

(2010) 12 CAL CK 0068**Calcutta High Court****Case No:** F.A.T. No. 002 of 2009

Collector (L.A.)

APPELLANT

Vs

Jagatha

RESPONDENT

Date of Decision: Dec. 2, 2010**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 2
- Land Acquisition Act, 1894 - Section 11, 12, 17, 17(3A), 18
- Limitation Act, 1963 - Section 14, 18, 29, 29(2), 29(4)

Citation: (2011) 2 CHN 387**Hon'ble Judges:** Kanchan Chakraborty, J; Kalyan Jyoti Sengupta, J**Bench:** Division Bench**Advocate:** Mohd. Tabraiz, for the Appellant; K.M.B. Jayapal, for the Respondent**Judgement**

Kalyan Jyoti Sengupta, J.

The instant appeal has assailed the judgment and decree passed in the Land Acquisition Case No. 14 of 1998. The short fact for which the present appeal came to be filed is as follows:

The Andaman and Nicobar Administration u/s 4 of the Land Acquisition Act, 1894 (here in after referred to as the Act-1 of 1894) had issued notification for acquisition of a land measuring about one hectare bearing survey Plot No. 59/1 situated in village Long Island under Rangat Tehsil which is classified as paddy land (hereinafter referred to as the said land). The said land was said to be acquired for the purpose of construction of water reservoir in the Long Island for the benefit and welfare of the public at large. While issuing the said notification under the direction of the State who felt the acute emergency, the Collector had taken possession symbolically, of the said land u/s 17 Sub-section (1) of the Act-1 of 1894. The Government dispensed with compliance of Section 5A of the Act-1 of 1894. The Collector thereafter issued notices and took all steps and also estimated 80% of the

compensation amount and the same was tendered to the original owner of the said plot of land being the predecessor-in-interest of the Respondents u/s 17(3A) of the Act 1 of 1894. On refusal to accept, the Collector deposited the said 80% compensation amount. It appears from the records of the Collector of the said land acquisition proceeding that on 16th of August, 1998 had passed an order estimating 80% of the compensation of Rs. 64,167/. The original owner of the said land was also notified for acceptance of the said 80% of the compensation amount. On 30th October, 1998 the said original owner of the land being the predecessor-in-interest of the Respondents refused to accept the said 80% compensation amount. Thereafter, the then Collector made an application on 5th November, 1998 intending to take step u/s 31, Sub-section (2) read with Sub-section (3A) of Section 17 of the Act 1 of 1894 in view of the refusal as aforesaid. The said step was taken making formal application and in the said application Section 18 of the Act 1 of 1894 was mentioned. It appears from the record of the learned Court below that on receipt of the said application the learned Trial Judge initiated the land acquisition case being No. 14 of 1998. Immediately after the said application the 80% amount of the compensation amount was deposited with the Court. On notice being served in relation to the land acquisition case No. 14 of 1998 the original owner being the predecessor-in-interest of the present Respondent entered appearance and filed objection not only to the 80% amount of compensation estimated u/s 17(3A) of Act 1 of 1894 but also he raised objection to the award made u/s 11 by that time on 10th June, 1999. The said objection was filed on 29th August, 2000. The Collector namely the Appellant before us also filed a counter objection to the statement and claim made by the original owner in relation to the said award dated 10th June, 1999. Thus it is clear when the aforesaid land acquisition case was initiated the award was not made and it was made subsequently on 10th June, 1999.

2. In the objection of the Collector the plea of legality and validity as well as the jurisdiction of the learned Trial Judge was not taken. Only objection was raised relating to the claim of enhanced amount made by the original owner.

3. The learned Trial Judge at the time of hearing of the matter on 16th February, 2001 framed the following issues:

Is the present reference maintainable in fact and in Law ?

Has the value of the land of the claimant, which has been acquired by the Land Acquisition Collector, been correctly and properly assessed by the Land Acquisition Collector ?

Is the claimant entitled to compensation at a higher rate as claimed ?

Is the claimant entitled to any other relief as prayed for ?

4. The learned Trial Judge after taking evidence adduced on behalf of the claimant/Respondent enhanced the amount of compensation to four lakhs with

simple interest @ 6% p.a. with effect from 1st January, 2002 till 31st March, 2009 and also a sum of Rs. 20,000/- as solatium. The learned Trial Judge overruled the preliminary objection as regard maintainability of the said land acquisition case holding that the said land acquisition case is lawful as the same was initiated on the reference being made by the Collector himself.

5. The Learned Counsel for the Appellant Mr. Tabraiz submits that the entire land acquisition case is without jurisdiction and the same is not maintainable. Therefore, the decree passed by the learned Trial Judge is null and void. He submits that admittedly there has been no application for reference by the owner u/s 18 within the stipulated period as mentioned therein. Therefore, there was no occasion for the Collector to make any reference. The application made under the grab of reference earlier was really intended for depositing 80% of the compensation as estimated u/s 17(3A), under the provision of Section 31 of the Act 1 of 1894 in view of refusal to accept the same despite being tendered. In order to initiate land acquisition case by the learned District Judge there must have been a valid and lawful reference by the Collector which in its turn requires an application for reference by the person interested, such conditions are sine qua non. In this case after the award was passed such step was not taken either by the claimant or by the Collector. In any view of the matter the Collector cannot make suo motu reference under the law and, the aforesaid proposition of law is well-settled by the Supreme Court long time back and Division Bench of this Court has also accepted the same view. In support of his submission he has cited decision of the Supreme Court reported in [State of Kerala Vs. Kumari T.P. Roshana and Another](#). Our attention has been drawn to an unreported judgment of the Division Bench of this Court in FAT No. 001 of 2005, Collector, Land Acquisition v. Champabati.

6. The Learned Counsel for the Respondents submits that it is true that after passing of the award in June, 1999 there was no separate application for reference but all along his client objected to the compensation estimated and ultimately awarded by the Collector, right from beginning. As such, when notice was served by the learned Trial Judge in connection with the aforesaid land acquisition case his client duly filed objection to the said award also. According to him, unless he had objected to the said estimate of 80% compensation he would not have raised any objection subsequently. Moreover, this point was never raised in the pleading nor seriously agitated. In fact, subsequently in the counter objection the Collector's contest was confined to the claim and contention of the compensation amount made out in their objection petition. Therefore, it is mere irregularity and all the provisions u/s 18 are deemed to have been complied with when an objection is made before the Collector even before making of the award and subsequently on receipt of the notice of the learned District Judge.

7. We record that Mr. Tabraiz has not advanced any argument on the merit of this case.

8. He confined his argument to the question of jurisdiction as agitated above. Therefore, only question we have to decide whether the learned Trial Judge was justified firstly in initiating the acquisition proceeding on receipt of the application made by the Collector in which there has been mention of reference u/s 18 of the Act 1 of 1894 when admittedly no award was published u/s 11 of the Act 1 of 1894; secondly whether the learned Trial Judge can assume jurisdiction to determine the compensation u/s 23 otherwise than provision of Sections 18 and 19 of the Act 1 of 1894?

9. In order to answer those points we are to examine first whether the estimation of 80% of the compensation amount as mentioned in Section 18(3A) of Act 1 of 1894 can be treated as award or not. On reading of the said Sub-section (3A) it appears to us, that it is an ad hoc decision as it is based on estimation. Therefore, the claim of compensation mentioned in Sub-section (3A) of the said Section 17 cannot be said to be an award so as to take action u/s 18 of the Act-1 of 1894. This will be clear from the provision of Section 19 under which the Collector makes a statement mentioning amongst other, the amount paid or deposited under Sub-section (3A) of Section 17.

10. On careful reading of the application made by the Collector in 1998 on the basis of which the said case was initiated, it appears to us that the said application was really intended to make for deposit of the 80% of the estimated compensation on account of refusal to accept despite being tendered u/s 17(3A). The mentioning of the word "reference u/s 18" in the said application is wholly irrelevant and meaningless for in the said Act there is only one provision i.e. u/s 18 which can be brought into action for reference only when the award has been made u/s 11 of the Act-1 of 1894. We therefore, set out the said Section 18 as follows:

18. Reference to Court.-- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,--

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

11. The Collector makes an award u/s 11 after undertaking of various procedure and method as mentioned therein, and this award is a final and conclusive document unless it is objected as mentioned in Section 12 of the Act 1 of 1894.

12. The said award can be taken exception as far as quantum of compensation is concerned u/s 18.

13. It appears that said reference can be made only when an application made by person interested who has not accepted the award. This application has to be made to the Collector within the period mentioned in the said proviso. It is thus clear that the aforesaid provision is enabling one, and the Collector will make reference only on receipt of the application within that time as provided in the said section with the proviso. In other words making an application by the person interested is a sine qua non and unless it is not made the Collector cannot suo motu do it, if it is done then provision of Section 12 will be frustrated. Section 12 of the Act-1 of 1894 provides by necessary implication, if no exception is taken then it will become final and conclusive document.

14. Therefore, it is the duty of the Collector on receipt of the application must examine that exception has been taken within the four-corners of Section 18. Our aforesaid view is having the complete support of the Supreme Court decision in the case of State of Kerala Vs. Kumari T.P. Roshana and Another, cited by Mr. Tabraiz. In paragraph 24 of the AIR the following is the statement of law:

24. The word "require" in Section 18 of the Act implies compulsion. It carries with it the idea that the written application makes it incumbent on the Collector to make a reference. The Collector is required to make a reference u/s 18 on the fulfillment of certain conditions. The first condition is that there shall be a written application by a person interested who has not accepted the award. The second condition is as to the nature of the objections which may be taken, and the third condition is as to the time within which the application shall be made. The power of the Collector to make a reference u/s 18 is thus circumscribed by the conditions laid down therein, and one condition is the condition regarding limitation to be found in the proviso.

15. The aforesaid principle has also been accepted by the Division Bench of this Court in an unreported decision referred to above.

16. In view of the aforesaid discussion and on the facts and circumstances recorded by us we think that the instant land acquisition case initiated on the application made by the Collector is invalid and without jurisdiction as the Collector has no jurisdiction to do it suo motu. Moreover, at that time there was no award. Hence, the question of making reference by the Collector did not and could not arise. It is contended that since both the parties participated in the proceeding from beginning and subsequently award was brought under challenge it is a mere corrigible irregularity. We are unable to accept the contention of the Learned Counsel for the Respondents as it goes to the root of the matter namely the question of jurisdiction.

The assumption of jurisdiction of the learned Land Acquisition Judge is depending upon the lawful and valid reference of the Collector which in its turn requires factually lawful application u/s 18.

17. It is settled position of the law when the law requires a thing is to be done it has to be done in that way, as it is provided or not at all. Question of estoppel as against the statute does not and cannot arise particularly when it is the question of jurisdiction. Hence, the submission of the Collector to the jurisdiction without raising any objection, of the learned Trial Judge does not cure the defect. In other words, as rightly contended by Mr. Tabraiz by act and conduct jurisdiction of the Court de hors the provision of the law cannot be conferred. This legal proposition is so well settled it does not require any authority of any Court.

18. Under this circumstances the learned Trial Judge we are of the view, has not decided it correctly. We hold that the entire proceeding namely the instant Land Acquisition case is void in view of the lack of jurisdiction.

19. But the question remains whether the case of the claimant (now Respondents) is destroyed. The answer would obviously be in negative. We notice that it is no doubt both the parties proceeded bona fide before the learned Land Acquisition Judge treating the same is initiated on the basis of the reference u/s 18, however, in oblivious of provision of law. Ignorance of law cannot be an excuse to validate the act and conduct by the parties but in this case act and conduct of the parties, may have some legal implication as far as the right of the present Respondents are concerned.

20. It appears from the records and in substance the original owner raised objection to the award ultimately passed in 1999 but he could not make any application because the land acquisition case was pending wherein all the issues were involved. In a situation like this one can take bona fide decision that when the Collector himself has submitted the jurisdiction and has referred factually all the points u/s 18 read with Section 23 of the Act 1 of 1894 there was no need to make separate application. It has to be accepted as a bona fide action.

21. Under the circumstances, we set aside the judgment and decree and award. However, we give liberty to the Respondents here in to make an application for reference u/s 18, if so advised, to the Collector who will entertain this application and will take a decision for referring the matter to the Land Acquisition Judge afresh. The Land Acquisition Act, 1894 on careful reading does not appear to have excluded the applicability of the Limitation Act, 1963 expressly or by necessary implication. There is a discussion in the Supreme Court decision referred to above with regard to limitation and also discussion in unreported judgment of this Court cited by Mr. Tabraiz but those decisions were rendered on different factual matrix and then it was not decided whether by virtue of Section 29, Sub-section (2) of the Limitation Act the provision under Sections 4 to 24 of Act 1963 would be made applicable in the

application for reference to be made by the person interested or not ? As we have already observed that the Land Acquisition Act, 1894 being a special statute within the meaning of 1963 does not exclude the applicability of Act 1963 either expressly or by necessary implication. The provision of Section 14 of the Limitation Act, 1963 must be applied. We, therefore, accordingly quote the Section 29(2) of the Limitation Act as well as Section 14 of the Limitation Act:

29. Savings.--(1)....

(2) Where any special or local law prescribes for any suit, appeal or (emphasis supplied) application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or (emphasis supplied) application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

14. Exclusion of time of proceeding bona fide in Court without jurisdiction.--(1) In computing the period of limitation for any suit the time during which the Plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of First Instance or of Appeal or Revision, against the Defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, (emphasis supplied) from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of First Instance or of Appeal or Revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of Order 23 of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of Sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under Rule 1 of that order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the Court or other cause of a like nature.

Explanation.--For the purposes of this section,--

- (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;
- (b) a Plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

22. We have already observed that the predecessor-in-interest of the Respondents as well as the Respondents herein proceeded bona fide within the meaning of Section 14 of the Limitation Act, 1963. Hence, the period during which the proceeding was pending till the date of delivery of this judgment shall be excluded for the purpose of computation of period of limitation for making the award. It is found from the records that on the date of making the award neither the original owner nor his representative was present. Therefore, CHN 2011(2) 3/27 the period of limitation of six months provided in the Clause (b) of proviso of Section 18 will be applicable.

23. We declare under law the Respondents will be entitled to withdraw the entire amount of compensation together with interest accrued which is kept deposited for long time with the learned Acquisition Judge without prejudice to their rights and contention and will also be entitled to make an application for which they have been granted liberty, however, this liberty should remain in force for a period of one month from the date of receipt of certified copy of this judgment. The Collector shall take steps in accordance with law taking note of the observation by this judgment as above as early as possible, once such application for reference is made.

24. This appeal is disposed of with the aforesaid order and direction.

Kanchan Chakraborty, J.

25. I agree.