(1955) 06 CAL CK 0004

Calcutta High Court

Case No: Civil Revision Case No. 676 of 1954

kajarilal Agarwala		APPELLANT
	Vs	
The Union of India and Others		RESPONDENT

Date of Decision: June 16, 1955

Acts Referred:

- Land Acquisition Act, 1894 - Section 18, 18(1), 18(2), 8, 8(1)(a)
- West Bengal Land (Requisition and Acquisition) Act, 1948 - Section 8

Citation: 59 CWN 935

Hon'ble Judges: Chakravartti, C.J; Mallick, J

Bench: Division Bench

Advocate: Rajendra Bhusan Bakshi and Bankim Chandra Roy II, for the Appellant; Bhabesh Narayan Bose for the Union of India and Nirmal Chandra Chakravarty and D.N. Basu for the State of West Bengal, for the Respondent

Final Decision: Allowed

Judgement

Chakravartti, C.J.

This Rule involves a point under the West Bengal Land (Requisition and Acquisition) Act, 1948. which was raised in the case of Birendra Nath Ray Sarkar and Another Vs. Union of India (UOI) and Another, , but left undecided, as the petitioner in that case was entitled to relief even if this point failed. The present Rule cannot, however, be disposed of without deciding the point. The facts which are simple are these It appears that an area of 37.85 acres of land, belonging to the petitioner and situated within the limits of the Siliguri Municipality, was acquired for purposes of the Assam Link Railway Project. We are told that it is on a portion of this land that the "present Siliguri Junction station has been constructed.

2. The notification u/s 4(1) of the Act was issued on the 30th june, 1949, and the petitioner filed his claim on the 29th December following, In his petition of claim, he valued the land at Rs. 100 per cottah which, if allowed, would entitle him to receive a

total sum of Rs. 2,27100, but in striking the total, an arithmetical error was committed and the claim was wrongly laid at Rs. 1,14000. Be that as it may, the amount actually awarded to the petitioner was considerably less. The Collector made his award on the 5th of February, 1951, and he allowed the petitioner a sum of Rs. 2.2074 computed at the rate of Rs. 600 per acre of the land acquired. The petitioner was not satisfied with the award and made an application u/s 8(1) of the Act for a reference to the court, but he did not make the application till the 2nd of February, 1953. The Collector has rejected the application as time-barred, and has said that he is passing his order in accordance with our decision in Civil Rule No. 2940 of 1951 which, by the way, is the case of Birendra Nath Ray Sarkar v. Union of India (l) (supra) to which I referred a few moments ago.

3. The Collector has given no reason for the view taken by him. Apparently, he considered it unnecessary to do so, because he thought he was following a decision of the High Court. How any such impression could have taken possession of his mind, is not clear, because in the case to which Ireferred. the question was expressly left open and not only was it left open but it was also said that if one was to take the language of section 8(2) of the Act literally, one was bound to come to the conclusion that no period of limitation had been prescribed for applications for a reference u/s 8(1) of the Act. It appears from an earlier order, dated the 2nd of February, 1953, that the Collector made a reference to the Government Pleader for his opinion, but apparently the Government Pleader also took our decision in a mistaken sense.

4. The only section of the Act to which reference need be made is section 8. Clause (a) of sub-section (1) of that section is in the following terms :

The Collector shall in every case-(a) Where any person aggrieved by an award made under sub-section'' (2) of section 7 makes an application requiring the matter to be referred to the Court.....refer the matter to the decision of the Court.

5. This provision, it will at once be seen, is the counter part of section 18(1) of the Land Acquisition Act and it is not restricted, in any manner, in regard to the time within which the application for a reference is to be made. On the other hand, the section is mandatory in character and says that upon an application for a reference being made, the Collector shall refer the matter to the decision of the Court and shall do so in every case. The language is noticeably different from that of section 18(1) of the Land Acquisition Act which deals with the matter only by reference to the person making the application, enabling him fee require the Collector to make a reference, but does not, in terms, make it a duty of the Collector to refer the mat tor to the Court, although such an obligation is obviously implied. The point to be noticed in section 8(1)(a), however, is that it is completely free of any limitation of any kind. Sub-section (2) of section 18 of the Land Acquisition Act has no counter part in section 8 of the West Bengal Land (Requisition and Acquisition) Act.

6. The latter section, however, has a sub-section (2) of its own and that provision is in the following terms :

The provisions of the Land Acquisition Act, 1894, shall mutatis mutandis apply in respect of any reference made to the Court under sub-section (1).

7. The argument in the previous case was--and the same argument was repeated before us in the present Rule-that sub-section (2) of section 8 of the local Act was addressed to a stage of the proceedings subsequent to the making of the reference by the Collector and that to the making of the reference, it had no application. Reliance for the contention was placed on the words, "apply in respect of any reference made to the Court under sub-section (1)". It was contended that the language used by the Legislature clearly contemplated that a reference had already been made or. in other words, it had reached the court and that although certain provisions of the Land Acquisition Act were being made applicable mutatis mutandis, it was only such provisions as were applicable to the post-reference stage. The process of making the reference itself or the time within which the application for a reference was to be made was in no way covered by the language of the sub-section.

8. In my view, the contention is unanswerable. We have to collect the intention of the Legislature from the words used by it, for they are the only repository of the intention. The words, "in respect of any reference made" can only he read as contemplating a completed reference and it is not possible to extend their implication backward, so as to stretch over either the making of the reference or the making of the application there for. Mr. Bakshi, who appears on behalf of the petitioner, contended that sub-section (1) of the section was a complete code by itself and that when it said that "the Collector shall in every case.....refer the matter to the decision of the Court", it left no room for the introduction of any condition or limitation. I would not attach much importance to the imperative character of the language used in sub-section (1) of the section, for, if the sub-section had been effectively controlled by a proviso, laying down certain conditions, the imperative character of the language used would not relieve an applicant of the conditions. To my mind, however, the language used in sub-section (2) is decisive. It cannot import any provisions of the Land Acquisition Act which apply to a stage prior to the consideration of a reference by the Court after a reference has been made. To put it in a concrete shape, the provisions of the Land Acquisition Act which are imported by the language used in section 8(2) are the provisions from section 20 onwards, so far as they relate to a reference made.

9. The learned Senior Government Pleader, who appears on behalf of the State Government, frankly conceded that, in view of the language used by the Legislature, he could not hope to succeed with a contention that the limitations contained in sub-section (2) of section 18 of the Land Acquisition Act were drawn in by section 8(2) of the local Act. He contended, however, that although the Legislature might

not have succeeded in prescribing any time for making applications for a reference, the right to make such applications could not be timeless. He referred to the principle usually applied by Courts, when no fixed period of limitation exists, that the act concerned must be done within a reasonable time, and offered to satisfy us that if the test of reasonableness was applied to the time Spent, the petition was bound to fail.

10. We do not, however, consider it possible to deal ourselves with the question of the reasonableness or otherwise of the time taken by the petitioner in making his application. He may have had impediments to contend against which would make even the time of two years taken by him reasonable or he may have been woefully negligent. These are questions of fact which can be more conveniently gone into by the Collector. We are all the less inclined to decide the question raised by the learned Senior Government Pleader, because the Collector did not deal with the application from the point of view of the reasonableness of time taken by the petitioner and. therefore, neither side has had a proper opportunity for placing before the Collector the relevant facts.

11. All that we do decide is that section 8 of the West Bengal Land (Requisition and Acquisition) Act, 1948. does not make the provisions of section 18(2) of the Land Acquisition Act applicable to applications made u/s 8(1) of the Act and that there is no prescribed period of limitation for making such applications. We also decide that although there is no prescribed period of limitation, an application u/s 8(1) must nevertheless be made within a reasonable time. What we do not decide and. what we leave for the decision of the Collector is whether or not, on the facts of the present case, the petitioner came with his application within a reasonable time. For the decision of that matter, the case must go back.

12. For the reasons given above, the Rule is made absolute. The orders passed by the Collector on the 24th and 28th December. 1953, are set aside and he is directed to deal with the petitioner''s application in accordance with law and in the light of the observations contained in this judgment. As the petitioner succeeds, he is entitled to his costs of this Rule--the hearing fee being assessed at three gold mohurs.

Mallick, J.

I agree.