U.P. Avas Evam Vikas Parishad Vs Rakesh Kumar Jain and Others

Court: Allahabad High Court

Date of Decision: May 8, 2013

Citation: (2013) 8 ADJ 178 : (2013) 5 ALJ 397 : (2013) 98 ALR 571 : (2013) 5 AWC 5352 : (2013) 120 RD 198

Hon'ble Judges: Manoj Misra, J

Bench: Single Bench

Advocate: Vivek Saran, for the Appellant; Rahul Agarwal, for the Respondent

Final Decision: Dismissed

Judgement

Manoj Misra, J.
As by a separate order passed on the delay condonation application the delay in filing the appeal has been condoned,

with the consent of the learned counsel for the parties, the appeal is being finally decided at the admission stage itself.

Heard Sri Vivek Saran for the appellant, Sri Rahul Agarwal for the claimant/opposite party No. 1 and the learned Standing Counsel for the

respondent Nos. 2, 3 and 4.

The instant appeal has been filed against the judgment and award dated 30.5.2012 passed by the Presiding Officer, NMA/AEVP, Tribunal/ADJ,

Agra in L.A. Case No. 27 of 1990. At the outset Sri Rahul Agarwal has pointed out that the impugned judgment and award has been passed on a

reference arising out of land acquisition proceeding for a Housing-cum-Street Scheme known as Sikandra Grahsthan Evara Sarak Yojna, Agra

framed by the U.P. Awas Evam and Vikas Parishad, Lucknow. It has been submitted that for the said scheme large tract of land, comprising plots

in as many as five villages, was acquired under a common Notification dated 4.4.1970. It is stated that arising out of the said land acquisition

proceedings, several awards were made which were subject-matter of separate references u/s 18 of the Land Acquisition Act. It has been

submitted that in all the references, the Tribunal had assessed the market value of the land at the rate of Rs. 27/- per square yard, as has been done

in the judgment and award impugned in this appeal. It has been submitted that against the judgment and award of the Tribunal in various other

references, arising out of the same land acquisition proceedings, several first appeals were preferred before this Court. The leading among them

was First Appeal No. 273 of 1994, which has been decided, alongwith other connected appeals, by judgment and order dated 26.5.2010 passed

by a Division Bench of this Court, whereby all the appeals were dismissed and the rate at which the value of the land was assessed, that is Rs. 27/-

per square yard, was affirmed. It has been submitted that against the judgment and order of this Court dated 26.5.2010, SLP was filed before the

Apex Court, being SLP No. 9129 of 2011, which was dismissed by order dated 10.5.2011. It has been submitted that as the matter is squarely

covered by the decision of this Court dated 26.5.2010 passed in First Appeal No. 273 of 1994 alongwith other connected appeals, no useful

purpose would be served in admitting the appeal for hearing and that, in the circumstances, it is a fit case where the appeal should be dismissed

summarily, under Order 41 Rule 11 of the Code of Civil Procedure, 1908.

2. Sri Vivek Saran, learned counsel for the appellant, though concedes that the aforesaid decision squarely applies to the present appeal, but states

that there is one distinguishing feature, which is, that the reference in the instant case was barred by limitation provided u/s 18 of the Land

Acquisition Act. It is contended by Sri Saran that the SLAO passed the award on 16.8.1986 whereas the application u/s 18 was made on

16.2.1987 i.e. beyond the period of six weeks from the date of award and not even within six months from the date of the award. It is submitted

that as the application was filed beyond the period of limitation, the reference was barred by limitation and, as such, the judgment and award

passed by the Court below is vitiated. It has also been contended that the original tenure-holder had accepted the awarded amount but the

Tribunal wrongly put the burden on the appellant to prove that it was not accepted under protest.

3. To assess the weight of the aforesaid submission, I have carefully perused the judgment of the Tribunal and, in particular, its finding returned on

the Issue No. 7, which deals with the aforesaid issue. A perusal of the judgment would indicate that P.W. 2? Ibarat Ali, who was an Amin of the

scheme, stated on oath, before the Tribunal, that no notice u/s 12(2) was sent to the owners. The stand of the claimant/owner had been that no

intimation of the making of the award was sent to the claimant/owner and that they were neither present nor represented at the time of making of

the award and also notices, u/s 12(2), were not sent to them. Further from Ext. Nos. 18 and 19 i.e. Application dated 27.12.1986 and Affidavit

dated 24.12.1986, it was proved that the amount of compensation was accepted under protest. Ibarat Ali proved the endorsement on the

reference application made by the then SLAO and the head clerk as well as clerk dated 16.2.1987 indicating that the reference application was

moved by 16.2.1987. The Tribunal recorded that no evidence was led in rebuttal cither by the appellant or the State. In the circumstances, the

Tribunal returned a categorical finding that neither it could be proved that the award was accepted nor could it be proved that the reference

application was barred by time. The Tribunal, in paragraph 60 of its judgment, returned a finding that as it could not be proved that the

claimants/owners were represented or present when the award was made and it could also not be proved that they were served with notice u/s

12(2) of the Act, therefore, the limitation of six months, under clause (b) of the proviso to sub-section (2), would commence from 24.12.1986 that

is, the day, on which, they had sworn affidavit to receive payment under protest, as the same could be treated to be the day when they had

knowledge of the contents of the award.

4. The learned counsel for the appellant could not dispute that neither the State nor the appellant led any evidence to rebut the evidence led on

behalf of the claimant, which was relied by the Tribunal to record finding that the award of the SLAO was not accepted by the original owner and

that the original owner was neither represented nor present when the award was made and that no notice or intimation of the award, as required

u/s 12(2) of the Land Acquisition Act, was served on the original owner. The learned counsel for the appellant also could not dispute that by the

unrebutted testimony of P.W. 2, it was proved that the reference application against the award dated 16.8.1986 was received on 16.2.1987.

5. The proviso to sub-section (2) of Section 18 of the Land Acquisition Act, 1894 provides for the period within which an application for making a

reference to the Court is to be made. It reads as follows:

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 u/s 12, sub-section (2), or within six months from the date of the

Collector"s award, whichever period shall first expire.

A perusal of the clause (a) of the proviso to Sub-section (2) of Section 18 discloses that where the person making the application is present or

represented before the Collector at the time when the award is made, then the application should be made within six weeks from the date of the

Collector"s award. In the instant case, there is no dispute that no evidence was led either by the State or by the Parishad (the appellant) to show

that at the time when the award was made, the person making the application i.e. the land owner was either present or represented before the

Collector. Accordingly, the testimony of the claimant''s witnesses was left unrebutted and, as such, the period of limitation as provided by clause

(a) of the proviso to sub-section (2) of Section 18 was not applicable.

6. The period of limitation, under clause (b) of the proviso to sub-section (2) of Section 18, for making an application is six weeks from the date of

receipt of the notice from the Collector u/s 12(2) or within six months from the date of the Collector''s award, whichever period first expires. In the

instant case, there is no dispute that no evidence was led either by the State or the Parishad (the appellant) to show that any notice under sub-

section (2) of Section 12 was served. Thus, the statement of the claimant''s witness denying service of notice remained unrebutted and, therefore,

the period of limitation of six weeks from the date of service of notice would also not be applicable. Now what is to be seen is whether the

reference application was made within six months from the date of the award.

7. The words ""date of the Collector''s award"" as occurring in clause (b) of the proviso to sub-section (2) of Section 18 of the Act have been

subject-matter of interpretation in large number of judicial pronouncements. In a recent decision, in the case of Bhagwan Das and Others Vs. State

of UP and Others, , the Apex Court summarized the law in that regard, in paragraphs 26, 27 and 28 of the report, as follows:

26. If the words six months from ""the date of the Collector''s award"" should be literally interpreted as referring to the date of the award and not the

date of knowledge of the award, it will lead to unjust and absurd results. For example, the Collector may choose to make an award but not to

issue any notice u/s 12(2) of the Act, either due to negligence or oversight or due to any ulterior reasons. Or he may send a notice but may not

bother to ensure that it is served on the landowner as required u/s 45 of the Act. If the words ""date of the Collector''s award"" are literally

interpreted, the effect would be that on the expiry of six months from the date of the award, he would lose the right to seek a reference. That will

lead to arbitrary and unreasonable discrimination between those who are notified of the award and those who are not notified of the award.

27. Unless the procedure under the Act is fair, reasonable and non-discriminatory, it will run the risk of being branded as being violative of Article

14 as also Article 300-A of the Constitution of India. To avoid such consequences, the words Mate of the Collector''s award"" occurring in proviso

(b) to Section 18 requires to be read as referring to the date of knowledge of the essential contents of the award, and not the actual date of the

Collector"s award.

28. The following position therefore emerges from the interpretation of the proviso to Section 18 of the Act:

i. If the award is made in the presence of the person interested (or his authorised representative), he has to make the application within six weeks

from the date of the Collector"s award itself.

ii. If the award is not made in the presence of the person interested (or his authorised representative), he has to make the application seeking

reference within six weeks of the receipt of notice from the Collector u/s 12(2).

iii. If the person interested (or his representative) was not present when the award is made, and if he does not receive the notice u/s 12(2) from the

Collector, he has to make the application within six months of the date on which he actually or constructively came to know about the contents of

the award.

iv. If a person interested receives notice u/s 12(2) of the Act, after the expiry of six weeks from the date of receipt of such notice, he cannot claim

the benefit of the provision for six months for making the application on the ground that the date of receipt of notice u/s 12(2) of the Act was the

date of knowledge of the contents of the award.

Applying the legal principles culled out above, in the instant case, undisputedly, neither the award was made in the presence of the owner/claimant

(or his representative) nor any notice u/s 12(2) was served on him. In such a situation, the legal principle laid in paragraph 28 {iii) of the judgment

in Bhagwan Das case (supra) would be applicable, which means that the period of limitation would be six months from the date on which the

claimant actually or constructively came to know about the contents of the award. In the instant case, the claimant/owner applied for payment of

the award amount, though under protest, by swearing an affidavit on 24.12.1986, therefore, this date can be taken as a date on which the

owner/claimant constructively came to know about the contents of the award, in absence of there being any evidence when he actually came to

know about it. Thus, limitation period of six months is to be counted from 24.12.1986. As the reference application was filed on 16.2.1987, as

proved on record by the uncontroverted testimony of P.W. 2, the finding of the Tribunal that the reference application was within limitation does

not call for any interference.

No other point has been pressed.

For the reasons recorded above and considering that the matter is squarely covered by the decision of this Court in First Appeal No. 273 of 1994,

decided on 26.5.2010, which has been upheld by the Apex Court, this appeal is liable to be dismissed and is, accordingly, dismissed. There is no

order as to costs.