b) to Section 18(2) would not be appropriate and the knowledge either actually or constructively of the party affected by the award is an essential requirement of fair play and natural justice. Therefore, this expression used in the proviso must mean the date when the award is either communicated to the party or it's known by him either actually or constructively. The knowledge must relate to the essential contents of the award either actually or constructively.'

The learned District Judge, therefore, was not justified in holding the reference made by the Collector Land Acquisition to be barred by time under Section 18 of the Act. On facts it is established that the application for making the reference was definitely made within six months from the date of the knowledge of the award. The requisite particulars were detailed in the order of reference and the accompanying documents which were lost sight of by the Court below.

7. Under the circumstances this revision petition is accepted and the order of District Judge, Bhadarwah impugned in this revision petition is set aside. The case is remanded to the District Judge, Bhadarwah for disposal according to law on merits. The record of the Court below shall be sent back to the trial Court immediately where the learned counsel for the petitioner has been directed to appear or cause the presence of his client on 24-3-1990.

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