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(1999) 05 CAL CK 0024

Calcutta High Court

Case No: Writ Petition No. 963 of 1999

Samaresh Mukherjee — APPELLANT

Vs

State of West Bengal — RESPONDENT

Date of Decision: May 18, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226
- Land Acquisition Act, 1984 - Section 11, 12, 12(2), 18, 18(1)
- Limitation Act, 1963 - Section 29, 5

Citation: (2000) 1 ILR (Cal) 410

Hon'ble Judges: Basudeva Panigrahi, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Basudeva Panigrahi, J.
In this writ petition, the Petitioners, who Were the owners of a premises which was acquired under Land Acquisition proceeding have challenged the order passed by the 2nd Land Acquisition Collector, Calcutta rejecting their prayer u/s 18 of the Land Acquisition Act, 1984, for referring the matter to the Civil Court. The Petitioners were admittedly the owners of the disputed premises No. 36 Vidyasagar Street, Calcutta. On December 4, 1996, a proceeding under Land Acquisition Act was initiated by the Respondents. Therefore, being aggrieved by such action of the Respondents, the writ Petitioners challenged such act under Article 226 of the Constitution. The said application was, however, rejected by ah order dated December 18, 1997, by a learned Single Judge of this Court. Therefore, the Petitioners preferred an appeal against the said order while the matter was pending before the Division Bench, the Petitioners received a notice on June 5, 1998, u/s 9 of the Land Acquisition Act, 1984, informing them that an award of compensation would be made on June 23, 1998, and therefore, they were asked to appear before the Land Acquisition Collector. On the aforementioned date, the Petitioners did not, however, attend the office of the Collector on account of pendency of the appeal

before the Division Bench. But, their learned Solicitor sent a letter on June 12, 1998, requesting the Land Acquisition Collector to adjourn the case in view of the pendency of the appeal.

2. The Land Acquisition Collector did not accede to such request and by letter dated June 24, 1998, informed the Petitioners that a sum of Rs. 36,15,447.00 had been awarded as compensation with a request to be present before the 2nd Land Acquisition Collector on June 30, 1998, at 4.00 P.M. and in case they would not attend before the said authorities, the award might be accepted. It has been claimed by the Petitioners that they have been kept in dark inasmuch as the copy of the award was not communicated to them. Therefore, the said award, even if passed, on the aforementioned date is legally not valid and binding on them as it vitiated the principles of natural justice.

3. After the earlier writ petition was dismissed, the Petitioners were eventually advised that they should make a formal application under Sections 18 and 23 of the Land Acquisition Act before the Land Acquisition collector for referring the matter to the appropriate Court for determination of the award and for revision of the compensation amount. It has been claimed by the Petitioners that when only five month''s lapsed by filing such application from the date of the letter dated February 18, 1999, yet, the Respondent dismissed their claim on the ground that it was barred by limitation. It has been further stated by the Petitioners that while construing the provision of Section 18 it should be conjointly read Section 12(2) of the Act. Since there was no valid notice u/s 12(2) and the notice which was purportedly sent to the Petitioners being very cryptic and without any details, therefore, the said notice cannot be construed to be a notice u/s 12(2). Thus, Petitioners should be given a chance to the a fresh application u/s 18, even if needed, with an application u/s 5 of the Limitation Act.

4. Mr. Sarkar, the learned Senior Advocate appearing for the Petitioners has submitted by placing reliance on the judgment of Special Deputy Collector, Land Acquisition (S.S.P.), Kurnool Vs. C. Sai Reddy and Others, that since the notice of the award as contemplated u/s 12(2) does not contain full details, such as, extent of land; amount of compensation and also other details it cannot be said that the objection should be filed within six weeks from the date of receipt of such notice. In that view of the matter the order passed by the Land Acquisation Collector rejecting the prayer for referring the matter to the competent court is illegal and therefore, it should be set aside.

5. The learned advocate appearing for the State has invited my attention that the judgment in Special Deputy Collector, Land Acquisition (S.S.P.), Kurnool Vs. C. Sai Reddy and Others, has been overruled by another bench decision in Maddela Narsimlu and others Vs. The Special Deputy Collector, Land Acquisition Unit-I, Sriramsagar Project, Nizamabad, which has been held as follows:

Under Section 18(2) of the Land Acquisition Act, 1984, (as amended by A.P. Act 20 of 1959) notice of award under proviso (b) to Section 18(2) (which corresponds to the first of

proviso (b) Section 18(2) in the Central Act), does not mean that it is necessary that the award copy or the reasoning part of the award need be communicated to the persons interested. If the Form 9 as per the A.P. Land Acquisition Manual is served, giving the Award No. the true area acquired, the compensation allowed, the persons known or believed to be interested and the appointment, it would be sufficient for the commencement of the limitation of two months. The particulars which are to be given in Form 9 amount to sufficient compliance with the requirement of "notice of award" contained in Section 12(2) of the Act read with the first part of proviso (b) to Section 18(2).

6. In that view of the matter, I can not place reliance on a judgment which has been subsequently overruled. The Petitioners further placed reliance on a judgment reported in Ramesh Shankar Wankhede Vs. The State of Maharashtra, which has also been overruled by the same High Court in Prabhakar Vasudav Gadgil and Others etc. Vs. P.Y. Deshpande Special Land Acquisition Officer and Another, which has been held as follows:

Considering the language of Sub-section (3) introduced by the Maharashtra amendment in Section 18 of the Land Acquisition Act, it is clear that the legislature merely intended to provide a remedy of revisional application to the High Court against any order passed by the collector in the discharge of his statutory duty under Sub-section (1) and that while the Collector so discharges his statutory duty he is not a Court under the CPC attracting the provisions of the Limitation Act.

7. In the judgment of Mohammed Hasnuddin Vs. State of Maharashtra, it has been indicated that the Statutory Authority/Board has no power to exercise the provision of Section 5 of the Limitation Act which has been cited below:

Merely because the Collector while making an award u/s 11, or in serving a notice on the owner of the land u/s 12, acts as an agent of the Government, it does not necessarily imply that while making a reference to the court u/s 18, he acts in the capacity of an agent of the Government. Section 18(1) entrusts to the Collector the statutory duty of making a reference on the fulfilment of the conditions laid down therein. The Collector, therefore, acting u/s 18, is nothing but a statutory authority exercising his own powers under the section, (1905) ILR 32 Cal 605 (PC) Foll.

The fulfilment 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 exists. 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.

8. Land Acquisition Collector has not been designated as a Court, therefore, he is not vested with the power for exercising the power u/s 5 of the Limitation Act. On a careful reference to the notice, it is also found that it contained all the details, namely, the

premises no, the amount of compensation and date of award, therefore, there has been sufficient compliance of Section 12(2) of the Act.

9. Another contention has been advanced by the Petitioners that in view of the provision of Section 29 of the Limitation Act, the Land Acquisition Act does not preclude the Application of Section 5 of the Limitation Act. Therefore, the Land Acquisition Collector in the above situation should have entertained the application for reference u/s 18 of the L.A. Act. But such contention does not cut any ice since the Land Acquisition Act prescribed special limitation for filing objection against the award u/s 18 of the Act. Therefore, considering the contentions raised by the Petitioners from every angle I do not find there is any merit in this case.

10. Accordingly, the writ petition is dismissed but in the circumstances without cost.

11. Let a xerox copy of the judgment duly signed by the Assistant Registrar of this Court be given to the parties upon their undertaking to apply for certified copy of the judgment.