

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION No. 943 OF 2012

Hindurao Balvant Korane & Ors. ... Applicants
Vs.
The Collector, Kolhapur & Ors. ... Respondents

Mr. Amit Borkar, Advocate for the applicants.

Mr. A.R. Patil, AGP for the respondent nos. 1 and 2.

Mr. Bhooshan Mandlik i/b. Mr. S.S. Patwardhan, Advocate for respondent no. 3.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **4th June, 2018.**

P.C.:

In this Civil Revision Application, the applicants have challenged the order dated 8th August, 2012 passed by the Special Land Acquisition Officer-XI, Kolhapur informing the applicant that his application challenging the award filed under section 18(2) of the Land Acquisition Act, 1894 is not within limitation and hence dismissed.

2. The learned counsel for the applicants submitted that the applicants want to challenge the award of the Collector of the acquisition of their land. When the Collector passed the award under section 12 of the Land Acquisition Act, as the applicants were not present, he sent notice to the applicants under section 12(2) of the

Act. However, along with the notice, the applicants did not receive certified copy of the award and therefore, they had no knowledge of the award. The period for filing Reference challenging the award is to be computed from the date of the knowledge of the contents of the award passed by the Collector and then the period as contemplated under section 18(2) of the Act is to be calculated. He further submitted that neither the Collector nor the Special Land Acquisition officer has any power to decide whether Reference was made within limitation or not, when it is a disputed question of facts. Only the power vests with the District Court to decide this point, therefore, the impugned order passed by Special Land Acquisition Officer is to be set aside. In support of his submissions, the learned counsel relied on the following judgments:

- (i) Judgment of the Division Bench of the Hon'ble Supreme Court in the case of Premji Nathu vs. State of Gujarat and Anr., reported in (2012) 5 SCC 250;
- (ii) Judgment of Single Judge of this Court in Mohandevi w/o. Sohanlal Jhawar vs. Special Land Acquisition Officer (General) reported in 1993 Mh. L.J. 335.

3. The learned AGP, in reply, has submitted that the reference

was sent to the Collector by the applicants within the period of 6 weeks as mentioned under section 18(2)(b) of the Act. He has submitted that the applicants have filed reference beyond the period of 6 weeks and therefore, the Collector, who is authorized to refer the matter to the District Court, has inherent power to look into the issue whether the reference is made within limitation or not. He has further submitted that the Hon'ble Supreme Court in the case of **Officer on Special Duty (Land Acquisition) & Anr. vs. Shah Manilal Chandulal & Ors, reported in (1996) 9 SCC 414** has held that the Collector will have to decide whether the application presented by the claimant is or is not within the time specified under section 18 of the Act.

4. Considered the submissions of learned counsel for both the sides. The issue is not resintegra. Undoubtedly, the Collector cannot be just a postman to send reference to the Civil Court. When the Reference is made to him, as held by the Supreme Court in the case of **Officer on Special Duty (Land Acquisition) & Anr. vs. Shah Manilal Chandulal** (*supra*), the Collector has to consider if the application is not made within time, then he should make reference or not. When the period of 6 weeks is specifically mentioned in

section 18(2)(b) of the Act, the Collector is expected to verify at the first stage whether it is within stipulated time or not and the condition laid down under section 18 is complied with or not. However, if the facts in respect of receipt of notice, i.e., notice along with award is disputed by the interested or aggrieved person, then the power vests with the District Court to decide the issue of limitation. The Collector cannot decide the debatable issue passed on disputed facts because to decide the reference made under section 18 of Land Acquisition Act wholly vests with the District Judge.

5. In the case of **Premji Nath** (*supra*), the Supreme Court has held that when the notice of award is issued under section 12(2) of the Act, it is to be necessarily notice along with award which is required to be sent and served by the Collector to the interested person. If the notice without award is not sent, then it is not an effective service under section 12(2) of the Act. The copy of the award is to be sent to the interested person along with the notice and that is to be shown to the Reference Court and the said issue of proper and effective service and resultantly of the limitation is to be decided only by the Reference Court.

6. In the case of **Mohandevi**(*supra*), the Single Judge of this Court has taken a view that the Collector acting under section 18 is not an adjudicating authority which may give finality to his award. If a disputed question of fact in respect of limitation is decided by the Collector, then it will amount to giving final decision in respect of its own award. Hence, Civil Revision Application is allowed with following order:

- (i) The order dated 8th August, 2012 passed by the Special Land Acquisition Officer, Kolhapur is hereby set aside;
- (ii) The applicant shall send the reference to the Collector on or before 15th June, 2018 and the Collector shall send the said Reference Exhibit A to the District Court, Kolhapur on or before 27th June, 2018;
- (iii) The parties shall appear before the District Court, Kolhapur on 2nd July, 2018 at 11 a.m.
- (iv) The learned District Judge, Kolhapur to entertain and decide this Reference on merit at the earliest.

(MRIDULA BHATKAR, J.)