

(1995) 01 OHC CK 0026**Orissa High Court****Case No:** Civil Revision No. 18 of 1996

Bidyutprava Jena

APPELLANT

Vs

Land Acquisition Officer (Civil)

RESPONDENT

Date of Decision: Jan. 1, 1995**Acts Referred:**

- Land Acquisition Act, 1894 - Section 12(2), 18

Citation: (1997) 2 OLR 341**Hon'ble Judges:** Pradipta Ray, J**Bench:** Single Bench**Advocate:** Niranjan Panda-I, S.K. Patnaik and S.K. Acharya, for the Appellant; S.K. Nayak, for the Respondent**Final Decision:** Allowed

Judgement

Pradipta Ray, J.

The petitioner has filed this revision challenging the legality and propriety of the order passed by the Land Acquisition Officer (Civil), Cuttack rejecting her application u/s 18 of the Land Acquisition Act (hereinafter referred to as "the Act") on the ground that the same was time barred.

2. For the purpose of the constructing a link road to the bridge over Kendrapara Canal lands including the petitioner's land measuring Ac. 0.05 decimals appertaining to Plot No. 898 were acquired. On December 18, 1991 the Land Acquisition Officer, Cuttack passed an award for the acquired lands in favour of different persons, but no award was passed in favour of the petitioner. It appears that compensation for the petitioner's land was awarded in her vendor's favour. On December 27, 1991 the petitioner filed an application before the Land Acquisition Collector putting forward her claim in respect of the aforesaid Ac. 0.05 decimals of land of plot No. 898 (hereinafter referred to as "the disputed land") for inclusion of her name in the award and for passing a proper award for the aforesaid disputed

land. The petitioner was directed to appear before the Land Acquisition Collector on February 5, 1992 to support her claim. On February 5, 1992 the petitioner and her vendor were heard. On that date the Land Acquisition Collector recorded inter alia:-

"Heard the objector Bidyut Prava Jena and the son of awardee Smt. Das, Pradip Kumar Das.....On their mutual agreement the award is revised in the name of Bidyut Prava Jena, wife of Narayan Chandra Jena for an area of Ac. 0.05 decimals as per sale deed. Issue notice u/s 12(2) accordingly." On march 20, 1992 the petitioner received an amount of Rs. 7,100/- with protest. On April 30, 1992 an application u/s 18 of the Act was filed before the Land Acquisition Collector. By the impugned order dated October, 31, 1995 the Land Acquisition Collector rejected the said application on the ground that the same was barred by limitation.

3. It appears from the impugned order that the Land Acquisition Collector proceeded on the basis that the award in favour of the petitioner was passed on February 5, 1992 in her presence and that the petitioner received a notice u/s 12(2) of the Act on March 13, 1992. On behalf of the petitioner Mr. Panda has urged that the petitioner did not receive any notice u/s 12(2) of the Act and no award was passed on February 5, 1992 in her presence. Mr. S.K. Nayak learned Additional Government Advocate has referred to the records of the Land Acquisition Proceeding to support the impugned order.

4. This Court has carefully perused the records including order dated February 5, 1992. It appears that on February 5, 1992 the Land Acquisition Collector was considering the petitioner's claims regarding the disputed land and the petitioner's title in respect of the disputed land was found. In the said order he did not award any specified compensation in favour of the petitioner. On a perusal of the award it is also found that a compensation of Rs. 7,100/- was awarded only on March 20, 1992 and the petitioner received the same on the said date under protest. There being no specified award in favour of the petitioner on February 5, 1992 there was no question of issuing any notice u/s 12(2) of the Act. Even the records of the land acquisition proceeding do not contain any such notice is used on February 12, 1992 as stated. If the period of six weeks is counted from March 20, 1992 then the application u/s 18 of the Act was received by the Office of the Land Acquisition Collector on 41st day i.e. within the period of limitation.

5. Upon a careful consideration of all the materials on record this Court is of the view that the petitioner's application u/s 18 of the Land Acquisition Act was not barred by limitation and the Land Acquisition Collector proceeded upon an erroneous view.

6. For the foregoing reasons this revision is allowed. The impugned order is set aside. The Land Acquisition Collector, Cuttack is directed to refer the petitioner's claim to the Civil Court within a period of two months from the date of arrival of the records.

This order be communicated and the records be sent down immediately to the Land Acquisition Collector, Cuttack.