

<u>Serial No.01</u> <u>Supple List</u>

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 75 of 2018

Date of Decision: 09.04.2024

Shri. Prakash Momin,
son of (Late) Marcella Momin,
resident of Upper Chandmary,
Tura, West Garo Hills District, Meghalaya
:::: Petitioner.

Vs.

1.State of Meghalaya
Represented by the Chief Secretary
Government of Meghalaya,

2.The Deputy Commissioner/Collector,
East Garo Hills District,
Williamnagar, Meghalaya.

3. The Deputy Commissioner/Collector,
North Garo Hills District,
Resubelpara, Meghalaya.

4. The North-Eastern Frontier Railway,
Represented By its Secretary,
Head Quarter Maligaon, Guwahati,
Assam.

:::: Respondents.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner(s) : Mr. T. T. Diengdoh, Sr. Adv. with
Mr. C.C.T. Sangma, Adv.

For the Respondent(s) : Mr. K. Khan, AAG with
Mr. S. Sengupta, Addl. Sr. GA.
Ms. S. Shyam, GA. (R: 1 – 3)
Ms. L.M.D. Sangma, Adv. (R: 4)

i)	Whether approved for reporting in Law journals etc:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER

By this writ petition under Article 226 of the Constitution of India, the petitioner has raised his grievance against the inaction on the part of the respondents, particularly the respondent No.2, to consider his written application seeking reference of the matter pertaining to the acquisition of his land under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) to the Reference Court.

1. The brief fact of the case is that a portion of the petitioner's land situated at Mendipathar, East Garo Hills District (now North Garo Hills District), was acquired by the Government for construction of a new railway line from Dudhnoi to Mendipathar. The acquisition

proceeding was initiated by issuance of notification dated 24-11-2009 and public notice dated 30-11-2009 under Section 4 of the Act. In view of the emergency of the project, the provision of Section 17 (4) of the Act was invoked and the petitioner was paid the initial compensation of 80 % on 30-08-2011 and the remaining 20 % on 17-10-2012. The petitioner received the aforesaid compensation under protest and subsequently by a written application made a request to the respondent No.2 for referring the matter to the Reference Court as the amount of compensation paid was not adequate. Since no action was taken by the respondent No.2, the petitioner having no other option approached this Court for a direction to the respondent to refer the matter to the Reference Court for determination of adequate land compensation.

2. Against the claim made in the writ petition, the respondent No.2 and the respondent No.4 filed two separate affidavit-in-opposition. The respondent No.2, the Collector, in his affidavit-in-opposition, apart from refuting the claim of the writ petitioner for enhancement of the amount of compensation, has taken a stand that the application of the petitioner for reference of the matter was not considered as the same was filed on 07-12-2012 beyond the statutory period of 6 (six) weeks from the date of final award on 17-10-2012. Subsequently, by

an additional affidavit filed on 28-04-2023, the respondent No.2 stated that the petitioner has received an amount of Rs. 17,70,820/- as land compensation which is reflected in the Award Statement dated 14-11-2011.

3. Mr. T. T. Diengdoh, learned Senior Counsel appearing for the petitioner submits that though the petitioner has received the final amount of compensation on 17-10-2012, he was not made aware of the date of the award and the contents thereof by the respondents. He submits that the petitioner was not present or represented when the award was made by the Collector and no notice was served on him under Section 12 (2) of the Act. He further submits that even the reason for non-consideration of the request of the petitioner for reference of the matter was made known to him only after filing of the affidavit-in-opposition by the respondent No.2. The learned Senior counsel submits that as per the affidavit-in opposition of the respondent No.2, the date of final award is 17-10-2012 whereas the additional affidavit dated 28-04-2023 filed by the respondent No.2, in clear contradiction of the affidavit-in-opposition, indicates that the Award Statement was prepared on 14-11-2011. He contends that the date of 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 involve the consideration of the question as to when it was known to the petitioner. The knowledge of the party affected by the award being an essential requirement of fair play and natural justice, the word 'date of award' used in the proviso to Section 18(2) of the Act, must mean the date when the award is either communicated to the petitioner or is known by him. He submits that in absence of any such proof showing that the petitioner had the knowledge of the date of award, the non-consideration of the application of the petitioner for reference by the respondent No.2 on the ground of delay is not tenable in the eye of law. He further contends that the date of receipt of compensation has no bearing in determination of date of award and hence, it is a fit case where a direction be issued to the respondent No.2 to refer the matter to the Reference Court for determination of amount of adequate compensation to the petitioner. In support of his argument, the learned Senior counsel places reliance on the decisions of the Apex Court reported in (2012) 5 SCC 250, *Premji Nathu Vs. State of Gujarat & Anr.* (paras 12 – 16), (2009) 16 SCC 1, *Steel Authority of India Limited Vs. Sutni Sangam & Others.* (Paras 40 – 43) and (2018) 8 SCC 266, *Vijay Mahadeorao Kubade Vs. State of Maharashtra Through the Collector* (paras 9 & 11).

4. Mr. K. Khan, learned AAG, appearing for the State-respondents, on the other hand submits that the petitioner was present at the time of preparation of the award and has the full knowledge of the final award. By referring to the provision of Section 12 (2) of the Act, he submits that the question of issuing notice would arise only when the petitioner is not present or is not represented at the time of making the award. He submits that in the entire writ petition, the petitioner has not made any averment that he was not present when the award was made and that he did not receive any notice under Section 12(2) of the Act. The learned AAG refers to the paragraph-2 of the reference application of the petitioner addressed to the respondent No.2 and submits that there is a specific statement made by the petitioner that an award of Rs. 17,70,820/- has been made and the same has been accepted by the petitioner. He contends that the fact that the petitioner has received the amount of compensation would undoubtedly indicate that the petitioner had the knowledge of preparation of the final award in the matter. He submits that the contention raised by the petitioner is totally misconceived and the writ petition being devoid of merit is liable to be dismissed.

5. For proper adjudication of the rival contentions, it is necessary to take into consideration some of the relevant factual aspects of the matter.

6. The petitioner in his writ petition stated that consequent to the public notice dated 30-11-2009, notice dated 13-10-2010 under Section 9 of the Act was issued to him and he has taken part in the hearing conducted by the respondent No.2 on 09-11-2010, 02-12-2010 and 14-12-2010 and raised objection as to the rate of compensation. Thereafter, on 17-12-2010 the petitioner received a letter informing that a payment of 80 % as advance payment had been approved by the Government. The petitioner received the said advance payment of 80% compensation on 30-08-2011 under protest. The respondent No.2 in his affidavit-in-opposition stated that the rate of compensation was revised and a modified statement of assessment/calculation of compensation on the basis of the objection of the petitioner was prepared by raising the value of land as well as the rate for rubber trees. The above uncontroverted facts would go to show that the petitioner was present throughout the process till the stage of Section 11 of the Act.

7. The writ petition does not make any disclosure as to the date on which the petitioner submitted his application to the respondent No.2

seeking reference of the matter to the Reference Court though a copy of the same has been annexed with the writ petition. The respondent No.2 in his affidavit-in-opposition has also annexed a copy of such application dated 27-11-2012 received by the concerned office on 07-12-2012. A bare perusal reveals that the copy of the application brought into record by the respondent No.2 is not identical to the copy annexed with the writ petition. However, the petitioner has not raised any dispute with regard to the copy of the written application brought into record by the respondent No.2 though it is difficult to comprehend how there exists two different copies of the same application. In his application for reference submitted to the respondent No.2, the petitioner has categorically stated as under: -

*“2. That an award of Rs. 17,70,820/- (Rupees seventeen lakh seventy thousand eight hundred and twenty) only has been made and the same has been accepted, has been taken by me on behalf of my mother Mrs. Marcella Ch. Momin under protest as permitted under Section 31 of Land Acquisition Act, 1894. Connected assessment papers are enclosed as **Annexures-A&B.***

*3. That my under-protest acceptance of the award is based on my objection to and dissatisfaction with both measurement of the acquired land as also the then standing rubber trees, and the amount of compensation paid in exchange. In anticipation of having to represent my mother Mrs. Marcell Ch Momin before the Honorable Reference Court due power of attorney has been executed and the same enclosed as **Annexure-C.**”*

8. In addition, the material on record reveals that a power of attorney dated 26-11-2012 was executed by the mother of the petitioner during her life time authorizing the petitioner to act on her behalf, a copy whereof is annexed with the affidavit-in-opposition. The clause 3 of the said power of attorney reads as under: -

“3. That the Government of India has awarded me a total compensation amount of Rs. 17,70,820/- (Rupees seventeen lakh seventy thousand eight hundred and twenty) only for acquisition of my said land;”

9. The above noted contents of the written application and the power of attorney make it amply clear that the petitioner all along had the knowledge of the preparation of the final award in the matter pertaining to the acquisition of his land. Section 18 of the Act lays down that any person 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. The law does not contemplate that even before an award is made, a general or vague objection can be made. The fact that the petitioner has filed a written application seeking reference of the matter to the Court by itself would establish that the petitioner was well-aware about the award. Moreover, the petitioner in his written application nowhere stated that

he has no knowledge of the award and that he has not received any notice under section 12 (2) of the Act.

10. The proposition of laws laid down in the decisions relied upon by the learned Senior Counsel for the petitioner apply to a situation where the person interested in the acquisition proceeding has no knowledge of the preparation of the award and the contents of the award. In the case of *Premji Nathu (supra)*, at para 19, the Apex Court reiterated the law laid down in *Bhagwan Das v. State of U.P.*, (2010) 3 SCC 545 as under: -

“19.The Court in Bhagwan Das⁵, then held: (SCC p.554, paras 30-31)

“30. When a person interested makes an application for reference seeking the benefit of six months’ period from the date of knowledge, the initial onus is on him to prove that he (or his representative) was not present when the award was made, that he did not receive any notice under Section 12(2) of the Act, and that he did not have the knowledge of the contents of the award during a period of six months prior to the filing the application for reference. This onus is discharged by asserting these facts on oath. He is not expected to prove the negative. Once the initial onus is discharged by the claimant/person interested, it is for the Land Acquisition Collector to establish that the person interested was present either in person or through his representative when the award was made, or that he had received a notice under Section 12(2) of the Act, or that he had knowledge of the contents of the award.

31. Actual or constructive knowledge of the contents of the award can be established by the Collector by proving that the person interested had received or drawn the compensation amount for the acquired land, or had attested the mahazar/panchnama/proceedings delivering

possession of the acquired land in pursuance of the acquisition, or had filed a case challenging the award or had acknowledged the making of the award in any document or in statement on oath or evidence. The person interested, not being in possession of the acquired land and the name of the State or its transferee being entered in the revenue municipal records coupled with delay, can also lead to an inference of constructive knowledge. In the absence of any such evidence by the Collector, the claim of the person interested that he did not have knowledge earlier will be accepted, unless there are compelling circumstances not to do so.”

11. The petitioner in his writ petition has not discharged his initial onus by making an assertion that he was not personally present or was not represented at the time when the award was made and that he has no knowledge of the award. He has also not made any statement that he did not receive any notice under Section 12(2) of the Act and that he did not have a knowledge of the contents of the award during a period of six months prior to the filing the application for reference. Since the petitioner has not made any such assertion in his writ petition, it cannot be inferred that the petitioner has no knowledge of the award.

12. The Apex Court in the case of *Steel Authority of India Limited (supra)* at para 42 has held:-

“42. The law does not contemplate that even before an award is made, a general or vague objection can be entertained by the Collector. Objection to the award, therefore, must be specific. When a reference is made,

the court shall ordinarily be bound by the terms of the reference. The Reference Court does not have a plenary jurisdiction. It does not have any original jurisdiction to entertain an application directly from the Collector or from the landholders.”

13. It follows from the above that a valid objection can be raised only after an award is made. A general or vague objection cannot be entertained in law. In the matter in hand, the petitioner has not made any specific statement as to whether he has raised his objection without having a copy of the award or after obtaining a copy of the award. If he has filed the objection without getting a copy of the award, his application seeking reference cannot be entertained in law. On the other hand, if he has filed the objection after getting a copy of the award, then it is incumbent upon him to disclose as to when and how he received a copy of the award. The aforesaid disclosure is imperative in the event petitioner desires to avail the benefit of time limit prescribed in Section 18 (2) (a) or Section 18(2) (b) of the Act. In absence of any such disclosure, the petitioner cannot contend that non-consideration of his reference application on the ground of delay is not tenable in law.

14. A careful scrutiny of the averments made in the writ petition does not throw any light as to whether the petitioner filed his application for reference after having a copy or without having a copy

of the award. However, there appears to be no dispute between the parties with regard to the date on which the petitioner received the final amount of compensation. As per the available documents on record, the petitioner received the final payment on 17-10-2012 and hence it can be construed that the petitioner had the knowledge, either actual or constructive, of the contents of the award on that date. Though, there appears to be some confusion with regard to the date of the award in view of the contradictory stand of the respondent No.2, the same is immaterial as there exists no dispute concerning the date of receipt of final payment by the petitioner. The petitioner also does deny that his reference application was received by the office on 07-12-2012 which is beyond the period of six weeks from 17-10-2012. Since the petitioner has failed to make out a case to attract application of Section 18(2)(a) or Section 18(2)(b) of the Act, the non-consideration of the application by the respondent No.2 on the ground of delay cannot be termed as improper.

15. Another noticeable fact is that the petitioner has preferred this writ petition on 11-04-2018, almost after the lapse of five and half years from the date of filing his application for reference. There is nothing on record to show that the petitioner had ever tried to procure a copy of the award made in the acquisition proceeding till the filing

of the writ petition. There is only one statement at paragraph 12 of the writ petition which speaks of information given to the petitioner on 16-11-2012 under the Right to Information Act, 2005 with regard to the quantum of compensation awarded to him. If the petitioner wanted to avail the benefit of law prescribed under Section 18(2)(b) of the Act, it was necessary on his part to apply and obtain a copy of the award before filing the application for reference.

16. For the reasons and discussions made above, there is no merit in this writ petition and the same is dismissed.

17. There will be no order as to costs.

JUDGE

Meghalaya
09.04.2024
"Biswarup-PS"