

(2005) 12 MAD CK 0059

Madras High Court

Case No: Writ Appeal No. 1073 of 1992

Steel Authority of India Limited

APPELLANT

Vs

The Salem Urukkalai Thittathal

Nilam Ilanthor Sangam and

RESPONDENT

Others

Date of Decision: Dec. 13, 2005

Acts Referred:

- Land Acquisition Act, 1894 - Section 10, 12(2), 18, 18(1), 18(2)
- Limitation Act, 1963 - Section 5

Hon'ble Judges: A.P. Shah, C.J; F.M. Ibrahim Kalifulla, J

Bench: Division Bench

Advocate: A.L. Somayaji, for Mr. S. Ramasubramanian, for the Appellant; R. Thiagarajan, for Mr. P. Jagadeesan for Respondent - 1 and Mr. D. Krishnakumar, Special Government Pleader for Respondents - 2 to 9, for the Respondent

Judgement

A.P. Shah, C.J.

In or around 1964, nearly 10,000 acres of land was notified for acquisition in several villages in Salem Taluk, Omalur Taluk and Sankari Taluk for establishment of Salem Steel Plant. The notification u/s 4(1) of the Land Acquisition Act for the above acquisition was published by the Government in the year 1964 and the declaration u/s 6 of the Land Acquisition Act was published in the year 1969. The acquisition proceedings were initiated from the year 1971 onwards and finally an extent of 3651 acres of land was acquired and the awards were passed during the period from 1971 to 1973. Nearly 300 awards were passed by five Land Acquisition Officers appointed for this purpose and it appears that more than 1000 applications were received from the awardees for referring their cases to the Court u/s 18 of the Land Acquisition Act. Many of these applications were rejected and in respect of some applications, the Land Acquisition Officer concerned rejected the request for reference on the ground that the compensation was received without protest and

while in some cases, orders were passed by the Land Acquisition Officer concerned rejecting the request for the reference on the ground that the applications were made beyond the period prescribed. An association of the land owners was formed in the name of Salem Urukkalai Thittathal Nilam Ilanthor Sangam, in order to protect and advance the case of the agriculturists, who have lost their meager holdings of land as a result of the acquisition made for the Salem Steel Project. On the representation made by the association, the State Government issued instructions vide letter No. D.Dis. 11/3748/80 dated 21.05.1981 and directed that the following categories of cases may be referred to the Court for enhanced compensation:

Point I:

Awardees who received the compensation amount with protest and submitted their applications requesting a reference u/s 18 of the Land Acquisition Act after the expiry of the stipulated time.

Point II :

Awardees who received the compensation amount without protest but submitted applications requesting reference u/s 18 of the Land Acquisition Act.

Point III :

Awardees who received the compensation amount without protest but failed to submit applications u/s 18 of the Land Acquisition Act.

2. Later on, however, the Commissioner of Land Acquisition issued another Order dated 05.01.1983 in which it was stated that the Government had clarified that the earlier instructions issued by the Government were not intended to over-ride the provisions of the Land Acquisition Act, and if the instructions were contrary to the provisions of the Land Acquisition Act, then only the provisions of the Act have to be complied with. It was also stated that the Government finally made it clear that in any case, if a claimant had accepted the amount without any protest, he would lose his right to claim a reference to civil court u/s 18 of the Act. It was also stated that even if the compensation was received under protest, the time limit u/s 18(2) of the Act should be taken into account. It was further stated that a written request should be insisted upon as per the Act for making a reference to the Court u/s 18 of the Act.

3. The association of the land owners then approached this court by means of the present petition seeking a mandamus to refer the cases of the agriculturists to Court u/s 18(2) of the Land Acquisition Act. It is averred in the petition that in number of cases the awardees were not present and were not represented before the Land Acquisition Officer when the award was passed and they had no knowledge of the date on which the award was made and in fact some persons did not receive any notice u/s 12(2) of the Act. It is also averred that more than 3000 land owners were affected by the land acquisition proceedings. It is averred that

some persons forwarded objections in printed form and para 6 of the said printed form is as follows:

If the Authority decides that the above noted amount is excessive the notices is/are prepared to receive the amount of compensation under protest and request the authority to refer the matter to Court of law for fixing the quantum of compensation. No other property is left to eke out the livelihood.

It is submitted by the petitioner association that while the awardees reconciled themselves to the loss of the land, they were given a raw deal in the matter of payment of compensation. The awardees were totally in dark about the procedure followed for award of compensation and the State did not establish any special machinery to aid or help the awardees in claiming the compensation due to them under law. It is submitted that there was an obligation on the State to set up machinery to provide legal aid to the awardees so that they could have participated in the award proceedings and claiming adequate and just compensation. The State ought to have ensured that the awardees had legal aid to take recourse to Section 18 of the Act and in the absence of legal aid or other help many of the awardees were unaware of their legal right and could not strictly comply with the provisions of the Act in the matter of claiming the compensation. Nevertheless the petitioner submitted that broadly speaking the awardees did protest against the award of compensation and required the concerned Land Acquisition Officer to refer their claim for enhanced compensation to the civil court u/s 18 of the Act.

4. The petitioner - association in its affidavit has stated that the cases of its members could be broadly divided into four categories i.e.,

- 1) Members who received the compensation without recording their protest, but who filed applications u/s 18 of the Act within the prescribed time seeking reference to a Civil Court;
- 2) Members who received the compensation after recording their protest, but whose applications u/s 18 of the Act for reference to the Civil Court have not been entertained on the ground of limitation u/s 18(2) of the Act;
- 3) Members who received the compensation without recording their protest and whose applications u/s 18 of the Act have not been entertained on the ground that they are beyond the prescribed time. This category would pertain to persons who were not present or were not represented when the award was made and who did not receive a notice from the Collector u/s 12(2) of the Act and who were not also communicated with the contents of the Collector's Award; and
- 4) Members who received the compensation under protest which fact has been noted in the Award itself and whose applications are also in time u/s 18(2) of the Act. These applications have been rejected on the ground that the compensation had been received without recording their protest ignoring the recitals in the Award

itself.

5. A counter affidavit was filed to the writ petition on behalf of the State Government contending that in most of the cases the awardees and the interested persons were served with the notices u/s 12(2) of the Act, who were present at the time of the award enquiry. It is also stated that in any event the awardees had knowledge about the acquisition proceedings and the cases of the land holders where compensation was accepted under protest and the applications were filed in time only were referred to the civil court u/s 18(2) of the Land Acquisition Act.

6. The learned single Judge, after considering the pleadings and materials placed on record, directed the respondents to refer the cases in all the four categories u/s 18(2) of the Act. Against the decision of the learned single Judge, the State Government as well as the Steel Authority of India filed writ appeals. The writ appeal filed by the State Government being Writ Appeal No. 923 of 1992 was ultimately dismissed for non prosecution. The present writ appeal is filed by the acquiring body viz., Steel Authority of India Limited.

7. Learned Counsel for the appellant strenuously contended that the reference to Court seeking enhancement of compensation has to be filed within six weeks or six months, as the case may be, as stated u/s 18(2) of the Act and any reference filed after the limitation period cannot be referred to the Court. In support of his contention Learned Counsel relied upon the decision of the Supreme Court in Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, (1996) 9 SCC 414, where the Court has held that Section 5 of the Limitation Act cannot be resorted to while making an application u/s 18(1) of the Act and the application has to be made within the period fixed u/s 18(2) of the Act. He also referred to the decision of the three Judge Bench of the Supreme Court in the case of State of Karnataka Vs. Laxuman, 2005 AIR SCW 5535, where the judgment in the case of Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, (1996) 9 SCC 414, was followed by the Supreme Court in the context of Section 18 of the Act as amended in Karnataka.

8. Learned Counsel for the appellant also referred to a decision of the Supreme Court in the case of Mohammed Hasnuddin Vs. State of Maharashtra, AIR 1979 SC 404, where the Court held that the fulfillment of the conditions, particularly, the one regarding limitation, are the conditions subject to which the power of the Collector u/s 18 to make the reference exist. The making of an application for reference within the time prescribed by proviso to Section 18(2) is a sine qua non for a valid reference by the Collector. According to the Learned Counsel, the belated contention of the land holders that an oral protest was made at the time of accepting the money ought not to have been accepted by the learned single Judge and the order of the learned single Judge is contrary to the judgment of the Division Bench of this court in K.N. Narayanappa Naidu Vs. Revenue Divisional Officer, Sivakasi (AIR 1955 Madras 23 = (1954) 67 L.W. 1074) and to the judgment in the case of Wardington Lyngdoh

Vs. Collector ((1995) 4 SCC 428). The learned Government Pleader supported the submissions of the counsel appearing for the appellant Steel Authority of India.

9. Mr. R. Thiagarajan, learned Senior Counsel appearing for the first respondent/claimants submitted that most of the members of the association are small farmers and they are illiterate people. The implication of the award was not explained to them by the Collector and in some cases, which are covered by categories 2 and 3, no notice of the award was served upon them by the Collector. Therefore, according to the Learned Counsel, the question of limitation would not arise. Mr. R. Thiagarajan submitted that the law does not require a protest to be in writing and oral protest is permissible in law and the learned single Judge has rightly held that there was compliance of the essential conditions of the provisions of Section 18 of the Act. Learned Counsel, however, fairly conceded that in cases where the award of the Collector was served on the claimants and yet reference was not made within the time, prayer for reference may not be maintainable. In support of his argument, Learned Counsel relied upon the decisions of the Supreme Court in Ajit Singh Vs. State of Punjab ((1994) 4 SCC 67) and also the judgments in Lachhman Dass Vs. State (AIR 1988 H.P. 39); Basant Kumar Jena Vs. State (AIR 1995 Orissa 288); Suram Ramakka Vs. District Collector, Karimnagar (AIR 1994 A.P. 5); and the judgment of a Division Bench of this court in Kamalam Vs. The Special Tahsildar No. III (Land Acquisition) Veedur Project, Tindivanam (1966 (1) MLJ 86 = (1965) 78 L.W. 688) and an unreported judgment of this court in Pachaianna Gounder Vs. Special Tahsildar, Land Acquisition Salem Steel Plant, in W.P. No. 2450 of 1983 dated 18.12.1990.

10. In the present case vast extents of land had been acquired and there are more than 4000 persons concerned with this acquisition. There are four categories of claimants specified in the affidavit filed in support of the petition in respect of which their claim for reference have to be considered. The four categories specified in the affidavit have already been extracted above. The short question is whether they are entitled to seek for reference u/s 18 of the Land Acquisition Act. It is fairly conceded by the Learned Counsel for the State Government that it is difficult to identify the persons to whom notice u/s 12(2) of the Act was sent and it is also seen from the counter affidavit filed on behalf of the State Government that in some cases, notice of the award was not served upon the claimants though it is contended that the claimants had knowledge about the award as they were constantly in touch with the concerned Special Land Acquisition Officer. The categories 2 and 3 mentioned above would cover the cases of those where the notice of the award was not served upon the land holders. In such cases, there was no justification for rejecting the application on the ground of limitation.

11. In this context, it will be worthwhile to refer to the averments made in paragraph 14 of the affidavit of the petitioner filed in support of the writ petition, which read as follows:

Para 14 - (B): The petitioner submits that in the cases of the awardees included in Annexures (i) and (ii), there has been a clear violation of Section 18 of the Act. In each of these cases, a written objection was given in response to the Notice u/s 9(3) and Section 10 of the Act. Paragraph - 6 of the written objections stated that if the Land Acquisition Officer was not inclined to grant the compensation claimed by the awardees, the awardee would receive the compensation under protest and the claim for enhanced compensation may be referred to a civil court. In the cases of those included in Annexure 1, this protest was followed up by a written application made within the prescribed time. In the cases of those included in Annexure II, it is claimed on behalf of the respondents that the written applications were not made within the prescribed time. Be that as it may the written objections filed in response to the Notice u/s 9(3) and Section 10, and in particular paragraph 6 thereof, would amount to a written application u/s 18. Therefore, the respondents are bound to refer the cases of those included in Annexures I and II to a civil court.

(C) The petitioner submits that the claim of the respondents that in the cases of those included in Annexure II it was not possible to make a reference because their applications for reference were made beyond the prescribed time is incorrect and untenable. If the Awardee was present or was represented before the Collector at the time when the Award was made, then he did give a written objection, which included paragraph 6. Therefore, his application satisfied Section 18(2)(a). If the Awardee was not present or was not represented before the Collector, he is obliged to make an application within six weeks of the receipt of the Notice u/s 12(2) or within six months from the date of the Collector's Award, whichever period shall first expire. In all the cases, no notice was received u/s 12(2). Besides, the Collector's Award was not communicated to the Awardees. Even in cases where the Collector's award was purported to be communicated, what was communicated was only a gist of the award, and not the full text of the award. Therefore, in the cases of those included in Annexure II, irrespective of the fact whether the awardee was present before the Collector or not when the award was made, it is submitted that their applications made subsequently for reference were within the prescribed time. The respondents are therefore, obliged to refer their cases to a civil court for enhanced compensation.

(D) The petitioner submits that the cases of those included in Annexure III are the hardest of the cases. It is claimed on behalf of the respondents that they received the compensation without recording their protest and they also did not file their applications for reference within the prescribed time. It is submitted that the persons included in Annexure III did submit their objections subsequently. Whether they recorded their protest or not when receiving compensation should not be a very significant factor in deciding their right for a reference to a civil court, because on all the facts and circumstances of this case, it is submitted that it must be deemed that every one recorded his protest, some time or other, and in some manner or other, against the compensation which was awarded. In fact, on

information, the petitioner states that even the persons included in Annexure III did submit a written objection which included paragraph 6 referred to in the body of this affidavit. In any event, they did make applications subsequently. Their cases would fall u/s 18(2)(b). In their case also, no notice was received from the Collector u/s 12(2). Nor did they receive a copy of the Collector's award. They made their applications as soon as they had legal advice and as soon as they became aware of the fact that they had been given only a paltry compensation.....

(E) The petitioner submits that the cases of those included in Annexure IV ought to have been referred to the Civil Court u/s 18 of the Act since the applications in these cases have been filed in time and the land owners had received the compensation under protest. There does not seem to be any conceivable reason for rejecting these cases. The respondents 4 to 8 have stated that the land owners had not received the compensation after recording their protest. This is *prima facie* and on the face of the records incorrect and illegal, because the Award itself in all these cases show that the land owners had received the compensation only after recording their protest.

12. In the counter affidavit filed on behalf of the State Government it is stated:

The allegations made in grounds A to F in paragraph 14 of the affidavit filed in support of the writ petition are incorrect and untenable. Ever since the notification u/s 4(1) published in 1969 after conducting the statutory enquiries in 1968, the villagers and the land owners were fully aware of the fact that their lands were proposed for acquisition for the Salem Steel Plant. More over, all the land owners appeared for the award enquiries, which were conducted from 1971 onwards, given statements and received the compensation amount willingly and without any protest as they were fully satisfied with the quantum of compensation amount awarded to them by the Land Acquisition Officers. Some of the awardees who were not satisfied with the compensation amount received the same under protest and they preferred their claims for enhanced compensation within the stipulated time, through their counsel which were properly referred to the Court u/s 18 of the Land Acquisition Act then and there. As such it is not proper to say that merely because the 12(2) notices were not issued to the awardees in some cases, (specific cases are not mentioned) they had no knowledge about the acquisition proceedings, since all the interested persons and the entire land owners were in proper touch with the Land Acquisition Officers concerned at every stage of land acquisition work, since the land acquisition work was carried out in their presence and in their villages..... Some of the awardees at the time of award enquiry demanded increased amount of compensation by presenting petitions, without producing any documentary evidence in support of their claims. The Land Acquisition Officers had rejected their claims, since, the awardees had not substantiated their claims with any documents, and since, they claimed higher amount without any basis.

13. Again it is reiterated on page 11 of the counter claim (running page 28) that merely because Section 12(2) notices were not issued to the awardees in some

cases, it cannot be said that they had no knowledge about the acquisition, since they were in proper touch with the Land Acquisition Officer concerned at several stages of land acquisition proceedings.

14. Insofar as the category of persons who did not receive notices u/s 12(2) are concerned, the learned single Judge has rightly directed the Government to issue notices u/s 12(2) of the Act to those persons and it is for the said persons to consider whether they are seeking reference in accordance with Section 18(2) of the Act or not. Further, the contention of the Learned Counsel for the appellant that unless there is protest in writing there cannot be any reference u/s 18(2) of the Act cannot be sustained for the simple reason that the law does not prescribe any particular mode of protest and it has been consistently held that oral protest is a valid protest under law. It has been brought on record that in some cases, it was specifically stated in the printed form of objections that if the Land Acquisition Officer was not inclined to grant compensation as claimed by the claimants, the claimants would receive the compensation under protest and the claim for enhanced compensation may be referred to the court. In these cases, protest was followed by written application made within the prescribed time. In such circumstances, it could not be said that the land owners have waived their right to challenge the award by accepting the amount in full and final settlement of the claim. Moreover, when the Collector failed to perform his obligation to explain the provisions of law to the land holders, it would disentitle him from raising the question of a bar to the maintainability of the reference. Unless it was clear that the land holders knew about the provisions or that the provisions were explained to them, the waiver of right cannot be presumed and the Collector would have no right to reject the reference on the ground that no protest was made at the time of acceptance of the amount.

15. In Ajit Singh Vs. State of Punjab, cited supra, the State of Punjab issued a notification u/s 4 of the Land Acquisition Act for acquisition of land for construction of godowns by the Central Warehousing Corporation. The Land Acquisition Collector awarded compensation at the rate of 6% to the claimants. Not being satisfied with the same, the appellants preferred application for references u/s 18 of the Act. On reference, the learned Additional District Judge enhanced the compensation. To such of those claimants who had received the amount of compensation as per the award without any protest, enhancement was denied. Allowing the appeal, the Supreme Court held that inasmuch as the appellants have filed an application for reference u/s 18 of the Act that will manifest their intention. Therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation.

16. In Suram Ramakka Vs. District Collector, Karimnagar (AIR 1994 A.P. 5), the Court held that an oral protest is valid u/s 18 of the Act. There, the petitioner was an illiterate land lady residing in a remote corner of the rural area and the assertion

that oral protest was made by the petitioner was not controverted by respondents by filing any counter affidavit. In that view of the matter, the High Court allowed the petition holding that law does not prescribe any particular mode of protest and an oral protest is a valid protest under law, and directed reference to the Court.

17. In the case of Basant Kumar Jena Vs. State (AIR 1995 Orissa 288) the Division Bench of the Orissa High Court has held as follows:

Law does not require the protest to be in writing. To hold so would amount to rewriting the provision. Written protest, of course, is the best proof. Oral protest may be difficult to substantiate, but is permissible in law. Contrary view would not only defeat the purpose of the provision but would also work very hard against the citizens (emphasis supplied). In the instant case the property jointly owned by two uneducated tribals was acquired by the State Government for a public purpose under the Land Acquisition Act Compensation for the entire property was determined by the Award. Half of the amount was paid to "B" and half to "U", "B" had received the amount under oral protest, and "U" had received much later under written protest. "B" filed an application u/s 18 to the Collector for making a reference to the Court for determination of the amount of compensation for the whole of the property. The Collector refused to make a reference on the ground that "B" had not received the amount under protest, and therefore, reference was incompetent in view of the second proviso to Section 31(2). In such circumstances, it could not be said that the owners have waived the right to challenge the award by accepting the amount in full and final settlement of the claim. Moreover, when the Collector failed to perform his obligation to explain the provision of law to "B", it would disentitle to him to raise the question of a bar to the maintainability of reference. Unless it was clear that the owner knew about the provisions or that the provisions were explained to him, waiver of the right cannot be presumed and the Collector would have no right to reject the reference on the ground like this and would also not be entitled to raise the question of bar when controversy arises.

The Court further observed:

The sole purpose behind second proviso to Section 31(2) of the Act is to bar a person from making a reference u/s 18 in case he has consciously waived his right. One who waives a right is estopped from asserting it later on is the principle behind that proviso.

(emphasis supplied)

18. Similar is the view expressed by the Division Bench of Himachal Pradesh High Court in Lachhman Dass Vs. State (AIR 1988 H.P. 39) The Chief Justice speaking for the Bench observed:

Where the petitioner, was a rustic villager and there was no evidence to establish that the Land Acquisition Collector had explained to him the consequences of his

acceptance, if any, of the compensation without protest and there was no evidence to establish also that even otherwise he knew the implications of such acceptance and he still accepted the compensation without any protest, the order rejecting the reference on ground that compensation was received by the petitioner without protest, was improper.

19. The same view is also taken by the learned Judge of this court in an unreported judgment in the case of Pachaianna Gounder and Another Vs. Special Tahsildar, Land Acquisition Salem Steel Plant and Another in Writ Petition No. 2450 of 1983 dated 18.12.1990. Having regard to this settled legal position laid down by the Apex Court as well as various High Courts it is clear that mere protest or expression of dissatisfaction to the award of compensation without there being anything in writing may be sufficient and that the authority concerned is under an obligation to refer the matter to the court in accordance with Section 18(2) of the Act. In view of this legal position various categories as indicated hereinabove, expressing their protest and tiling their applications for reference and some having not even received notices u/s 12(2) of the Act, cannot be denied the right to refer their cases to the Court u/s 18(2) of the Act, and therefore, we do not find any ground to interfere with the judgment of the learned single Judge. Writ appeal is therefore, dismissed with no order as to costs.