

Prayag Upnivesh Awas Evam Nirman ... vs Allahabad Vikas Pradhikaran & Anr on 16 April, 2003

Equivalent citations: AIR 2003 SUPREME COURT 2302, 2003 AIR SCW 2273, 2003 ALL. L. J. 1431, 2003 (6) SRJ 467, (2003) 6 ALLINDCAS 839 (SC), 2003 (6) ALLINDCAS 839, 2003 (4) ACE 580, 2003 (5) SCC 561, 2003 (3) SLT 278, (2003) 5 ALL WC 4437, (2003) 3 ALLMR 320 (SC), (2003) 3 CIVLJ 260, (2003) 4 ANDHLD 36, (2003) 5 INDLD 959, (2003) 51 ALL LR 504, (2003) 2 CURCC 278, (2003) 4 SCALE 39, (2003) 3 SUPREME 656, (2003) 2 RECCIVR 674, (2003) 3 ICC 123, (2003) 4 MAD LW 33, (2003) 2 LACC 170

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Bench: K.G. Balakrishnan, P. Venkatarama Reddi

CASE NO.:

Appeal (civil) 3064 of 2000

PETITIONER:

Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd.

RESPONDENT:

Allahabad Vikas Pradhikaran & Anr.

DATE OF JUDGMENT: 16/04/2003

BENCH:

K.G. Balakrishnan & P. Venkatarama Reddi.

JUDGMENT:

J U D G M E N T K.G. BALAKRISHNAN, J.

An extent of 2 bigha, 5 biswa and 8 dhur of land falling in Village Civil Station in the city of Allahabad was acquired under the provisions of the Land Acquisition Act, 1894 (for short, "the Act"), for establishing a commercial district centre at the instance of the Allahabad Development Authority (ADA). Notification under Section 4(1) of the Act was published on 13.1.1987 and Declaration under Section 6(1) was made on 6.2.1987. Emergency provision under Section 17 of the Act was invoked and the award was published on 25.5.1987. The land in question was government land which had been given on lease to Shiv Narain Chaudhary, Laxman Narain Chaudhary and others. The period of lease had expired in 1960 and it was not renewed. The award was passed on 25.5.1987 and the compensation was fixed at Rs.9,80,565.06. As both the Government and the lease holders claimed the compensation, the Special Land Acquisition Officer (SLAO) referred this dispute to the Civil Court on 12.10.1987 under Section 30 of the Act. The Reference was registered as

Reference Case No. 124 of 1987 and the matter was pending before the 11th Addl. District Judge, Allahabad. While the matter was so pending, the Addl. District Judge, Allahabad, sent a communication on 11.8.1992 to the SLAO stating that on perusal of the case file, an application filed under Section 18 of the Act by the appellant herein, namely, Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. (Appellant-Samiti), was found to be on the file and that no mention had been made regarding that application in the letter of Reference. A clarification, therefore, was sought by the Addl. District Judge. Pursuant to this communication, the SLAO sent the reply stating that such an application was also attached and due to an error, the same was not mentioned in the letter dated 12.10.1987. After the receipt of this letter, the 11th Addl. District Judge impleaded the appellant-Samiti and proceeded in the matter as if there was a proper Reference under Section 18 of the Act. It was held by the Addl. District Judge that for the land acquired by the Government, the market value shall be Rs.1,400/- per square yard. Seventy five per cent of the compensation was directed to be paid to the appellant-Samiti and the balance twenty five per cent was directed to be paid to the State Government.

The award passed by the Addl. District Judge was challenged by the sponsoring authority, viz., Allahabad Development Authority (ADA) as well as the State. ADA urged before the High Court that there was no proper Reference under Section 18 of the Act for enhancement of the compensation and that the Addl. District Judge had no jurisdiction to grant enhancement of compensation. It was submitted that the appellant-Samiti did not participate in the acquisition proceedings and therefore, they were not entitled to file Reference application under Section 18 of the Act. The High Court accepted the contentions raised by the ADA and the State and held that there was no proper reference under Section 18 of the Act and enhancement of compensation ordered by the reference court was set aside. However, the finding on Issue No. 2 that the Samiti will be entitled to get seventy five per cent of the compensation amount and the balance twenty five per cent shall be given to the State, was affirmed. The judgment of the Division Bench of the High Court is challenged before us.

We heard the appellant's counsel and counsel for the respondents. The counsel for the appellant-Samiti submitted before us that the SLAO, by his subsequent letter, clarified that an error had been committed in not mentioning about the application submitted by the appellant-Samiti in the Reference letter, although such application itself had been sent along with the Reference file by the SLAO to the Additional District Judge. Learned counsel submitted that there was proper Reference under Section 18 of the Act and, therefore, the award passed by the Civil Court was proper and valid and was not liable to be quashed by the High Court. Learned counsel for the respondent, on the other hand, submitted that there was no proper Reference under Section 18 and as there was no such Reference, the Addl. District Judge lacked jurisdiction and, therefore, the award passed by the learned Addl. District Judge is non est and has rightly been set aside by the High Court.

The short question that arises for consideration is whether the SLAO had made a reference under Section 18 of the Act? Admittedly, the original reference was only under Section 30 of the Act, for apportionment as there was a dispute as to who should get the compensation.

In the Reference letter sent by the SLAO on 12.10.1987, nothing has been stated regarding the claim for enhancement of compensation put in by any of the parties. It is also pertinent to note that in the reference letter, the appellant-Samiti is not shown as a party. The first claimant is one, Shiv Narain Lal Chaudhary and there are six other claimants. The Reference letter of the SLAO clearly shows that the appellant-Samiti was not a party to such Reference. It is surprising as to how the learned Addl. District Judge could seek a clarification on the basis of an application which was found on the file and if such an application was made by any party, naturally there would have been a Reference under Section 18 of the Act and it would have been specifically mentioned in the Reference letter. It is equally surprising that even though the appellant was not a party to the reference case and was allegedly not having knowledge of the proceedings, how and at whose instance the clarification was sought by the Addl. District Judge. It is also pertinent to note that the clarification issued by the SLAO subsequent to the letter from the Addl. District Judge, cannot be construed as Reference under Section 18 of the Act. The letter from SLAO reads as follows :

"This is with reference to your letter dated 11.8.1992 whereby you have enquired as to whether in the reference forwarded on

12.10.1987 entitled as State Government vs. Shiv Narayan Chaudhary and Ors., the reference of Prayag Upnivesh Sahkari Samiti, under Section 30/18 was also made? In this connection it is submitted that in the file of the office, the reference of Prayag Upnivesh Sahkari Samiti Ltd., is also attached. Probably, due to error in the previous reference letter dated 12.10.1987 the same was not mentioned."

The letter quoted above by itself is not sufficient to make it as a Reference purported to have been made under Section 18 of the Act. The learned Addl. District Judge clearly erred in assuming that there was a Reference under Section 18 of the Act. The subsequent impleadment of the Samiti as a party to the Reference, which was pending under Section 30 of the Act, and the conversion of the same also as a Reference under Section 18, were illegal and has rightly been quashed by the High Court.

It is well established that the reference court gets jurisdiction only if the matter is referred to it under Section 18 or 30 of the Act by the Land Acquisition Officer and that civil court has got the jurisdiction and authority only to decide the objections referred to it. The reference court cannot widen the scope of its jurisdiction or decide matters which are not referred to it. This question was considered by various judicial authorities and one of the earliest decisions reported on this point is *Pramatha Nath Mullick Bahadur vs. Secy of State* AIR 1930 PC 64. This was a case where the claimant sought a Reference under Section 18 of the Act. In the application filed by the claimant, he raised objection only regarding the valuation of the land. The claimant did not dispute the measurements of the land given in the award. Before the reference court, the claimant raised objection regarding the measurements of the land and sought for fresh measurements. This was refused and the claimant applied to the High Court for revision of this order, but without success. Again, in the appeal, the claimant raised the same objection regarding measurements and the High Court rejected it. The Judicial Committee of the Privy Council held thus :

"Their Lordships have no doubt that the jurisdiction of the Courts under this Act is a special one and is strictly limited by the terms of these sections. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the "matter" referred, and the Court has no power to determine or consider anything beyond it."

In another case, namely, Mohammed Hasnuddin vs. State of Maharashtra (1979) 2 SCC 572, this Court observed :

"Every tribunal of limited jurisdiction is not only entitled but bound to determine whether the matter in which it is asked to exercise its jurisdiction comes within the limits of its special jurisdiction and whether the jurisdiction of such tribunal is dependent on the existence of certain facts or circumstances. Its obvious duty is to see that these facts and circumstances exist to invest it with jurisdiction, and where a tribunal derives its jurisdiction from the statute that creates it and that statute also defines the conditions under which the tribunal can function, it goes without saying that before that tribunal assumes jurisdiction in a matter, it must be satisfied that the conditions requisite for its acquiring seisin of that matter have in fact arisen. As observed by the Privy Council in *Nusserwanjee Pestonjee v. Meer Mynodeen Khan* wherever jurisdiction is given to a court by an Act of Parliament and such jurisdiction is only given upon certain specified terms contained in that Act, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction for if they be not complied with the jurisdiction does not arise."

In *K. Kankarathanamma & Ors. vs. State of Andhra Pradesh & Ors.* (1964) 6 SCR 294, the Land Acquisition Officer made a reference under Section 30 for the apportionment of the compensation amount amongst the various claimants. Six of the appellants did not accept the award of the Land Acquisition Officer and made application to him for referring the matter for determination by the court, but no reference was made by him pursuant to this application. When the matter came up before the court, it proceeded on the footing that the reference made to it was not merely limited to the apportionment of compensation but also with respect to the amount of compensation. No objection, however, was raised by the State before the reference court regarding the absence of reference. When the matter came up before the High Court, the Govt. Pleader raised this objection. Though the High Court allowed the plea to be raised before it, but ultimately it negated the plea. The appellants contended before the High Court that pursuant to the failure of the State to raise the plea before the Subordinate Judge as to the absence of a reference, the State must be deemed to have waived the point. Rejecting this contention, this Court held :

"..the matter goes to the court only upon a reference made by the Collector. It is only after such a reference is made that the court is empowered to determine the objections made by a claimant to the award. Section 21 restricts the scope of the proceedings before the court to consideration of the contentions of the persons affected by the objection. These provisions thus leave no doubt that the jurisdiction of

the court arises solely on the basis of a reference made to it. No doubt, the Land Acquisition Officer has made a reference under s. 30 of the Land Acquisition Act but that reference was only in regard to the apportionment of the compensation amongst the various claimants. Such a reference would certainly not invest the court with the jurisdiction to consider a matter not directly connected with it. This is really not a mere technicality for as pointed out by the Privy Council in *Nusserwanjee Pestonjee & Ors. V. Meer Mynooddeen Khan Wullud Meer Sudroodeen Khan Bahadoor* wherever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein it is a universal principle that those terms should be complied with, in order to create and raise the jurisdiction, and if they are not complied with, the jurisdiction does not arise. This was, therefore, a case of lack of inherent jurisdiction and the failure of the State to object to the proceedings before the court on the ground of an absence of reference in so far as the determination of compensation was concerned cannot amount to waiver or acquiescence. Indeed, when there is an absence of inherent jurisdiction, the defect cannot be waived nor can be cured by acquiescence."

In a recent decision of this Court in *Ajjam Linganna vs. Land Acquisition Officer* (2002) 9 SCC 426, it was held that the Reference court has no power to convert the Reference under Section 30 into one under Section 18 of the Act at the instance of those who did not apply for reference earlier.

In the instant case, there was no Reference by the SLAO under Section 18 of the Act and the appellant-Samiti was not before the SLAO. Even the application allegedly filed on 12.10.1987 has rightly been characterized as suspicious as no mention has been made by the SLAO in the Reference letter dated 12.10.1987. In the absence of a proper Reference, the Additional District Judge had no jurisdiction to decide the question of enhancement of compensation. When such an objection was not referred to the court, there was complete lack of jurisdiction. In our view, the decision of the High Court is correct and requires no interference. The appeal is without merits and is accordingly dismissed with costs.