

(2024) 02 CHH CK 0009

Chhattisgarh High Court

Case No: Civil Revision No. 16 Of 2024

Jay Mangal Patel

APPELLANT

Vs

Collector District Raigarh (C.G.)

RESPONDENT

Date of Decision: Feb. 6, 2024

Acts Referred:

- Land Acquisition Act, 1894 - Section 4, 6, 11, 18, 18(1), 18(2), 18(2)(b)
- Limitation Act, 1963 - Section 5, 29(2)

Hon'ble Judges: Deepak Kumar Tiwari, J

Bench: Single Bench

Advocate: Harishankar Patel, Rajeev Bharat

Final Decision: Dismissed

Judgement

1. This Civil Revision has been preferred against the order dated 07.12.2023 passed by the Collector, Raigarh (C.G) whereby, the application preferred by the applicant under Section 18 of the Land Acquisition Act, 1894 (in short “the Act, 1894”) for making a reference in respect of enhancement of the award of compensation passed in the Land Acquisition Case No.19/v-82/2009-10 Village Khairpur, has been rejected on the ground that the said application has been moved after 6 months from the date of passing of the award and the applicant has also not mentioned any reason for delay in filing the same.

2. Brief facts of the case are that the applicant’s land bearing Khasra No.519/1 ad-measuring 0.049 Hectare situated at Village Khairpur, Tehsil and District Raigarh was acquired for construction of road and an award was passed on 22.03.2012 by the Land Acquisition Officer (Annexure P/2). On 14.05.2012 immediately after passing of the award, the applicant moved an application (Annexure P/3) for determination of the compensation @ 3,600/- as per the guideline. In this petition, it has been stated that on such date the applicant had prayed to refer the matter to the competent Court for determination of proper compensation. On 05.11.2014, 02.01.2015 and 17.05.2023 the applicant has filed application for sending the reference. Thereafter, the applicant has moved a Writ Petition before this Court bearing WPC No.3427/2023, wherein, the applicant made a limited prayer to decide the application preferred by him on 02.01.2015 by the concerned authority within stipulated time, which was not opposed by the State counsel.

3. Thereafter, the impugned order (Annexure P/1) was passed by the Collector holding that the reference application was not filed within limitation and dismissed the prayer for making reference. Hence, this Revision.

4. Learned counsel for the applicant would submit that the impugned order is bad in law, as under the Act, 1894, the respondent/Land Acquisition Officer is duty bound to send the reference to the competent Court. He would further submit that the applicant is an old person aged about 89 years and infirm. Due to the arbitrary action of the State authorities thereby, depriving him to get proper compensation. Though, the applicant has firstly approached on 14.05.2012 which was well within the limitation period and while passing the order, learned Collector has failed to appreciate this aspect. Learned counsel prays to allow the Revision and set aside the impugned order. He would place reliance on the judgments in the matters of Pannalal Mourya Vs. State of C.G (order dated 17.12.2013 passed in Civil Revision No.142/2012); and Ambya Kalya Mhatra (D) By L.Rs. & Ors Vs. State of Maharashtra, [2011 AIR SCW 5749 (at para 12)] to submit that the Land Acquisition Officer is not a Court and he could not determine the question of the limitation.

5. Per contra, learned counsel for the State would support the impugned order, which is well merited. He submits that the application has not been preferred within limitation as prescribed under Section 18(2) of the Act, 1894 and the said limitation is prescribed in the special law. Hence, the provision under Section 5 of the Limitation Act shall not apply. He would further submit that the applicant has wrongly stated the facts in the Revision that on 14.05.2012 he has filed a reference application vide (Annexure P/3), though in the said application, there is no such prayer and the only prayer was made to determine the compensation in accordance with the guideline @ 3,600/-. As the applicant was well aware of the award on such date and thereafter, he has not moved proper application for making reference, even he has accepted the award and did not fulfill the prerequisites required under Section 18 of the Act, so no interference is warranted invoking the revisional jurisdiction.

6. Heard the rival submissions of learned counsel for the parties and also perused the record with utmost circumspection.

7. To dwell upon the issue, the provision for reference to the Court which is provided under the Act, 1894 reads as under:-

“18.(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.”

8. By the Amendments in C.P. and Berar Act 7 of 1949, Section 3 dated 25.03.1949, the provision of revision was inserted after Sub-Section 2 read thus:-

“(3) Any order made by the Collector on an application under this Section shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court, within the meaning of Section 115 of the Code of Civil Procedure, 1908.”

9. In the matter of *Sail Vs. Sutni Sangam*, (2009) 16 SCC 1, it has been clarified that Section 18 (2) (b) of the Act provides for the maximum period of six months from the date of the Collector's award and it was further held that it was impermissible to direct reference to be made after a long period particularly when the provision of Section 5 of the Limitation Act, 1963 cannot be said to have any application, the relevant paras 45 to 47 read thus:-

“45. When the statute provides for a law of limitation, compliance therewith is mandatory. For the purpose of applying the statute of limitation, the courts should, however, be liberal in their approach. Section 18(2)(b) of the Act provides for the maximum period of six months from the date of the Collector's award. It was, therefore, impermissible to direct references to be made after a long period particularly when the provisions of Section 5 of the Limitation Act, 1963 cannot be said to have any application.

46. In *Officer on Special Duty (Land Acquisition) v. Shah Manilal Chandulal* [1996 (9) SCC 414] this Court held: (SCC pp. 417-18, paras 8-9)

"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 fulfillment 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 paragraph 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. Even if the reference is wrongly made by the Collector, the court will have to determine the validity of the reference because the very jurisdiction of the court to hear a reference depends upon a proper reference being made under Section 18. If the reference is not proper there is no jurisdiction in the court to hear the reference. It was, therefore, held that it is the duty of the court to see that the statutory conditions laid down in Section 18 including the one relating to limitation, have been complied with and the application is not time-barred. It is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It has to proceed to determine compensation and if it is time-barred, it is not called upon to hear the same. It is only a valid reference which gives jurisdiction to the court. Therefore, the court has to ask itself the question whether it has jurisdiction to entertain the reference. If the reference is beyond the prescribed period by the proviso to sub-section (2) of Section 18 of the Act and if it finds that it was not so made, the court would decline to answer the reference. Accordingly, it was held that since the reference was made beyond the limitation, the court was justified in refusing to answer the reference.

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 sub-section (2). The Collector, when he makes the reference, acts as a statutory authority."

47. It was furthermore held in Shah Manilal case [(1996) 9 SCC 414] : (SCC p. 421, paras 17-18)

"17. It is to be remembered that the Land Acquisition (Amendment) Act (68 of 1984) was enacted prescribing the limitation to exercise the power under Sections 4, 6 and 11 and also excluded the time occupied due to stay granted by the courts. Taking cognizance of the limitation prescribed in proviso to sub-section (2) of Section 18, the provisions of the Limitation Act were not expressly extended. Though Section 29(2) of the Limitation Act is available, and the limitation in proviso to sub-section (2) of Section 18 may be treated to be special law, in the absence of such an application by Land Acquisition (Amendment) Act (68 of 1984), the Act specifically maintains distinction between the Collector and the court and the Collector/LAO performs only statutory duties under the Act, including one while making reference under Section 18. It is difficult to construe that the Collector/LAO while making reference under Section 18, as statutory authority still acts as a court for the purpose of Section 5 of the Limitation Act.

18. Though hard it may be, in view of the specific limitation provided under proviso to Section 18(2) of the Act, we are of the considered view that sub-section (2) of Section 29 cannot be applied to the proviso to sub-section (2) of Section 18. The Collector/LAO, therefore, is not a court when he acts as a statutory authority under Section 18(1). Therefore, Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to sub-section (2) of Section 18. The High Court, therefore, was not right in its finding that the Collector is a court under Section 5 of the Limitation Act."

10. In the matter of Ambya Kalya Mhatra (D) By L.Rs. & Ors (supra) at para 12, it has been observed that the Land Acquisition Collector is not a Court and the Land Acquisition Collector is bound to refer the matter to the Civil Court for determination of the compensation but it has been materially observed in the said para that the Collector has no choice of refusing to make a reference, when the request is in time.

11. In the instant case, the reference was not preferred within time, therefore, the said case laws are of no help to the applicant. Further, in the matter of Pannalal Mourya (referred to above) relied upon by the applicant, this Court disposed of the Civil Revision relying on its earlier decision in the matter of Devsing @ Shankar Vs. State of C.G, 2013 (1) C.G.L.J 363 and remitted back the matter to the concerned authority to make a reference to the appropriate form and the concerned authority was directed to decide, whether the amount paid was reasonable or not. In the said matter, the Collector has decided the adequacy of the compensation and the Collector has no authority to decide the just compensation as the said power is vested with the reference Court. Hence, the said precedents are also distinguishable on facts.

12. Reverting back to the facts of the present case, though at para 3 of the revision, it has been stated that the applicant has filed an application on 14.05.2012 for making reference, but perusal of the said application (Annexure P/3) shows that no such request was made. Even the applicant has filed a Writ Petition bearing WPC No.3427/2023 and made a limited prayer to decide his reference application dated 02.01.2015. The learned Collector, after examining the facts of the case, held that the said reference was neither preferred within the limitation nor fulfilled the criteria under Section 18 of the Act, 1894. Therefore, the discretion exercised by the learned Collector is in accordance with law, which does not call for any interference invoking the revisional jurisdiction.

13. Resultantly, this Revision fails and is hereby dismissed at the motion stage.