

Supreme Court of India

State Of Mizoram vs Biakchhawana on 7 October, 1994

Equivalent citations: 1995 SCC (1) 156, JT 1994 (7) 472

Author: K Ramaswamy

Bench: Ramaswamy, K.

PETITIONER:

STATE OF MIZORAM

Vs.

RESPONDENT:

BIAKCHHAWANA

DATE OF JUDGMENT 07/10/1994

BENCH:

RAMASWAMY, K.

BENCH:

RAMASWAMY, K.

VENKATACHALA N. (J)

CITATION:

1995 SCC (1) 156 JT 1994 (7) 472

1994 SCALE (4) 948

ACT:

HEADNOTE:

JUDGMENT:

## ORDER

1. Leave granted.

2. The notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') was published in the Gazette by the State of Mizoram on 13-8-1987 acquiring the land in District Aizawl for providing accommodation to the Assam Rifles. The respondent filed objections and ultimately the objections were overruled. The Collector made his Award No. 4 of 1988 on 26-8-1988. The respondent was entitled to compensation of Rs 5,34,748. The respondent received the compensation under protest and on 29-9-1988, filed an application but ultimately the Collector did not make any reference to the Civil Court under Section 18 of the Act.

3. The respondent filed the Civil Suit No. 2 of 1989 in the Court of Deputy Commissioner, Aizawl which endorsed for disposal to the Additional District Magistrate. After the receipt of the notice the appellant objected to the jurisdiction of the Civil Court in entertaining the suit. The Additional District Magistrate in his judgment overruled the objection and granted the decree declaring that "the respondent is entitled to a sum of Rs 26,39,286 as compensation for compulsory acquisition of his lands described in the suit and shall get the decree to that effect". The appellant had challenged the jurisdiction and validity of the judgment and decree in the High Court. By the impugned judgment in First Appeal No. 1 of 1991 dated 15-6-1993, the High Court of Guwahati dismissed the appeal.

4. It is contended for the appellant that under scheme of the Act when the claimant received the compensation under protest, he should specifically seek reference under Section 18 of the Act. Since he did not seek the reference, the Collector was not under any obligation to make a reference under Section 18 of the Act. Instead of filing a writ petition under Article 226 directing the Collector to refer the dispute, the respondent had chosen to file the civil suit which the Civil Court had no jurisdiction to take cognizance and grant a decree as confirmed by the appellate court.

5. It is contended by Mr K.K. Venugopal, the learned Senior Advocate for the respondent that what the court has to see is the substance of the matter. It is argued that the Governor had issued the notification adopting the Assam Autonomous Districts (Land Acquisition) Regulation, 1951 under sub-section (3) of Section 2. Sub-section (3) of Section 2 of the said Regulation says:

"Any court or authority may construe the provisions of the Land Acquisition Act, 1894 (Act No. 1 of 1894) and of any rules and orders made thereunder with such modifications not affecting substance as may be necessary or proper to adopt them to the matter before that court or authority."

6. The Deputy Commissioner gave a hearing to the respondent and after having been satisfied, referred the matter to the Civil Court of Additional District Magistrate to dispose of the suit. In substance the suit is a reference under Section 18 of the Act. The Court had thereby jurisdiction to grant the decree as was given in the impugned judgment. We find no force in the contentions.

7. It is true that in the State of Mizoram, the District Magistrate and the Additional District Magistrate have the jurisdiction both on the executive side and the civil side. But the one cannot be confused for the other. When the statute indicated that the action be taken was to be in a particular manner, it must be done in that manner and in no other way. Under Section II of the Act the Collector after making an Award is enjoined to tender payment after giving notice of making the award and on receiving the notice any person interested present at the time of making the award or on receipt of the notice, is not only entitled to receive the compensation under Sections 18 and 31 of the Act under protest but also is entitled to make an application in writing requiring the Collector to refer the matter and the Collector is enjoined under Section 18 of the Act to make a reference of the objection made by the claimant as an interested person, objecting to either (a) the measurement of the land, (b) for the amount of compensation, or (c) the person to whom it is payable or the compensation among the interested person. The application should be made within the prescribed period mentioned in sub-section (2) of Section 18 of the Act. The Collector acts as an agent of the

Government under Section 11 and while making a reference under Section 18, he acts as a statutory authority exercising his own power under Section

18. Making an application within limitation in writing is sine qua non for making a valid reference. The court is a special tribunal under the Act having special jurisdiction and has power and duty to see that the reference made under Section 18 is in compliance with the conditions laid down therein so as to give to court the jurisdiction to hear the reference. The court under Section 3(d) is not only the Principal Civil Court of original jurisdiction but also a special judicial officer specially appointed by the Government. A valid order of reference under Section 18 is sine qua non for a civil court of original jurisdiction or special judicial officer specially appointed to take cognizance of the objection. Though an application was made within six weeks as seen hereinbefore, no reference under Section 18 was made by the Collector. The Collector is enjoined, while making a reference, to make a statement "in writing under his hand" under Section 19 of the Act, with particulars enumerated therein. The Collector has to state, to the Court all the information on (a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon; (b) the names of the persons whom he has reason to think interested in such land; (c) the amount awarded for damages and paid or tendered under Sections 5 and 17, or either of them, and the amount of compensation awarded under Section 11; (cc) the amount paid or deposited under sub-section (3-A) of Section 17; and (d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined. He should append the schedule giving particulars in that behalf as enumerated in sub-section (2) of Section 19 of the Act. On receipt of such a valid reference with the statement, the Court shall under Section 20 'thereupon' cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:

(a) the applicant;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

8. Thus, the scheme of the Act envisages that on making an application under Section 18, making a reference under Section 18 of the Act in the manner prescribed under Section 19 to the Court is mandatory and is sine qua non for the court to proceed 'thereupon' since it gets jurisdiction to issue a notice to the persons enumerated hereinbefore specifying the day to appear before it. The Court then is enjoined to determine compensation in the manner prescribed in Part III of the Act. On such determination, it shall pass a decree and the award under Section 26 and in the form and manner specified therein. The Award is a decree and the statement of grounds a judgment under sub-section (2) of Section 26 of the Act for the purpose of appeal under Section 54. Since this is a special procedure provided in the Act, by necessary implication, the Civil Court under Section 9 of the Civil Procedure Code 1908 has been prohibited to take cognizance of the objections arising under the Act for determination of the compensation for the land acquired under the Act.

9. Therefore, at the time of disposing of the award proceeding, the Land Acquisition Collector or the court on reference under Section 18 of the Act is required by statutory commendations to follow the substance of the provisions of the Land Acquisition Act as contained in para 3 of the notification issued by the Governor on 13-8-1987. It is seen that the procedure prescribed in para 3 of the notification is not in derogation of the mandatory compliance under Sections 18 to 20, and Civil Court does not get valid and legal jurisdiction to take cognizance of the objection for higher compensation unless the procedure prescribed in Sections 18, 19, 20 and 31 are complied with and adhered to.

10. The High Court and Civil Court committed a clear and manifest error of law in decreeing the suit. The impugned judgments and decrees are set aside as being a nullity. However the Collector is directed to make a reference to the Civil Court as the application with the requisite particulars was filed in writing with the objections raised by the respondent on 29-9-1988. The Civil Court shall dispose of the matter as expeditiously as possible. The appeal is allowed. No costs.