Raja Harish Chandra Raj Singh vs The Deputy Land Acquisition Officer And ... on 30 March, 1961

Equivalent citations: 1961 AIR 1500, 1962 SCR (1) 676, AIR 1961 SUPREME COURT 1500, 1961 ALL. L. J. 650, 1962 (1) SCJ 696, 1962 (1) SCR 696, ILR 1961 2 ALL 372

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, K.N. Wanchoo

PETITIONER:
RAJA HARISH CHANDRA RAJ SINGH

Vs.

RESPONDENT:
THE DEPUTY LAND ACQUISITION OFFICER AND ANOTHER

DATE OF JUDGMENT:
30/03/1961

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.

CITATION:
1961 AIR 1500 1962 SCR (1) 676
CITATOR INFO :

RF	1963 SC1604	(1,5)
D	1969 SC 323	(8)
RF	1970 SC 214	(13)
R	1974 SC 923	(45A)
R	1975 SC2085	(9)
RF	1976 SC2101	(11)
RF	1979 SC 404	(17)
R	1980 SC 15	(1)
R	1980 SC 775	(11)
APL	1981 SC 427	(5)
R	1986 SC1164	(5)
RF	1986 SC1805	(5)
D	1989 SC 239	(3,4,5)
RF	1991 SC2141	(10)

ACT:
Limitation-Land Acquisition-Award by Collector-Notice Of

award not given-Application for reference to Court-Time for making-Land Acquisition Act, 1894 (1 of 1894), s. r8.

HEADNOTE:

Certain lands belonging to the appellant were compulsorily acquired. The Collector made an award with respect to the amount of compensation, signed and filed it in his office as required by S. 12(1) Land Acquisition Act on March 19, 1950. But no notice of the award, as required by s. 12(2) , was given to the appellant. The appellant came to know of the award on or about January 13, 1953, and on February 24, 1953, he filed an application under s. 18 requiring that the matter be referred for the determination of the Court. The proviso to s. 18 prescribes that in cases where a person was not present or represented at the time of the making of the award the application under s. 18 shall be made within six weeks of the receipt of the notice from the Collector under s. 12(2), or "within six months from the date of the award", whichever shall expire first. The appellant's application was dismissed as time barred on the ground that it was made beyond six months of the date of the award.

Held, that the application made by the appellant under s. 18 of the Act was not beyond time. The award of the Collector was not a decision but an offer of compensation on behalf of the Government to the owner of the property and it was not effective until it was communicated to the owner. The making of the award did not consist merely in the physical act of writing the award or signing it or filing it in the office of the Collector; it also involved the communication of the award to the owner either actually or constructively. Consequently, the expression "the date of the award" in the proviso to s. 18 meant the date when the award was communicated to the owner or is known by him either actually or constructively. The application in the present case was made within six months of the date when the appellants came to know of the award and was within the period prescribed.

Ezra v. The Secretary of State, (1903) I.L.R. 30 Cal. 36 and Ezra v. Secretary of State for India, (1905) I.L.R. 32 Cal, 605, applied.

Magdonald v. The Secretary of State for India in Council, (1905) 4 Ind. C. 914 and Hari Das Pal v. The Municipal Board, Lucknow, (1914) 22 Ind. C. 652, approved.

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Jahangir Bemanji v. G. D. Gaikwad, A.I.R. 1954 Bom. 419 and State of Travancore Cochin v. Narayani Amma Ponnamma, A.I.R. 1958 Kerala 272, disapproved.

O. A. O. A. M. Muthia Chettiar v. The Commissioner of Income-tax, Madras, I.L.R. 195i Mad. 815, Annamalai Chetti v. Col. T. G. The Cloeta, (1883) I.L.R. 6 Mad. 189. and E. V. E. Swaminathan.The Alias Chidambaram Pillai v. Letchmanan Chettiar, (1930) I.L.R.Acqu 53 Mad. 491, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 25 and 26 of 1958.

Appeals from the judgments and orders dated August 7, 1956, of the Allahabad High Court in Special Appeals Nos. 151 and 152 of 1955.

C. B. Agarwala, A. N. Goyal and Mohan Lal Agarwala, for the appellant.

Gopi Nath Dikshit and C. P. Lal, for the respondents. 1961. March 30. The Judgment of the Court was delivered by GAJENDRAGADKAR, J.-These two appeals arise out Gajen, of two writ petitions filed by the appellant Raja Harish Chandra Raj Singh against the respondents the Deputy Land Acquisition Officer and another in the Allahabad High Court and they were based on the same facts and asked for the same relief. Both of them raise a short common question of limitation the decision of which would depend upon the determination of the scope and effect of the provisions of the proviso to s. 18 of the Land Acquisition Act I of 1894 (hereafter called the Act). Since the facts in both the appeals are substantially the same we would refer to the facts in Civil Appeal No. 25 of 1958. The decision in this appeal would govern the decision of the other appeal, Civil Appeal No. 26 of 1958.

The appellant Raja Harish Chandra Raj Singh was the proprietor of a village Beljuri in the District of Nainital. It appears that proceedings for compulsory acquisition of land including the said village for a public purpose were commenced by respondent 2, the State of Uttar Pradesh; notifications under ss. 4 and 6 of the Act were issued in that behalf, and the provisions of s. 17 were also made applicable. Accordingly, after the notice under s. 9(1) of the Act was published possession of land was taken by the Collector on March 19, 1960. Thereupon the appellant filed his claim to compensation for the land acquired in accordance with s. 9(2), and proceedings were held by the Deputy Land Acquisition Officer, respondent 1, for determining the amount of compensation. It appears that in these proceedings an award was made, signed and filed in his office by respondent I on March 25, 1951. No notice of this award was, however, given to the appellant as required by s. 12(2) and it was only on or about January 13, 1953 that he received information about the making of the said award. The appellant then filed an application on February 24, 1953 under a. 18 requiring that the matter be referred for the determination of the Court, as, according to the appellant, the compensation amount determined by respondent I was quite inadequate. Respondent I took the view that the application thus made by the appellant was beyond time under the proviso to s. 18 and so he rejected it. The appellant then filed a writ petition in the Allahabad High Court on December 21,1953 in which he claimed appropriate reliefs in respect of the order passed by respondent I on his application made under a. 18. This petition was heard by Mehrotra, J. and was allowed. The learned Judge directed respondent 1 to consider the application made by the appellant on the merits and deal with it in accordance with law. He held that in dealing with the said application respondent 1 should treat the application as filed in time. Against this decision the respondents preferred an appeal to a Division Bench of the said High Court. Mootham, C. J. and Chaturvedi, J., who heard

this appeal took the view that the application filed by the appellant under s. 18 of the Act was barred by time, and so they allowed the appeal, set aside the order passed by Mehrotra, J. and dismissed the writ petition filed by the appellant. The appellant then moved for and obtained a certificate from the said High Court and it is with this certificate that he has come to this Court in the present appeal; and so the short question which the appellant raises for our decision is whether the application filed by him under s. 18 of the Act(was in time or not.

Before proceeding to construe the material provisions of s. 18 it is necessary to refer very briefly to, some other sections of the Act which are relevant in(order to appreciate the background of the scheme in relation to land acquisition proceedings. Section 4 deals with the publication of the preliminary notification and prescribes the powers of the appropriate officers. Whenever it appears to the appropriate Government that land in any locality is needed for any public purpose a notification to that effect shall be published in the official gazette and a public notice of its substance shall be given at convenient places in the said locality; that is the effect of s. 4(1). Sec- tion 4(2) deals with the powers of the appropriate authorities. Section 5-A provides for the hearing of objections filed by persons interested in any land which has been notified under s. 4(1). After the objections are thus considered a declaration that land is required for a public purpose follows under s. 6(1). Section 6(2) provides for the publication of the said declaration; and s. 6(3) makes the declaration conclusive evidence that the land is needed for a public purpose. Section 9 requires the Collector to give public notice in the manner specified stating that the Government intend to take possession of the land and calling for claim,% to compensation in respect of all interests in such land. Section 9(2) prescribes the particulars of such notice, and s. 9(3) an 4) provide for the manner of serving such notice. Section II deals with the enquiry and provides for the making of the award by the Collector. Section 12(l) then lays down that the award when made by the Collector shall be filed in his office, and shall, except as otherwise provided, be final and conclusive evidence as between the Collector and the persons interested whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested. Section 12(2) is important. It makes it obligatory on the Collector to give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made. It is common ground that no such notice was given by respondent 1 to the appellant. That briefly is the scheme of the relevant provisions of Part II of the, Act which deals with acquisition.

Part III which deals with reference to Court and procedure thereon opens with s. 18. Section 18(1) provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by him for determination of the Court, inter alia, whether the amount of compensation is adequate or not. It is under this provision that the appellant made an application from which the present appeal arises. Section 18(2) requires that the application shall state the grounds on which objection to the award is taken. These grounds have been stated by the appellant in his application. The proviso to s. 18 deals with the question of limitation. It prescribes 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 under s. 12(2), or within six months from the date of the Collector's award

whichever shall first expire. The appellant's case falls under the latter part of el. (b) of the proviso. It has been held by the Allahabad High Court that since the application made by the appellant before respondent I was made beyond six months from the date of the award in question it was beyond time. The view taken by the High Court proceeds on the literal construction of the relevant clause. As we have already seen the award was signed and delivered in his office by respondent 1 on March 25, 1951 and the application by the appellant was made under s. 18 on February 24, 1953. It has been held that the effect of the relevant clause is that the application made by the appellant is plainly beyond the six months permitted by the said clause and so respondent I was right in rejecting it as barred by time. The question which arises for our decision is whether this literal and mechanical way of construing the relevant clause is justified in A law. It is obvious that the effect of this construction is that if a person does not know about the making of the award and is himself not to blame for not knowing about the award his right to make an application under s. 18 may in many cases be rendered ineffective. If the effect of the relevant provision unambiguously is as held by the High Court the unfortunate consequence which may flow from it may not have a material or a decisive bearing. If, on the other hand, it is possible reasonably to construe the said provision so as to avoid such a consequence it would be legitimate for the Court to do so. We must therefore enquire whether the relevant provision is capable of the construction for which the appellant contends, and that naturally raises the question as to what is the meaning of the expression "the day of the Collector's award". In dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector under s. 12. In a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, inter alia, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer s. 18 gives him the statutory,, right of having the question determined by Court, and' it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance. In Ezra v. The Secretary of State (1). It has been held that "the meaning to be attached to the word "award" under s. 11 and its nature and effect must be arrived at not from the mere use of the same expression in both instances but from the examination of the provisions of the law relating to the Collector's proceedings culminating in the award. The considerations to which we have referred satisfy us that the Collector acts in the matter of the enquiry and the valuation of the land only as an agent of the Government and not as a judicial officer; and that consequently, although the Government is bound by his proceedings, the persons interested are not concluded by his finding regarding the value of the land or the compensation to be awarded." Then the High Court has added that such tender once made is binding on the Government and the Government cannot require that the value fixed by its own officer acting on its behalf should be open to question at its own instance before the Civil Court. The said case was taken before the Privy Council in Ezra v. Secretary of State for India (2), and their Lordships have expressly approved of the observations made by the High Court to which we have just referred. Therefore; if the award made by the

Collector is in law no more than an offer made on behalf of the Government to, the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office; it must (1) (1903) I.L.R. 30 Cal. 36, 86.

(2) (1905) I.L.R. 32 Cal. 605.

involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words "the date of the award" occurring in the relevant section would not be appropriate.

There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the' rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, 'is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair-play and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award"

> used in the proviso to s. 18 in a literal or mechanical way. In this connection it is material to recall the fact that under s. 12(2) it is obligatory on the Collector to give immediate notice of the award to the persons interested a,, are not present personally or by their representatives when the award is made. This requirement itself postulates the necessity of the communication of the award to the party concerned. The Legislature recognised that the making of the award under s. 11 followed by its filing under s. 12(1) would not meet the requirements of justice before bringing the award into force. It thought that the communication of the award to the party concerned was also necessary, and so by the use of the mandatory words an obligation is placed on the Collector to communicate the award immediately to the

person concerned. It is significant that the section requires the Collector to give notice of the award immediately after making it. This provision lends support to the view which we have taken about the construction of the expression "from the date of the Collector's award" in the proviso to s. 18. It is because communication of the order is regarded by the Legislature as necessary that s. 12(2) has imposed an obligation on the Collector and if the relevant clause in the proviso is read in the light of this statutory requirement it tends to show that the literal and mechanical construction of the said clause would be wholly inappropriate. It would indeed be a very curious result that the failure of the Collector to discharge his obligation under s. 12(2) should directly tend to make ineffective the right of the party to make an application under s. 18, and this result could not possibly have been intended by the legislature.

It may now be convenient to refer to some judicial decisions bearing on this point. In Magdonald v. The Secretary of State, for India in Council (1) Rattigan and Shah Din, JJ. held that under the proviso to s. 18 until an award is announced or communicated to the parties concerned it cannot be said to be legally made.

(1) (1005) 4 Ind. C. 914.

An award under the Act, it was observed in the judgment, is in the nature of a tender and obviously no tender can be made unless it is brought to the(-, knowledge of the person to whom it is made. The learned Judges observed that this proposition seemed to them to be self-evident. The same view has been expressed by the Oudh Judicial Commissioner in Hari Das Pal v. The Municipal Board, Lucknow (1). On the other hand, in Jehangir Bomanji v. G. D. Gaikwad (2) the Bombay High Court has taken the view that the element of notice is only an essential ingredient of the first part of cl. (b) of the proviso to s.18 which prescribes the period of limitation as six weeks from the date of the receipt of the notice from the Collector, not of the second part which prescribes the maximum period of six months from the date of the Collector's award in absolute terms. According to that decision, as far as the limitation under the latter part is concerned it runs from the date of the award and the date of the award has nothing whatever to (lo with the notice which the Collector has to give under s. 12(2). In our opinion this decision is based on a misconstruction of the relevant clause in the proviso to s. 18. The same comment falls to be made in regard to the decision of the Kerala High Court in State of Travancore-Cochin v. Narayani Amma Ponnamma (3). It may, however, be pertinent to point out that the Bombay High Court has taken a somewhat different view in dealing with the effect of the provision as to limitation prescribed by s. 33A(2) of the Indian Income-tax Act. This provision prescribes limitation for an application by an assessee for the revision of the specified class of orders, and it says that such an application should be made within one year from the date of the order. It is significant that while provid- ing for a similar period of limitation s. 33(1) specifically lays down that the limitation of sixty days therein prescribed is to be calculated from the date on which the order in question is communicated to the (1) (1914) 22 Ind. C. 652. (2) A.I.R. 1954 Bom. 419, (3) A.I.R. (1958) Kerala 272.

assessee. In other words, in prescribing limitation s. 33(1) expressly provides for the commencement of the period from the date of the communication of the order, whereas s. 33A(2) does not refer to any such communication; and naturally the argument was that communication was irrelevant under s. 33A(2) and limitation would commence as from 'the making of the order without reference to its communication. This argument was rejected by the Bombay High Court and it was hold that it would be a reasonable interpretation to hold that the making of the order implies notice of the said order, either actual or constructive, to the party affected by it. It would not be easy to reconcile this decision and particularly the reasons given in its support with the decision of the same High Court in the case of Jehangir Bomanji (1). The relevant clause under s. 33A(2) of the Indian Income-tax Act has also been similarly construed by the Madras High Court in O.A.O.A.M. Muthia Chettiar v. The Commissioner of Income-tax, Madras (2). "If a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time", observed Rajamannar, C.J., "limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order, and therefore must be presumed to have the knowledge of the order". In other words the Madras High Court has taken the view that the omission to use the words "from the date of communication" in s. 33A(2) does not mean that limitation can start to run against a party even before the party either knew or should have known about the said order. In our opinion this conclusion is obviously right. A similar question arose before the Madras High Court in Annamalai Chetti v. Col. J. G. Cloete(3). Section 25 of the Madras Boundary Act XXVIII of 1860 limited the time within which a suit may be brought to set side the decision of the settlement officer to two months from the date of the award, and (1) A.I.R 1954 Bom. 419. (2) I.L.R. 1951 Mad. 815. (3) (1883) I.L. R. 6 Mad. 1 89.

so the question arose as to when the time would begin to run. The High Court held that the time can begin to run only from the date on which the decision is communicated to the parties. "If there was any decision at all in the sense of the Act", says the judgment, "it could not date earlier than the date of the communication of it to the parties; otherwise they might, be barred of their right, of appeal without any knowledge of the decision having been passed". Adopting the same principle a, similar construction has been placed by the Madras High Court in K. V. E. Swaminathan alias Chidambaram Pillai v. Letchmanan Chettiar (1). On the limitation provisions contained in ss. 73(1) and 77(l) of the Indian Registration Act XVI of 1908. It was held that in a case where an order was not passed in the presence of the parties or after notice to them of the date when the order would be passed the expression "within thirty days after the making of the order" used in the said sections means within thirty days after the date on which the communication of the order reached the parties affected by it. These decisions show that where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. Therefore, we are satisfied that the High Court of Allahabad was in error in coming to the conclusion that the application made by the appellant in the present proceedings was barred under the proviso to s. 18 of the Act.

In the result we allow the appeal, set aside the orders passed by Mootham, C. J. and Chaturvedi, J., and restore those of Mehrotra, J. In the circumstances of this case there would be no order as to costs.

Appeal allowed.

(1) (1930) I.L.R. 53 Mad- 491.