

(2013) 12 CAL CK 0015

Calcutta High Court

Case No: M.A.T. No. 1760 of 2013, C.A.N. No. 11277 of 2013 (condonation of delay) and
C.A.N. No. 11278 of 2013 (stay)

Ramesh Chandra Dhara

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Dec. 18, 2013

Citation: (2014) 1 CHN 716 : (2014) 2 WBLR 510

Hon'ble Judges: Subhro Kamal Mukherjee, J; Sahidullah Munshi, J

Bench: Division Bench

Final Decision: Disposed Off

Judgement

Subhro Kamal Mukherjee, J.

Re: C.A.N. No. 11277 of 2013

1. After hearing the learned advocates appearing for the respective parties and after considering the explanations offered in the application for condonation of delay, we are satisfied that the appellants were prevented by sufficient cause from presenting the memorandum of appeal in time. Therefore, the delay of twenty days in filing the memorandum of appeal is condoned. The application for condonation of delay is allowed.

2. The office is directed to register the appeal, if the appeal is otherwise in form.

3. We make no order as to costs.

Re.: M.A.T. No. 1760 of 2013

with

C.A.N. No. 11278 of 2013

4. Although the matter is appearing under the heading "for orders", by consent of the learned advocates appearing for the contesting parties, we take up the appeal

itself for hearing. All formalities are dispensed with.

5. This is an appeal against an order passed by the Hon"ble Single Judge in W.P. No. 9302(W) of 2003, inter alia, disposing of an application under Article 226 of the Constitution of India by directing the State-respondents to pay compensation for the land acquired to the petitioners together with interest at the rate of 10% (ten per centum) per annum from the date of publication of the award upto to the date of issuance of the notice u/s 12(2) of the said Act.

6. In the writ petition, the entire acquisition proceeding was challenged. However, the land was acquired for development of a township. Thus, we hold that the land was acquired for the public purpose.

7. Although the award was passed on January 29, 1999, but notice u/s 12(2) of the Land Acquisition Act, 1894, was issued on March 11, 2003. The Hon"ble Single Judge expressed his anguish and directed payment of interest.

8. The writ petitioners come up this appeal.

9. Mr. Partha Pratim Roy, learned Advocate appearing in support of the appeal, submits that the entire acquisition proceeding was not valid. He, further, submits that the Collector concerned assessed the valuation without any basis and, thus, the award was bad.

10. As we have already held that the land was acquired for public purpose, we are not accepting the submission of Mr. Roy.

11. Alternatively, Mr. Roy submits that when the petitioners received the notice dated March 11, 2003 they made a representation to the Land Acquisition Collector on April 4, 2003 challenging the acquisition proceeding as also the award.

12. The application/objection is annexed at page 63 of the application for stay.

13. Our reading of the said application is that the writ petitioners not only challenged the acquisition proceeding, but, also, challenged the award contending, inter alia, that the award was passed without any basis.

14. Mr. Roy, therefore, submits that the Land Acquisition Collector ought to have made a reference to the Court u/s 18 of the said Act.

15. Mr. Biswajit De, learned Advocate appearing for the State-respondents, and Sk. Rejaul Alam, learned Advocate appearing for the respondent No. 4, submit that since there was no specific prayer made, the Land Acquisition Collector was justified in not making the reference.

16. We have considered the application submitted by the writ petitioners. Although there was no specific prayer for making a reference, but there was a challenge to the award, inter alia, on the allegation that the award was passed without any basis. Conditions precedent to a valid reference is that any person interested, who having

not accepted the award, desires to have an adjudication of the claim by the Court, should, within the period of limitation prescribed in the proviso to section 18 of the said Act ask for a reference. There is no prescribed form for asking for a reference. A dispute challenging the legality of the award is sufficient.

17. We are of the opinion, considering the petition submitted by the writ petitioners in the office of the Collector, that the person interested, in substance, challenges the award and, thus, it should be construed for ends of justice. A prayer for valid reference without such representation was made within the period of limitation.

18. The Supreme Court of India in the case of [A. Viswanatha Pillai and others Vs. Special Tahsildar for Land Acquisition No. IV and others](#), noted that undoubtedly there was no express averment in the reference application u/s 18 of the said Act that the referring claimant was seeking a reference on his behalf and on behalf of his three brothers, but held, inter alia, that it was surprising that State having acquired the property of a citizen would take technical objections regarding the entitlement of the claim. Although the Supreme Court of India recognised that the State certainly has right and is entitled to resist claim for enhancement and lead evidence in rebuttal to prove the prevailing price as on the date of notification and ask the Court to determine the correct market value of the lands acquired compulsorily, but as regards the persons' entitlement to receive compensation, it has no role to play.

19. Mr. Roy has cited another decision in the case of [Dingman Sangama and Others Vs. State of Meghalaya and Others](#), .

20. In Dingman Sangama (supra) instead of making the prayer for reference before the Collector, representation was submitted to the Chief Minister of the State. The Gauhati High Court held that there was sufficient compliance of the requirement of law, as the citizens are not supposed to be familiar with the procedure under the said Act.

21. Thus, the order impugned is set aside and the Land Acquisition Collector is directed to make a reference u/s 18 of the said Act within six weeks from the date of receipt of this communication.

22. The appeal and the connected application for stay, filed under C.A.N. 11278 of 2013, are disposed of.

23. We make no order as to costs. The office is directed to supply photostat certified copy of this order to the applicant, if applied for, on urgent basis.

Sahidullah Munshi, J.

I agree.