(1962) 11 MP CK 0011

Madhya Pradesh High Court (Gwalior Bench)

Case No: Miscellaneous Civil Petition No. 35 of 1960

Kaliyanchand Devilal		APPELLANT
	Vs	
Kanchanbai Butilal and Others		RESPONDENT

Date of Decision: Nov. 9, 1962

Acts Referred:

- Land Acquisition Act, 1894 - Section 18(1), 18(2)

Citation: AIR 1963 MP 220 : (1964) ILR (MP) 340 : (1963) MPLJ 745

Hon'ble Judges: P.R. Sharma, J; H.R. Krishnan, J

Bench: Division Bench

Advocate: P.L. Inamdar, for the Appellant; H.N. Dwivedi, for the Respondent

Final Decision: Dismissed

Judgement

Krishnan, J.

This is a petition Under Article 227 of the Constitution by one of the parties to a dispute regarding the apportionment of compensation granted by the Collector in a land acquisition case. The ground is that the Court to which an application for reference by the opposite party was forwarded by the Collector should have held that the application to the Collector being timebarred u/s 18(2) of the Land Acquisition Act, he was not competent to entertain the reference. Actually, it rejected the petitioner''s prayer to this effect, holding that once the reference had been made by the Collector it was not competent to consider its propriety or validity, but should straightway proceed to determine, after noticing the parties, the objection raised in the application.

Without going into the merits of the contentions of the parties for and against "limitation" of the opposite party''s application u/s 18 of the Land Acquisition Act before the Collector, we have hear to decide whether once the reference has been received from the Collector, the Court is competent to see whether or not the Collector should have dismissed the application as timebarred u/s 18(2) of the Act.

The facts are simple and are common ground. The parties seem to be co-sharers or at least claim to be so in the property that has been acquired. The petitioner himself made an application u/s 18 which was forwarded to the Court and is being considered as such. Some time later, the opposite party made her objections before the Collector. This she did in two applications, the first on 30-9-1959 asking only for a stay of the disbursement of the compensation till the filing and disposal of a partition suit by her. On more or less the same averments the second application was made on 9-11-1959, with the further prayer that this might be forwarded to the Court as a reference. The Collector forwarded it. It is not clear whether the effect of Sub-section (2) was raised before him; but if it was, he considered it to be of no consequence. Anyway, when the application came before the Court, the present petitioner who was already before it apropos of his own reference, prayed that it should not be entertained, the Collector himself having committed a mistake in sending it up in disregard of Section 18(2) of the Act. The Court took the position that once a reference had been made by the Collector, it was not for it to sit in judgment Over him, but it was his duty to proceed to investigate the merits of the objection in the manner provided in Section 20. From this order the petitioner has come up to this Court under Article 227 of the Constitution.

Since there has been some confusion in this regard, it is to be noted that the present petition is against the order of the District Judge refusing to go behind the reference, and not against the order of the Collector making it. No doubt, an application by a party aggrieved by an order of the Court dealing with a reference under the Land Acquisition Act should be one of revision u/s 115 CPC and not one under Article 227 of the Constitution. If this were the only difficulty, the petitioner would not be seriously inconvenienced, this petition having been filed within 45 days from the date of its order. He can pray that the petition itself might be treated as one u/s 115 Civil Procedure Code; this petition being dismissed, he might file another application under that section, and re-quest the Court to condone the delay in view of his having proceeded under Article 227. One or the other of these courses has been adopted by similar petitioners in other cases.

The real difficulty, however, is on the merits. The question has come up before different High Courts, though not before that of Nagpur or the Madhya Pradesh, and there is a difference of view. Typical of one school is the line taken in Hari Krishan Khosla Vs. State of Pepsu, which incidentally cites a number of other rulings in direct support or of analogy. On this view the Court is not competent to go behind the reference made by the Collector who is not subordinate to it for the purposes of revision or appeal.

"Section 18 constitutes the Collector the sole authority for making the reference. In the statement which he has to make u/s 19, the question of limitation is not one of those matters which he is required to state at all. He is not even bound to send the application which is to be made u/s 18 along with his reference. All that the Court

then can do u/s 20 is to cause issue of notice ..... There is no other provision in the statute which entitles the Court to re-examine the question whether the Collector''s order was correct on the application having been made within the period of limitation ..... When the legislature establishes a tribunal or body with limited jurisdiction, they have also to consider whether there shall be any appeal from their decision; for, otherwise there will be none. It would be an erroneous application of the formula to say that the tribunal cannot give them jurisdiction by wrongfully deciding certain facts to exist because the legislature gave them jurisdiction to determine all the facts."

The Punjab ruling also refers to a number of older rulings which need not be separately set out.

As against this, there is the line indicated in Boregowda v. Subbaramiah AIR 1959 Mys 265.

"It appears to be the intention of the scheme of the Act that normally speaking, the Deputy Commissioner (Collector) should make a reference when he himself does not decide the matter and that without an unnecessary loss of time ..... The court to which a reference is made can go behind the reference and see whether it is competent."

This ruling also gives some earlier citations, in particular, the rulings of Allahabad, the earlier (Sukhbir Singh and Others Vs. Secretary of State for India, being followed in preference to the later (Secy. of State Vs. Bhagwan Prasad . It is of interest to note that an old ruling of 1911 in Collector of Akola v. Anand Rao 11 Ind Cas 690 (Nag) of the Nagpur Judicial Commissioner''s Court has taken the same line as the Mysore ruling. But the idea there seems to be that there should be some control on the Collector''s making any reference, so that he might give due regard to Section 18(2). For one thing, the Nagpur Judicial Commissioner''s Segments are not binding on this Court, but are only persuasive; for another, -- and this is more important -- subsequent local amendment in the Madhya Pradesh has, as will be presently noted, provided sufficient check over the possibility of an erroneous or arbitrary order by the Collector in this regard.

On full consideration of both the views, we are satisfied that the Punjab view that the Court may not go behind the reference is in accordance with the wording of Sections 18, 19 and 20, the scheme of the Act and the general principles governing the relations between tribunals that are not subordinate to one another. Whether or not Section 18(2) lays down a law of limitation properly so called, or whether it is a matter of procedure only, it is no doubt a principle which the Collector should bear in mind when considering an application u/s 18(1). But the moment he decides to make a reference, the Court receiving it has nothing more to do with Section 18(2) of the Act. If the legislature had intended otherwise, the particulars in Section 19 would contain a heading relating to this, and calling for the mention of the interval

between the award and the making of the application that is the subject-matter of the reference. Since there is no such heading, it would be proper to assume that the legislature is of the view that it is no business of the Court to see whether or not Section 18(2) has been disregarded. Another reason which supports this view is the wording of Section 20. The moment the Court receives the reference, it has to notice the parties and to proceed to determine the objection, that is to say, the subject matter of the application on merits that section does not indicate that before determining the objection, the Court is also to see whether or not the Collector has acted regularly in making the reference. In fact once the reference is made by the Collector, the Court has to presume it to be a valid one.

There is a third ground also in support of the Punjab view. After all, the Collector making the reference, though a tribunal of limited jurisdiction, is not subordinate to the Court for the purposes either of appeal or revision. In all such cases unless statute expressly empowers it otherwise, each of the independent tribunals has to presume the validity of the acts of the others and not try to investigate whether or not it had committed an error of law; otherwise, there would be no end to controversies.

There is, of course, the question whether a party affected by the Collector''s mistake, if any is altogether without remedy. If the statute does not give any remedy there is an end to it and we cannot proceed on the assumption that every possible error on the part of every tribunal should be provided against by some right of appeal or revision. It would also be an interesting question if Section 18(2) is really a rule of limitation; but we need not examine it, because as it happens, in Madhya Pradesh there is a remedy for the possible mistake or illegality on the part of the Collector in making a reference. There is a local amendment to Section 18 of the Land Acquisition Act introducing Sub-section (3) (Section 3 of the C.P. and Berar Act VII of 1949 dt. 25-3-49).

"(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."

By the operation of the Madhya Pradesh Extension of Laws Act, 1958, this was the law in force in the entirety of the new Madhya Pradesh at the relevant time, that is, November 1959. It is also to be noted that the Nagpur Judicial Commissioner''s ruling referred to was made in 1911 long before the amendment of 1949.

This takes us to one more point against the petitioner. The petitioner''s grievance is really against the order of the Collector on the application by the opposite party dated 9-11-1959. It is conceivable that he did not know of this application at that time and came to know of it only when the reference was received by the District Judge. Even so he had a remedy by way of revision to the High Court. If there was

delay beyond his control, it was always open to him to make it a ground and ask for condonation before the High Court. But having such a simple and straightforward course open to him, he sought the help of the Court and when it refused to interfere, he has come up to this Court. Even if there was some substance in his petition (which there is not) this alone would justify its dismissal.

The result is, looked at in any manner whatsoever, the petition is without any force. It is accordingly dismissed with costs payable to the opposite party of Rs. 50/- (fifty). The balance, if any, of the security deposit may be refunded to the petitioner.

Sharma, J.

I agree.