

Mahadeo Bajirao Patil vs State Of Maharashtra And Others on 6 September, 2005

Equivalent citations: AIRONLINE 2005 SC 1059

Author: B.P. Singh

Bench: B.P. Singh, S.B. Sinha

CASE NO. :
Appeal (civil) 867 of 2003

PETITIONER:
Mahadeo Bajirao Patil

RESPONDENT:
State of Maharashtra and others

DATE OF JUDGMENT: 06/09/2005

BENCH:
B.P. SINGH & S.B. SINHA

JUDGMENT:

J U D G M E N T B.P. SINGH, J.

This appeal by special leave is directed against the judgment and order of the High Court of Judicature at Bombay dated October 30, 2001 in First Appeal No. 981 of 1996. By the aforesaid judgment the High Court allowed the appeal preferred by the State of Maharashtra/respondent No.1 herein and held that the application filed by respondent No.1 under Section 18 of the Land Acquisition Act for making a reference was barred by limitation. The sole question which, therefore, arises for consideration in the instant appeal is whether the said application filed by the appellant herein under Section 18 of the Land Acquisition Act was barred by time.

The facts of the case in so far as they are relevant for the disposal of this appeal are as follows:-

One Kulkarni held a lease executed on December 3, 1979 for a period of 20 years in respect of an area of 142 Hectares 78 Ares from the State of Maharashtra for mining Silica sand. The aforesaid lessee applied to the State of Maharashtra on May 3, 1991 for transfer of the mining lease in favour of the appellant herein. In the mean time, on October 8, 1991 a proposal was submitted to the Collector of Sindhudurg by Respondent No.136, namely, M/s. Konkan Railway Corporation Ltd. for acquisition of land for the purpose of the said Corporation situated in village Achirne. Pursuant thereto land measuring 13 Hectare 9 Ares were notified for acquisition by

Notification issued under Section 4 of the Land Acquisition Act on February 13, 1992. Subsequent thereto the Government by its Order dated February 20, 1992 allowed the application for transfer of mining lease in favour of the appellant herein. This included the lands notified for acquisition of village Achirne. The agreement was thereafter executed by and between the aforesaid Kulkarni and the appellant on May 15, 1992 and the lease-hold rights were transferred in favour of the appellant.

On July 25, 1992 a declaration under Section 6 of the Act was issued in respect of the lands earlier notified on February 13, 1992.

Sometime in May 1994, the appellant filed a writ petition before the High Court of Bombay being Writ Petition No. 1238 of 1994 for quashing the acquisition proceeding as also the inquiry conducted under Sections 9 and 11 of the Act. It was also prayed that respondent No.136 M/s. Konkan Railway Corporation. Ltd. be restrained from taking any further action in the matter. This writ petition was disposed of by order of June 7, 1994 which directed the State of Maharashtra to comply with the requirements of Section 17(3)(a) of the Act within eight weeks and declare the award within eight weeks thereafter. The award ultimately came to be declared on August 29, 1994 which awarded compensation only to the land owners/ respondents 2 to 135 and not to the appellant who was a mere lessee and found not entitled to grant of compensation. It is also not disputed that on September 18, 1994 a telegram was sent to the appellant herein by the Special Land Acquisition Officer informing him of the declaration of the award which translated into English reads as follows:-

"This Office No. LQN/Konkan Railway Project/Sank-3-Achirne 463/91 dated 31-8-94 be perused Mouje Achirne Taluka Vaibhavwadi Award No.463/91 has been declared on 29-8-94".

"As per the discussion in this Award first demand is rejected".

On receiving the telegram on September 20, 1994 the appellant immediately applied to the Collector for providing him a copy of the award filed in his office. Thereafter, on December 9, 1994, the appellant filed Writ Petition No.447 of 1995 before the Bombay High Court. In the Writ Petition, he admitted the fact that although an award had been declared by the Special Land Acquisition Officer it had not been officially served upon him. The appellant annexed to this writ petition as Ex. B an ordinary copy of the award and challenged the validity of the award in as much as the appellant had not been awarded any compensation. This writ petition was disposed of by the High Court by its judgment and order of January 30, 1995 directing the appellant to seek remedy under Section 18 of the Act with liberty to make an appropriate application for condonation of delay. On February 20, 1995 an application under Section 18 of the Act was filed. The Joint Civil Judge who heard the aforesaid Land Reference No.69 of 1995 allowed the reference application and awarded compensation of Rs.4 crores to the appellant with interest @ 10% per annum from November 1, 1996 onwards. We may only notice that in the aforesaid writ petition the land owners/ respondents 2 to 135 were added as party respondents while respondent No.136 intervened in the writ petition

making a grievance that in the land reference case no order should have been passed in the absence of respondent 136 i.e. M/s Konkan Railway Corporation. Ltd. since the acquisition was made at the instance of the aforesaid Corporation.

The State of Maharashtra challenged the judgment and order of the Joint Civil Judge in First Appeal No.981 of 1996 before the Bombay High Court. It was contended, inter alia, that the application for reference made under Section 18 was barred by limitation and there was no power in the Court or the Land Acquisition Officer to condone the delay in filing an application under Section 18 of the Act. The High Court by its impugned judgment and order has upheld the contention of the State of Maharashtra.

From the facts noticed above it cannot be disputed that an award had been declared by the Special Land Acquisition Officer on August 29, 1994. Intimation about the declaration of the award was sent to the appellant by telegram dated September 18, 1994 which was admittedly received by the appellant on September 20, 1994. In the writ petition filed on December 9, 1994 the appellant admitted knowledge of the fact that an award has been declared but asserted that a copy of the award had not been officially served upon the appellant. However, an ordinary copy of the award was annexed to the writ petition as Ext-B. The application under Section 18 of the Act was made by the appellant on February 20, 1995. Section 18 of the Act reads 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 under section 12, sub-section (2); or within six months from the date of the Collector's award, whichever period shall first expire".

A mere perusal of section 18 discloses that there are three situations for which period of limitation has been provided for making an application for reference. Firstly, if the person making the application was present or represented before the Collector at the time when he made his award, the application must be filed within six weeks from the date of the Collector's award.

In the instant case, it is not disputed that the appellant was not present when the award was made and, therefore, Section 18(2)(a) is not applicable to the facts of this case.

Second and third situations are envisaged by Section 18 (2)

(b). The second situation envisaged is where a notice is received by the applicant under Section 12 sub-section (2) of the Act. In such a case, the period of limitation prescribed is six weeks from the date of the receipt of the notice or within six months from the date of the Collector's award whichever period shall first expire. In the instant case, the High Court has held the application to be barred by limitation, firstly, on the ground that the telegram sent to the appellant on September 18, 1994 amounted to a notice under sub-section (2) of Section 12 of the Act, and secondly, on the ground that in any event as on December 9, 1994 the applicant had not only knowledge of the fact that an award had been declared but had also a copy of the award which he annexed with writ petition as Ext.B. If the date of knowledge is taken to be December 8, 1994, even then the application under Section 18 was barred by limitation. The correctness of these findings has been assailed before us.

It is by now well settled that notice under Section 12(2) of the Act is a clear intimation of making of the award requiring the owner or person interested to receive the compensation awarded under Section 11 of the Act. It is not necessary that the notice should contain all the details of the award including the consideration by the Land Acquisition Collector and its manner of determination of the compensation. No particular form is prescribed by the Act or the Rules.

In State of Punjab and another vs. Satinder Bir Singh :

(1995) 3 SCC 330 this Court held :-

"The question then is whether the notice under Section 12(2) is a valid notice. From a conjoint reading of Sections 11 and 12, it is clear that notice is only an intimation of making of the award requiring the owner or person interested to receive compensation awarded under Section 11. On receipt of the notice, if the person interested receives compensation without protest, obviously no reference need be made. The determination of compensation becomes final and binds the parties. When he receives the compensation under protest as contemplated under Section 31 of the Act, the need to make the application for reference under Section 18(1) would arise. At that juncture it will be open to the person interested either to make an inspection of the award which was conclusive between him and the Collector by operation of sub-section (1) of Section 12, or seek a certified copy of the award from the Collector and the contents. Thereon he could make necessary objection for the determination inter alia, of compensation for the land. It is not necessary that the notice should contain all the details of the award including his consideration and its manner of determination of the compensation as opined by the learned Judge of the High Court. It is not incumbent that the person interested should immediately make the reference application on his receiving compensation under Section 31. In other words receipt of the amount and making the reference application are not simultaneous. The statutory operation of limitation mentioned by Section 18(2) does not depend on the ministerial act of communication of notice in any particular form

when the Act or Rules has not prescribed any form. The limitation begins to operate from the moment the notice under Section 12(2) is received or as envisaged by Section 18(2)".

It is not disputed that a telegram was sent to the appellant by the Special Land Acquisition Officer informing the appellant that the award had been declared on August 29, 1994 and further stating that the first demand as discussed in the award was rejected. The counsel for the appellant sought to contend before us that though this telegram intimated the factum of declaration of the award necessary particulars were not disclosed therein. On the other hand, counsel for respondent No.1 and 136 contended that the telegram clearly mentions the fact that the demand of the appellant had been rejected. The appellant sought to contend that the reference to "first demand" in the telegram is to the request of the appellant made on September 15, 1993 to change the alignment of the railway track so that the mining area of which the appellant was the lessee, was not disturbed. It was this demand that had been rejected. Such a plea does not appear to have been raised before the High Court. The appellant has not placed before us a copy of the award declared by the Special Land Acquisition Officer. The representation made by him on September 15, 1993 to the Collector, Sindhudurg, of which copy had no doubt been endorsed to the Special Land Acquisition Officer, did not relate to any claim of compensation payable in respect of the lands to be acquired. It was only a representation confined to the request made by the appellant to change the railway alignment so that the mining area was not disturbed. He submitted that the appellant later claimed compensation amounting to Rs.29 crores by a demand made on May 26, 1994. We are not persuaded to accept this contention. The Special Land Acquisition Officer while making an award was certainly not concerned with the alteration of railway track alignment. He was only concerned with the grant of compensation in accordance with law relating to the lands forming subject matter of the declaration under Section 6 of the Act. The submission urged on behalf of the appellant before the High Court that since no amount had been awarded to the appellant, the award declared on August 29, 1994 was not an award under Section 11 of the Land Acquisition Act, must also be rejected. It is not disputed before us and also noticed by the High Court, that the Land Acquisition Officer held that the appellant being a lessee was not entitled to any compensation and compensation was payable only to the land owners, namely, respondents 2 to 135.

We are here not concerned with the correctness of the decision, but the fact remains that having considered the claim of the appellant for compensation, the Special Land Acquisition Officer rejected the claim. This does amount to the making of an award, commonly described as "nil award". If the appellant was aggrieved by such an award, it was open to him to seek reference under Section 18 of the Act which the appellant actually did. We, therefore, cannot hold that no award as envisaged by Section 11 of the Act was declared on August 29, 1994, since the claim of the appellant was considered and was totally rejected. There was, therefore, no question of giving any calculation of the manner in which the compensation was computed. Since, the application under Section 18 was not filed within six weeks of the receipt of notice under Section 12(2) of the Act, the High Court did not commit any error in holding that the application was barred by limitation. It was not disputed before us that the Land Acquisition Officer making a reference, or the Court considering a reference under Section 18 of the Act has no power of condonation of delay in making an application under the aforesaid Section.

The next ground on which the High Court held the application to be barred by limitation is that in any event the appellant had knowledge of the award being made on December 8, 1994, since he filed a copy of the award as annexure to the writ petition filed on December 9, 1994 and, therefore, should have filed the application under Section 18 of the Act within six weeks. The submission urged on behalf of the appellant relying upon the decision of this Court in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Anr. AIR 1961 SC 1500 that in the instant case even if it is assumed that the appellant had knowledge of the award at least on December 8, 1994, he could make an application within six months from the date of such knowledge, would have deserved serious consideration, but for the finding recorded by us earlier that the appellant had notice under Section 12(2) of the Act and, therefore, period of limitation for filing the application under Section 18 was six weeks from the date of receipt of the notice and not six months from the date of knowledge of the award.

In the view that we have taken, we find no merit in this appeal and the same is, accordingly, dismissed.