

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22627 of 2011

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Mangani Rai

.... Petitioner/s

Versus

The State of Bihar & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yogendra Mishra, Sr. Advocate

For the Respondent/s : Mr. Krishna Chandra A.C. to A.G.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

6 10-12-2015

This writ application under Article 226 of the Constitution of India is directed against the order dated 23.07.2008 passed by the District Land Acquisition Officer (in short D.L.A.O.) Sitamarhi in L.A. Case No. 5 of 2005-2006 whereby the application preferred by the writ petition under section 18 of the Land Acquisition Act (in short the Act) was considered and rejected.

Facts are not much in dispute and they are ;

2. The land of the petitioner detailed in paragraph 3 was acquired by the respondent State and the award was prepared on 24.01.2007 in the name of one Tilakdhari Rai. Notice under section 12(2) of the Act was issued although in the name of Tilakdhari Rai son of Ramautar Rai but the same was served on and received by the writ petitioner. The petitioner filed an application (annexure-2) claiming his right to receive the



compensation amount. It was stated in the said objection that he is entitled to receive the compensation amount and he is ready to receive the same with objection. Through the said application the petitioner claims for payment of the compensation amount. The D.L.A.O after making some enquiry allowed the petitioner to receive the compensation amount in the sum of Rs. 1, 96, 875/- which was paid through cheque and received by the writ petition on 14.07.2008. The petitioner thereafter prayed for enhancement of the compensation amount and for an order referring the case to the court. The said request or prayer was made in terms of section 18(2) of the Act. The respondent District Land Acquisition Officer rejected the said prayer by an order dated 23.07.2008 which has been impugned in the present writ petition.

3. Heard Mr. Yogendra Mishra Senior Advocate appearing for the petitioner and Mr. Krishna Chandra A.C. to A.G. for the State. Parties have exchanged pleadings.

4. It has been urged by Mr. Mishra that the respondent D.L.A.O. rejected the said prayer of the petitioner erroneously. The application or prayer for referring the matter to the court filed under section 18(2) of the Act was well within time. The period prescribed under section 18(2) of the Act for filing such application or making such request, in the facts of the case



shall reckon from the date when the D.L.A.O., accepted the case of the petitioner and permitted payment of the compensation amount to him. This was obviously after effecting correction in the name of the awardee of the award. The period of six weeks shall commence therefrom. The impugned order records the aforesaid reason for declining the relief to the petitioner as the payer for enhancement of the compensation award was filed on 18.07.2008 whereas the award was prepared and served on the petitioner but in the name of one Tilakdhari Rai on 27.12.2007.

5. In contra, Mr. Chandra counsel for the State supported the order and the reasons assigned therein. He would argue that the provisions of the Act contemplate filing of objection or claim not by the person who is awardee of the award but by any person having interest in the land covered by the award. There is presumption under the Act that award so prepared shall be conclusive evidence between the Collector and the persons interested. Indisputably, the award prepared in this case was served on the petitioner on 27.12.2007 (Annexure-B at page 36 of the brief). The petitioner was required to file an application for enhancement of the compensation amount by referring the matter to the court under section 18(2) of the Act within six weeks there from. Such application was filed by him subsequently on

18.07.2008. Respondent D.L.A.O rightly considered the said application of the petitioner and rejected on the ground set out therein.

6. There is no dispute that the award was drawn in this case in the name of Tilakdhari Rai and others but the notice thereof issued under section 12(2) of the Act was served on the petitioner on 27.12.2007. An application (annexure-2) was filed by the petitioner on 12.01.2008 before the respondent D.L.A.O. in which the writ petitioner only sought interest and title over the subject land and payment of the award money. No prayer for reference of the matter to the court under section 18(2) of the Act was, however, made. The respondent D.L.A.O. having ascertained the fact that the writ petitioner was the bonafide claimant of the award permitted him to receive the compensation amount which was paid through cheque dated 14.07.2008 duly received by the petitioner with objection on the same day. An application was thereafter filed on 18.07.2008 (copy whereof has not been placed on record). Such petition was filed beyond time as prescribed under the Act. It would be advisable to extract hereinbelow the provision under section 18 of the Act which runs thus:

“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 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 the Collector's award whichever period shall first expire".

7. On bare perusal of the aforesaid it appears that any person interested who has not accepted the award may by written application require the D.L.A.O. for a reference of the matter to a court. Such objection may be with respect to the



measurement of land, the amount of compensation, the person whom it is payable or the apportionment of the compensation amongst the persons as interested. There is no dispute or controversy between the parties that in the case at hand the period provided or prescribed under clause (b) of subsection 2 of section 18 shall have the application.

8. The counsel for the petitioner has argued that the award was prepared in the name of Tilakdhari Rai and not in the name of the petitioner who had title over the subject land. The initial objection was filed by the petitioner for correction in the award. Once the same was allowed the petitioner was required to file the application seeking reference within six weeks therefrom and not from the date he received the notice under section 12(2) of the Act i.e. on 27.12.2007. In this regard he has relied upon the judgment of Premji Nathu Vs. State of Gujrat since reported in AIR 2012 SC 1624. This court would first delineate the factual background in which the said case was considered by the Hon'ble Supreme Court. Notice under Section 12(2) was issued to the petitioner which was received by him on 22.02.1985. Similar notices were received by other land owners on 22.02.1985 and 23.02.1985. The copy of ward was not annexed with the notice. After obtaining certified copy of the award an application was



submitted on 08.04.1985 for making a reference to the court for higher compensation. The other land holder also filed such application which was separately registered. After considering the reference placed by the petitioner the reference court concluded that land owners were entitled to the higher value. This was in the case of other land holder only. The claim of the petitioner of the case was declined on the ground that the application filed by him was beyond the time specified in section 18(2)(b) of the Act. The Apex Court in this factual back ground referred to and relied on the ratio laid down in State of Punjab Vs. Qaisar Jehan Begun , AIR 1963 SC 1604, wherein it was held:

“it seems clear to us that the ratio of the decision in Harish Chandra Case is that the party affected by the award must know it, actually or constructively, and the period of six month will run from the date of that knowledge. Now knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under section 12(2) of the Act, the party must be obviously fixed with knowledge

of the contents of the award whether he reads it or not. Similarly when a party is present in court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award.”

Explaining further, the Apex Court in the said report relying on Bhagwan Das Vs. State of U.P (2010) #SCC 545 noted as under:

“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 knowledge 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



Stare or its transferee being entered in 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.”

9. It is not the case of the writ petitioner that he has no constructive knowledge of the contents of the award which he got after obtaining certified copy of the award. It is also not the case that the notice served on him was not annexed with the copy of the award. In this factual back ground it is difficult for this court to grant relief in the light of the order passed by the Hon’ble Apex Court in Premji Nathu (Supra). Further, contention of the petitioner that on his petition (Annexure-2) the award was amended/corrected is not supported by the provisions of the Act. Section 13(A) requires correction of clerical error only by the Collector within six months from the date of the award else he is required to make reference under section 18 of the Act. The petitioner could have filed a composite application seeking correction of clerical error, if any, and for reference of the matter to the court under section 18 of the Act. This is not the case in

Annexure-2 filed by the petitioner. In the said application he claims title and interest in the subject land and requested for payment of the compensation amount. After having received the said amount through cheque on 14.07.2008 separate application appears to have filed by him on 18.07.2008 seeking reference.

10. In this context section 12 of the Act shall have relevance which reads thus:

“12. Award of Collector when to be final:- (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.”

11. Seen thus, award so prepared is construed as final and conclusive evidence as between the Collector and the person interested. The provision does not provide such correction and preparation of separate award. Having found so if we advert to the provisions of section 18 of the Act similar expression “any person” has been used in place of Awardee.

12. Having evaluated the relevant provisions of the Act, in the light of the rival contentions of the party, in my considered opinion it would be an incorrect proposition of law to say that the person interest in the subject land can make such application for reference under section 18(2) of the Act only after getting an award amended/corrected and the time prescribed therefore would commence not from the date of receipt of the notice under section 12(2) of the Act by him but from the date when on considering his interest in the land order for payment of compensation amount was passed by the respondent D.L.A.O. This is the primal submission of Mr. Mishra.

13. For the reasons aforementioned, I find no merit in this writ application which is accordingly dismissed.

14. There shall be no order as to costs.

(Kishore Kumar Mandal, J)

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