

Powergrid Corporation Of India vs Sunil Thapa And Another on 20 July, 2022

Author: Sharad Kumar Sharma

Bench: Sharad Kumar Sharma

HIGH COURT OF UTTARAKHAND AT NAINITAL

Civil Revision No. 18 of 2018

Powergrid Corporation of IndiaRevisionist.

Versus

Sunil Thapa and another Respondents

With

Civil Revision No. 19 of 2018

Powergrid Corporation of IndiaRevisionist.

Versus

Rajendra Prasad and another Respondents

With

Civil Revision No. 20 of 2018

Powergrid Corporation of IndiaRevisionist.

Versus

Shri Sandeep Pal and another Respondents

With

Civil Revision No. 21 of 2018

Powergrid Corporation of IndiaRevisionist.

Versus

Sanjiv Walia and another Respondents

With

Civil Revision No. 22 of 2018

Powergrid Corporation of IndiaRevisionist.

Versus

Babita and another Respondents

With
Civil Revision No. 23 2018

Powergrid Corporation of IndiaRevisionist.

Versus

Trilok Kumar and another Respondents

With
Civil Revision No. 24 of 2018

Powergrid Corporation of IndiaRevisionist.

Versus

Banshidhar and another Respondents

With
Civil Revision No. 25 of 2018

Powergrid Corporation of IndiaRevisionist.

Versus

Shri Anil Ranyal and another Respondents

Present :

Dr. Kartikey Hari Gupta, Advocate, assisted by Mr. Rafat Munir, Advocate, for the revisionist.

Mr. Anil Dabral, Addl. C.S.C, with Mr. Sushil Vashistha, Standing Counsel and Mr. M.S. Bisht, Brief Holder, for the State of Uttarakhand.

JUDGEMENT

Hon'ble Sharad Kumar Sharma, J.

In these Civil Revisions preferred under Section 115 of the CPC, the Power Grid Corporation of India, the revisionist, herein, in all these connected Revisions, had put a challenge to the impugned order of 15th December, 2017, as it has been passed in respective Land Acquisition Reference cases, by virtue of which, the revisionist's application under Order 7 Rule 11 of the CPC, was rejected.

2. It is contended by the learned counsel for the revisionist, that the reference, which was sought to be decided by the respondents was barred by the provisions contained under Section 18 (2) (b) of the Land Acquisition Act, 1894. The provisions of Section 18 (2) (b) is extracted hereunder:-

"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."

3. In fact, as per the opinion of this Court, the implications of the bar created for seeking a reference within the prescribed period of six months from the date of the Collector's award, would only be calculated based upon the information, when it is parted to the applicant, who is seeking a reference under Section 18 of the Act, whose land has been acquired under the Act.

4. It is not in dispute that the Collector's award under Section 11 of the Act, was ex parte and none of the respondents were at all present before the Collector at the time when the award was rendered, hence, the bar created by second part of Sub-section (b) of Sub-section (2) of Section 18 of the Act, would be attracted because the knowledge to the respondents of the award rendered by Collector will not start running from the date of the Collector's award, as none had appeared and the Collector award was rendered ex parte, it would be deemed that no knowledge was parted to the respondents.

5. The second expression and the exception which has been carved out therein, under Sub-section (b) of Sub-section (2) of Section 18 of the Act, is that on the receipt of the notices from the Collector under Section 12 (2) of the Act.

6. For that purposes, the reference of Section 12 (2) is required to be considered by the Court. If the language used under Section 12 (2) of the Act, which in its applicability, in the undivided State of UP, was amended by virtue of the State Amendment, as it was carried by the Act No.22 of 1954, the reference of Sub-section (2) would be relevant, where rather a duty has been casted upon the Collector, that he will give immediately a notice of his award to such person interested, i.e. the respondents, herein, who were admittedly not personally present, when the award was rendered, either himself or through their representatives.

7. As already observed, that the respondents, herein, were not present either in person or through their representative, when the award was rendered, then under Sub-section (2) of Section 12 of the Act, which is extracted above, the Legislature has used the word "shall", which in fact casts a duty on the Collector, that he will immediately issue notices of the award to the person interested.

8. But as per the findings, which has been recorded, while considering the application of the revisionist under Order 7 Rule 11 of the CPC, and rejecting the same by the impugned order of 15th December, 2017, the Court of Addl. District Judge, Vikasnagar, Dehradun, in respective reference cases has category observed that there is no evidence of any nature whatsoever on record to show that the duty, which was casted upon the Collector at the time of rendering of an award under

Section 11, whether ever any notices were issued under Sub-section (2) of Section 12 of the Land Acquisition Act, because this duty was to be mandatorily discharged by the revisionist, when he was taking a plea of bar of the proceedings of reference due to embargo of limitation which was created and provided under Sub-section

(b) of Sub-section (2) of Section 18 of the Act.

9. Apparently, this responsibility has not been discharged by the revisionist, at the time when he was pressing his application under Order 7 Rule 11 of the CPC, to substantiate the fact of attribution of knowledge of the award to the respondents, rendered by the Collector by issuance of notice under Sub-section (2) of Section 12 of the Act, and this is what the reasoning has been assigned by the reference Court in its order of 15th December, 2017, wherein, it has been observed that the knowledge to the respondents was attributed only when the award was served upon them, which then only gave them an occasion to seek a reference under Section 18 of the Act. Hence, knowledge for them, for all practical purposes, for seeking reference in the context of the provisions contained under Section 18 (2) (b) of the Act, would start running from the date when the actual knowledge of the rendering of award was imparted to the respondents of rendering of an award under Section 11 of the Act by the Collector.

10. Since there is nothing on record to the contrary as established by the State or by the Counsel for the revisionist before the Court below, that there was any issuance of a prior notice by the Collector under Section 12 (2), in all genuineness and reasonableness to the proceedings under Section 18 of the Act, the cut off period of six months provided under Sub-section (b) of Sub-section (2) of Section 18 of the Act, in case of the respondents, would be commensurated from the date when they actually acquired the knowledge of the rendering of the award, which was rendered ex parte against them, and particularly, when there was no prior compliance of notice under Section 12 (2) of the Act.

11. Hence, in view of the reasoning, which has been assigned, particularly in para 36, 43 and 45 of the impugned judgement, seeking a reference within six months from the date of knowledge of the award would suffice to meet out the cut off period of limitation prescribed under Sub-section (b) of Sub-section (2) of Section 18 of the Act. Hence, the application of the revisionist under Order 7 Rule 11 of the CPC was rightly rejected by the Court below, which does not call for any interference by this Court, as there is no apparent anomaly, and quite rationally too, when the revisionist has not discharged its burden to establish the sustainability of his application under Order 7 Rule 11 of the CPC, by putting on record the proof or an evidence of service of notice under Section 12 (2) of the Act, giving knowledge of the award of the Collector.

12. Thus, the Civil Revisions lack merit and the same are accordingly dismissed.

(Sharad Kumar Sharma, J.) 20.07.2022 Shiv