

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.12 OF 2007

Raghunath Kachru Kakad
and Others ..Applicants
versus
The State of Maharashtra
and Others ..Respondents

Mrs. Bhavana Khemani i/b. Mr. Anil Ahuja, for
the Applicants/Petitioners.
Mr. A.R. Patil, AGP, for State/Respondent Nos.
1 and 2.

CORAM : M. S. SONAK, J.

DATE : APRIL 17, 2015

P.C. :-

. This Revision Application impugns the
orders dated 9th October, 2006 and 23rd September,
2002 rejecting the Petitioner's application for
reference under Section 18 of the Land Acquisition
Act, 1894 (the said Act) seeking enhancement of the
compensation.

2] In terms of Section 18(3) of the said Act
as applicable to the State of Maharashtra, any

order made by the Collector on an application under this section shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court, within the meaning of section 115 of the Code of Civil Procedure, 1908. Accordingly, the present Revision Application makes reference to the provisions contained in Section 18(3) of the said Act as applicable to the State of Maharashtra.

3] An award in the present case, was made by the Land Acquisition Officer/Collector on 8th December, 1993. The Petitioner's claim to be co-sharers of the land which has been acquired and which forms the subject matter of the award dated 8th December, 1993. The Petitioners state that they were not represented before the Collector when the award was made and further they denied the receipt of any notice under Section 12(2) of the said Act. The Petitioners stated that they got notice of the award on 20th September, 1994 on which date the compensation in respect of acquired land was paid

to them and was accepted by them under protest. Within 10 days from the said date i.e. 30th September, 1994 the Petitioners applied for reference. Accordingly, the Petitioners contend that the application seeking reference made on 30th September, 1994 was well within the period of limitation prescribed under Section 18(2) of the said Act and consequently reference could have been declined even without offering of an opportunity of hearing to the Petitioner.

4] On behalf of the Respondents, an affidavit in reply has been filed by Mr. Dilip Mahajan, Special Land Acquisition Officer, Nashik. Along with the reply, annexed a list comprising of 21 names titled as notice under Section 12(2) of the said Act. At serial No. 20 of the said list, there appears the name of Petitioner No. 1. There is however, no reference to Petitioner Nos. 2 and 3. The case set out in the affidavit in reply is that the said list constitutes a notice under Section 12(2) of the said Act and since such list is dated

8th December, 1993, an application for reference made much beyond a period of six weeks from the said date or much beyond a period of six months from the date of Collector's award, was barred by law of Limitation, prescribed under Section 18(2) of the said Act.

5] By communication dated 23rd September, 2002, the Petitioners were informed that their application seeking for reference has been disposed of since the same was not filed within a time limit. There is no record that the Petitioners were offered any opportunity of hearing before the communication/order dated 23rd September, 2002 was made. Thereafter, the Petitioners made representation and were offered an opportunity to file documents and to remain present for hearing. This evident from the communication dated 25th November, 2002 and notice dated 24th January, 2005 addressed by and on behalf of the Petitioners. There is again no record that any post facto hearing was ever furnished to the Petitioners.

Finally by communication/order dated 9th December, 2002, the Petitioners were informed that their application for reference was already disposed of by communication/order dated 23rd September, 2002. Hence the present Petition.

6] Mrs. Khemani, the learned counsel for the Petitioners submitted that the list of names appended to the affidavit filed by the Special Land Acquisition Officer cannot be construed as notice under Section 12(2) of the said Act. In any case, such notice was never served upon Petitioner Nos. 2 and 3. Mrs. Khemani submitted that in order to show that the period of limitation commenced, it is necessary that appropriate notice under Section 12(2) of the said Act is issued and appropriate notice would envisage, at least some details with regard to date and contents of the award. In this regard, Mrs. Khemani placed reliance upon the decision of the Hon'ble Apex Court in the case of "*Premji Nathu vs. State of Gujarat*"¹ and the

1. AIR 2002 SUPREME COURT 1624.

decision of the Division Bench of this Court in the case of *"Ramesh Chandra Bhogilal Parikh vs. Collector of Dadra and Nagar Haveli and Others"*².

7] In this case, the impugned communication/order are required to be set aside because before making the same, the Petitioners were not offered any opportunity of hearing. This is evident from the records. Before making the order dated 23rd September, 2002 no opportunity of hearing was offered to the Petitioners. Thereafter, the Petitioners were offered an opportunity of hearing and submission of documents. The Petitioners did submit their document. However, there is no record of any hearing as such offered to the Petitioners. Ultimately, by an order dated 9th October, 2006 the Respondents merely furnished the copy of their earlier decision dated 23rd September, 2002. This constitutes a gross violation of principles of natural justice. However, in the facts and circumstances of the present case, it would not be

2. 1997(II) Land Acquisition Laws, 419.

appropriate to merely set aside the impugned orders and direct a fresh consideration of the matter after offer of hearing to the Petitioners.

8] This is because an award in the present case was made way back in the year 1993. An application seeking reference was made on 30th September, 1994 i.e. within hardly 10 days from the date of acceptance of compensation by the Petitioners under protest and without prejudice. Till date, the Petitioners have been deprived of an opportunity of seeking enhancement in compensation.

9] The list which is annexed to the affidavit in reply of the Respondents, can by no means be regarded as notice under Section 12(2) of the said Act. The list admittedly was not served on Petitioner Nos. 2 and 3. The list was not served by the mode prescribed under Section 45 of the said Act. The purpose of Section 12(2) of the said Act is to intimate the persons interested about the award, meaning thereby, the essential contents of

the award which have become final by virtue of filing of the award in Collector's Office i.e. the true area and the value of the land and the apportionment of the compensation among the person interested. Though no form is prescribed for a notice under Section 12(2) of the said Act, it is clear that a notice under Section 12(2) of the said Act should contain such information, so that the party affected is in position to take and informed the decision in the matter of seeking reference under Section 18 of the said Act.

10] The Division Bench of this Court in the case of Ramesh Chandra(supra) in some what an identical circumstances, has held that, the list of names which includes the name of the Petitioner accompanying a notice requiring parties to remain present on a particular date for receipt of compensation, could hardly be styled as notice under Section 12(2) of the said Act. This Court has also held that such notice cannot be lightly or casually issued treated because it is a statutory

notice which has the effect of commencement of limitation in making application for reference under Section 18 of the said Act. In such circumstances, notice can either be construed liberally nor the service thereof can be presumed in favour of the Government or the acquiring authority.

11] In the present case, apart from the production of list even the notice which alleged to have accompanied the list has not been produced along with the affidavit. The Hon'ble Apex Court in the case of Premji Nathu(supra) has held that, whether an authority had not served the notice of passing of award, the application for reference made within six weeks of the obtaining copy of award, cannot be said to be barred by limitation. In arriving at this conclusion, the Hon'ble Apex Court relied upon its earlier decision in the case of *"Harish Chandra Raj Singh vs. Land Acquisition Officer"*³ interpreting the expression 'date of

3. AIR 1961 SC 1500.

award' as it appears in Section 18(2) of the said Act. In the said case, the Hon'ble Apex Court made the following observations:-

“Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the 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 party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words, 'the date of the award' occurring in the relevant section would not be appropriate”.

12] Applying the aforesaid principles in the facts and circumstances of the present case, it does appear that the application for reference made by the Petitioners within hardly 10 days from the date of receipt of compensation under the award under protest and without prejudice, could not have been regarded as barred.

13] For the aforesaid reasons, Rule is made absolute in terms of prayer clauses (a) and (b).

14] Respondent No. 2 is directed to make reference to the Court as expeditiously as possible and in any case within a period of six weeks from today.

15] The reference Court upon receipt of the reference is directed to offer priority to the matter since the Petitioners have applied for reference way back in the year 1994.

16] In the facts and circumstances of the present case, no order as to cost.

(M. S. SONAK, J.)