

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 22-1-2019

Judgment delivered on 13-02-2019

FA No. 96 of 2006

Pardeshidas aged about 62 years, s/o. Mangludas, r/o. Village Birbhata, Tahsil Malkharoda, Dist. Janjgir Champa. (CG).

---- Appellant.

Versus

1. The State of Chhattisgarh through Collector, Janjgir Champa (CG).
2. The Land Acquisition Officer, Hasdeo Bango Praiyojna, Sakti, District Janjgir Champa.

---- Respondents

For appellant : Mr. Salvik Tiwari, Advocate.

For respondent/State : Mr. V.B. Singh, Panel Lawyer.

For respondent No.2 : None.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. The appellant has preferred this appeal under Section 54 of the Land Acquisition Act, 1894 (for short, "the Act, 1894") against the award dated 6-12-2005 passed by the Additional District Judge, Sakti, Civil District Bilsapur (CG) in

Misc. Civil Suit No. 114 of 2005 wherein the said court dismissed the reference forwarded under Section 18(2) of the Act, 1894.

2. As per version of appellant, the land bearing Khasra No. 13/7, 13/4, 13/8, area 0.194, 0.004, 0.279 hectare respectively and 13/4 area 0.069, Khasra No. 13/11, area 0.048 hectare, total 0.594 hectares situated at village Birbhata, Tahsil Malkharoda belongs to the appellant and his family members and same had been acquired by the respondent authority for construction of canal. The land in question was an irrigated land but the respondent granted the compensation to the appellant on the basis of an unirrigated land and because of this the appellant has suffered the loss of Rs.95,.000/-. A reference under Section 18 of the Act, 1894 has been made and same was referred by the Collector to the Additional District Judge, Sakti. Appellant filed certificate which goes to show that land of the appellant was an irrigated land by private tube-well which was not rebutted by the respondent, but the said court rejected the reference on the ground of limitation. Reference was made for the purpose whether the appellant is entitled for compensation on the basis of irrigated land or not but the reference court decided the issue on the basis

of limitation. As the Land Acquisition Officer did not provide opportunity to the appellant at the time of deciding the compensation, the delay in the present case is not with mala fide intention or to linger on the proceeding and is bona fide, therefore, dismissal of reference on the ground of limitation is not proper, therefore, order for enhancement of compensation be directed to the authority.

3. The first question for consideration of this court is whether the land in question is an irrigated land.
4. To dwell the issue, first definition of assured irrigation is necessary which is defined in Section 2(bb) of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (for short, "the Act, 1960") which may be read as under:

"Assured irrigation" means irrigation from any source of irrigation belonging to the State Government on the appointed day".

5. Assured private irrigation is defined in Section 2(bbb) of the Act, 1960 which may be read as under:

2(bbb) "*assured private irrigation*" means irrigation on or before the 15th August, 1972-

(i) from tube wells;

(ii) by lift irrigation from a perennial source of water operated by diesel or electrical energy.

Explanation. - For the purpose of item (ii) of this clause, "perennial source of water" means a source of water from which water flows throughout the year but does not include a well;.

6. From the definition, it is clear that for irrigation land source of water must flow through out the year. In the present case, appellant filed a document regarding irrigation which is certificate issued by the Sub Divisional Officer, Mand Canal Project, Dabhra as per Ex.P/2 and P/3 and again filed electric bill of April 2003 of Rs.305/- for the said month. No one was examined before the Reference Court by the appellant of the said Canal Division who issued certificate and no one to prove electric bill for the month of April 2003. Electric bill filed for one month is not sufficient to establish that bill is regularly paid for irrigation. Again in Ex.P/2 and P/3, it is not mentioned that private tube well is operated through out the year. In absence of statement of any officer of Irrigation Department, Revenue Department or Electricity Department, it is not established that the land in question is irrigated for the whole year regularly for a long. In absence of evidence, it is not established that the land in question is

irrigated by the private tube-well through out the year. Thus, the answer of the question is in negative.

7. The second question for consideration of his court is whether the reference is made within limitation as per Section 18(2) of the Act, 1894.
8. The appellant deposed before the Reference Court that he has received the compensation (para 8). From his statement, date of knowledge of award is not clear. Looking to his receiving of award, it can be inferred that he has knowledge of award from the date of award which is 19-9-2003. Reference can be made only within six months from the date of knowledge of the award. In the present case, it appears that the appellant had knowledge of award from the date of award and reference can be made within six months from the knowledge of award. In the present case, reference is made on 13-5-2005 while the date of award is 19-9-2003 which is apparently time barred. When limitation expired, reference made by the Land Acquisition Officer was not maintainable as time barred. It is for the reference court to decide the issue of limitation and the Land Acquisition Officer has no right to decide the issue of limitation, therefore, looking to the factual material of the

case, reference court is right in holding that reference is time barred and same cannot be acted upon.

9. In the present case, it is clear that from the statement of the appellant that he has received the compensation and there is nothing on record to say that he has received the same with protest. When compensation is received without any protest, the appellant is not entitled to seek any reference.
10. In the matter of **Land Acquisition Officer vs. Shivabal and others, reported in (1997) 9 SCC 710**, it is held that when compensation is received without any protest, the claimant is not entitled to seek any reference.
11. Section 31 of the Land Acquisition Act, 1894 may be read as under:

"31. Payment of compensation or deposit of same in Court - (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the

apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted: Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount: Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:"

12. Considering all the facts and in view of the law laid down by Hon'ble Supreme court in the above case law (supra), this court is of the opinion that the appellant is not entitled to make any reference. The rejection of the reference by the Reference Court is just and proper which needs no interference by this Court in appeal.
13. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju