
S.K. Abed Bash Vs The State

Writ Petition No. 14210 (W) of 2000

Court: Calcutta High Court

Date of Decision: Sept. 11, 2000

Acts Referred:

Land Acquisition Act, 1894 " Section 29, 30

Citation: (2001) 2 ILR (Cal) 157

Hon'ble Judges: Dilip Kumar Seth, J

Bench: Single Bench

Advocate: Asis Kumar Das and Pradip Kr. Panja, for the Appellant; Chittarangan Panda and Aparna De Chowdhury, for the Respondent

Judgement

Dilip Kumar Seth, J.

After the earlier Writ petition was dismissed by this Court on the ground of alternative remedy the Petitioner has filed

an application u/s 30 of the Land Acquisition Act before the Collector seeking a reference for apportionment. It is contended that the Collector

instead of making the reference purporting to disburse the amount.

2. The Land Acquisition Act provides for two class of reference to the Court, one relating to assessment of compensation, the other relating to

apportionment, as was held in Taylor v. Collector of Purnea ILR 14 Cal. 423 Once the award has become final the assessment of compensation

comes to end. The duty of the Collector in case of dispute as to the relative rights of the persons together entitled to the money is to place the

money under the control of the Court and the parties then can proceed to litigate for determining the respective rights and title to the property and

then to the respective shares. It was so held in Ramachanjdra Rao v. Ramachandra Rao 26 C.W.N. 713 (P.C.).

3. Section 29 prescribes that where there are several persons interested, if such person agree to the apportionment of compensation, the particular

of such apportionment shall be specified in the award and as between such persons the award shall be conclusive evidence of correctness of the

apportionment. Thus only in case of agreement between the persons the Collector may decide the question of apportionment. Section 29 postulate

a decision when there is no dispute between the persons and who agree to the apportionment.

4. But if there is a dispute with regard to apportionment then the case falls u/s 30 of the said Act. Section 30 does not leave any option to the

Collector. This section has not empowered the Collector to decide such dispute. As soon dispute is raised the Collector has to refer the same for

decision by the Court. But such claim is to be made before the Collector during the process of the award. The Collector may refer even without

being asked for, i.e. of his own motion.

5. The provision contained in Section makes it clear that in case of dispute with regard to apportionment the reference to Civil Court u/s 30 is to be

made before disbursement of the compensation. But at the same time there is nothing to prohibit a reference even after payment is made. Section 30

has also not prescribed any period. Therefore, there cannot be any question of limitation and such reference can be made at any time.

6. Section 30 proceeds on the basis of dispute as to apportionment. This necessarily imply the existence of a dispute. Unless there is a dispute,

there can not be a reference u/s 30. The existence of a dispute confers jurisdiction on the Collector to make the reference. Thus he cannot have

jurisdiction to make a reference u/s 30 unless there exist a dispute relating to apportionment. Such a view finds support in Sudhansu Kumar Ghose

and Another Vs. Land Acquisition Officer and Others, and Chandeswari Prosad Narain v. State of Bihar AIR 1955 Pat. 104.

7. Therefore before making a reference the Collector has to examine whether there exists a dispute. If dispute exists the Collector has no

alternative but to make the reference. But in course of examining the question of existence of dispute, the Collector is not empowered to decide

anything which may amount to adjudication of any dispute or a complicated issue. It is only a prima facie satisfaction about the existence of the

dispute that has to be ascertained by the Collector Only in a case where a man of ordinary prudence may say that there is no dispute only and only

in such a case the Collector may refuse to refer u/s 30. If in order to say there exists no dispute when an adjudication becomes necessary a

reference must ensue.

8. In the facts and circumstances of the case no useful purpose will be served by keeping this petition pending in view of the order that is proposed

to be passed protecting the interest of the non-appearing Respondents.

9. The Collector before making the payment of compensation shall decide the application made by the Petitioner raising the dispute and dispose of

the same within 2 months from the date of production of a certified copy of this order upon notice and after giving opportunity to the Respondents

to show that no reference is needed. However, the Collector will decide the question according to his own wisdom and discretion in the light of the

observation made above. In case he finds that there is a dispute he will make the reference within 4 weeks from such finding. In case he does not,

he will communicate the reason to the Petitioner forthwith.

10. The writ petition thus disposed of without any order as to costs.

11. Let a Xerox certified copy of this order be supplied to the applicant expeditiously subject to compliance with all the required formalities.