

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.150/2017

DR. SHANKAR D. NADKARNI

major, Doctor, R/o. H.No.1/1,
Dando, Sanguem, Goa.

... APPELLANT

Versus

1. THE EXECUTIVE ENGINEER,
Work Division-XIV, W.R.D., Gogol,
Margao – Goa.

2. DY. COLLECTOR & SDO/LAO
Quepem, Goa.

... RESPONDENTS

Mr. Vishnuprasad A. Lawande with Mr. P. Redkar, Advocates *for the Appellant.*

Ms. Sapna Mordekar, Additional Government Advocate *for the Respondents.*

CORAM.: M. S. SONAK, J.

DATED: July 01, 2022

ORAL JUDGMENT:

1. Heard Mr. Vishnuprasad Lawande, who appears along with Mr. Parimal Redkar for the Appellant and Ms. Sapna Mordekar, learned Additional Government Advocate for the Respondents.

2. This appeal challenges the Judgment and Award dated 23.06.2016 in Land Acquisition Case No.3/2015, by which the Reference Court rejected the reference on the ground of limitation. The Reference Court also considered the merits and held that the Appellant made no case for compensation above ₹7/- per sq. mtr. as determined by the Land Acquisition Officer (LAO).

3. Mr. Lawande submits that the respondents never raised the limitation issue; therefore, the Reference Court could not have *suo moto* gone into this issue. Without prejudice, he proposes that the findings recorded by the Reference Court are contrary to the material on record. He submits that the Reference Court has adopted a literal and mechanical construction of the phrase "date of the award" in clause (b) of the proviso to Section 18(2) of the Land Acquisition Act, 1894 (said Act). He submits that such a construction is contrary to the law in ***Raja Harish Chandra Raj Singh vs. Deputy Land Acquisition Officer and Another – AIR 1961 SC 1500.***

4. Mr. Lawande submits that a portion of Survey No.32/7, Cotarlim, Sanguem, Goa, was acquired in 1993. He points out that the LAO had accepted that the land in Survey No.32/7 was bharad land and offered a rate of ₹25/- per sq. mtr. He submits

that there is no evidence of the land being affected by tenancy. He proposes that after granting appropriate escalation, the rate should be determined at ₹150/- per sq. mtr.

5. Ms. Mordekar learned Additional Government Advocate appearing for the respondent submitted that no evidence was led by the Appellant about the date of knowledge of the award. She, therefore, offers that the Reference Court was justified in rejecting the reference as barred by limitation. She relies on *Mohammed Hasnuddin vs. The State of Maharashtra – AIR 1979 SC 404* to submit that the Reference Court was justified in ascertaining whether the reference was within limitation, even though the respondents might not have raised such an issue.

6. Ms. Mordekar submits that the earlier acquisition was regarding bharad lands and paddy fields. Second, she submits that the Appellant claims to have cultivated the acquired lands; therefore, they must be paddy fields. Third, she submits that there is evidence of tenancy reflected in the survey records. Finally, she submits that there is evidence about the acquired property being used as a public road.

7. Based on all this, she submits that there was no question of any escalation. Therefore, she presents the determination of ₹7/-

per sq. mtr. by the LAO as fair and proper even considering the 1993 award. She relies on *The Goa Housing Board vs. Rameshchandra Govind Pawaskar – 2011 (10) SCC 731* to submit that agricultural tenanted lands cannot be compared with the other lands not affected by the tenancy factor. For these reasons, Ms. Mordekar submits that this appeal may be dismissed.

8. The rival contentions now fall for my determination.

9. Based on the rival contentions and the material on record, the following three points arise for determination:

(a) Was the Reference Court justified in suo moto taking up the limitation issue?

(b) If yes, whether the Reference Court has correctly held the reference to be beyond the period of limitation?

(c) If no, then whether the Reference Court was justified in not enhancing the rate determined by the LAO?

10. On the first issue of whether the Reference Court could have *suo moto* taken up the issue of limitation even though the respondents never raised the same, the submission of Ms.

Mordekar based on *Mohammed Hasnuddin (supra)* will have to be upheld.

11. In *Mohammed Hasnuddin (supra)* the Hon'ble Supreme Court has held that the court functioning under the Act being a tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector under Section 18 complies with the conditions laid down therein so as to give the court jurisdiction to hear the reference. In deciding the question of jurisdiction in a case of reference under Section 18 by the Collector to the Court, the Court is certainly not acting as a court of appeal; it is only discharging the elementary duty of satisfying itself that a reference which it is called upon to decide is a valid and proper reference according to the provisions of the Act under which it is made. That is a basic and preliminary duty which no tribunal can possibly avoid. The Court has, therefore, jurisdiction to decide whether the reference was made beyond the period prescribed by the proviso to sub-section (2) of Section 18 of the Act, and if it finds that it was so made, decline to answer reference.

12. Therefore, there was nothing wrong with the Reference Court *suo moto* taking up the limitation issue. However, the principles of natural justice would required that the Reference

Court puts the parties or their counsel to notice that it proposes to take up such an issue. This would enable the parties or their counsel to assist the Court in deciding the limitation issue. In addition, if any evidence is required to be led on this issue, the parties will have the opportunity to do so.

13. Mr. Lawande submitted that the issue of limitation was neither raised by the respondents nor was any notice given to the parties that this issue was proposed to be considered. He submits that only after the copy of the impugned award was received was it realized that the Reference Court had *suo moto* taken up the limitation issue and decided the same against the Appellant.

14. Mr. Lawande submitted that certain findings recorded by the Reference Court are incorrect only because the parties could not point out to the Reference Court the material on record. He submits that if the parties or their counsel had been put to notice, such material could have been brought to the notice of the learned Reference Court. Further, he submits that even certain decisions of the Hon'ble Supreme Court on the issue could have been cited in the matter.

15. The first issue is therefore decided by holding that the Reference Court has the powers to go into the limitation issue

even though none of the parties may have raised such an issue. Incidentally, even the Limitation Act provides that it shall be the duty of the Court to go into the issue of limitation, irrespective of whether or not the opposite party raises the same. First, however, the Reference Court should put the parties to notice that it proposes to go into this issue so that the parties or their counsel have an opportunity to put forth their case on this issue.

16. To determine the second issue, a reference will have to be made to the statement under Section 19 of the said Act forwarded by the LAO to the Reference Court. The respondents cannot dispute this statement because the LAO made the same.

17. The statement dated 05.05.2015 records that the award, in this case, was declared on 04.11.2003, but the notice under Section 12(2) of the said Act was issued to the interested parties only on 13.12.2012. This statement also records that the date for payment in terms of the award and the date for taking over the possession was fixed on 10.01.2013 at 11.00 am. The statement also records that the application seeking reference under Section 18 was received from the Appellant on 11.02.2013.

18. The Appellant's application dated 11.02.2013 seeking reference is on record. The application bears a stamp from the

office of the Sub-Divisional Officer of Quepem, Goa (LAO) against inward entry no.1945, confirming the date of receipt of this application as 11.02.2013. This is precisely the date reflected in the statement under Section 19 made by the LAO on 05.05.2015. Thus, there can be no dispute about the date the LAO received the Appellant's reference application.

19. In paragraph 4 of this reference application, the Appellant stated that he came to know of the award having been passed for the first time on 03.01.2013 when he received the notice under Section 12(2) of the said Act. Based on this factual statement, he asserted in para 4 of the reference application that the reference was in time.

20. The LAO did not even suspect that the application for reference was beyond the period of limitation prescribed in the proviso to Section 18(2) of the said Act. Therefore, on 05.05.2015, i.e., almost two and a half years from the receipt of the reference application, made a reference to the Reference Court under cover of the statement under Section 19 of the said Act dated 05.05.2015.

21. The Reference Court has noted this delay of two and half years but held it against the Appellant. The Appellant had no

control over the LAO, referring to the Reference Court. This delay, therefore, could not have been held against the Appellant.

22. The Reference Court has also noted the unreasonable delay of over nine years between the date of declaration of the award, i.e., 04.11.2003, and the date on which notices under Section 12(2) of the said Act was issued to the interested parties, i.e., 13.12.2012. Accordingly, the Reference Court had again held this circumstance against the Appellant when the Appellant had no control over this circumstance whatsoever.

23. The Reference Court, at one place, suggested that there was no proof about the Appellant receiving the notice under Section 12(2) of the said Act on 03.01.2013. However, the evidence, if required, is to be found in the LAO's statement under Section 19 of the said Act dated 05.05.2015. This statement clearly states that Section 12(2) notice was issued to the interested parties only on 13.12.2012. This statement has to be construed along with the endorsement that the payment and possession date was fixed only on 10.01.2013 at 11.00 am. Based on this, there was no reason to doubt the Appellant's statement about receiving Section 12(2) notice on 03.01.2013. This is not a case of over nine years delay attributable to the Appellant as the learned Reference Court suggested. Instead, this is a case where the notice was issued on

13.12.2012 and was received shortly, i.e., on 03.01.2013, by the Appellant.

24. In the reference application dated 11.02.2013, the Appellant clearly stated that he came to know about the LAO's award for the first time on 03.01.2013 when he received notice under Section 12(2) of the said Act. Usually, such a statement has to be made on an affidavit. But in the present case's peculiar facts, this statement must be believed. This statement was accepted by the LAO, who referred without holding that the reference was barred by limitation. The circumstances discussed above also more than probabalize this statement. Even before the Reference Court, the respondents did not raise any limitation issue, as noted earlier.

25. The delay of over nine years in issuing notice under Section 12(2) of the said Act is indeed disturbing. But the Appellant can, in no manner, be held responsible for this delay. Moreover, section 19 statement dated 05.05.2015 unambiguously records that the award was declared on 04.11.2003, but notice under Section 12(2) of the said Act was issued to the interested parties only on 13.12.2012.

26. Section 19 statement dated 05.05.2015 also records that the payment of compensation and the date for taking over possession was 10.01.2013 at 11.00 am. The delay was possibly because the State wanted to delay the payment of compensation to the interested parties. Suffice to note that the Appellant was in no manner responsible for this delay, and the Reference Court was therefore not justified in deciding the issue of limitation against the Appellant on this count.

27. Similarly, the record bears out that even after the Appellant applied for reference on 11.02.2013, the LAO referred only on 05.05.2015. The Reference Court notes the delay of over two years and even holds this against the Appellant. However, the Reference Court was not justified in holding this circumstance against the Appellant when the Appellant had no control over the LAO belatedly referring.

28. There is no doubt that the Appellant applied for reference on 11.02.2013. The evidence on record probabalizes that the Appellant received notice under Section 12(2) of the said Act on 03.01.2013. The Appellant has asserted that he came to know of the award for the first time on 03.01.2013 after receiving this notice. The reference has been made within six weeks from the date of the receipt of notice under Section 12(2) of the said Act.

29. The six-week limitation may not apply in this case, considering the last portion of clause (b) of the proviso to Section 18 of the said Act. However, the material on record establishes that the Appellant got knowledge of the award only on 03.01.2013, and the application for reference was made within six months from the date of knowledge.

30. Section 18 of the said Act reads as follows:

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

31. The Reference Court, in this case, has interpreted the expression "*from the date of the Collector's award*" literally and mechanically. However, in the precise context of this phrase, the Hon'ble Supreme Court, in *Raja Harish Chandra Raj Singh (supra)*, has reversed the Allahabad High Court's literal interpretation.

32. The reasoning of the Hon'ble Supreme Court is found in paragraphs 4, 6, and 7 that, read as follows:

"4. Part III which deals with reference to Court and procedure thereon opens with Section 18. Section 18(1) provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by him for determination of the Court, inter alia, whether the amount of compensation is adequate or not. It is under this provision that the Appellant made an application from which the present appeal arises. Section 18(2) requires that the application shall state the grounds on which objection to the award is taken. These grounds have been stated by the Appellant in his application. The proviso to Section 18 deals with the question of limitation. It prescribes 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(2), or within six months from the date of the Collector's award whichever shall first expire. The Appellant's case falls under the latter part of clause (b) of

the proviso. It has been held by the Allahabad High Court that since the application made by the Appellant before Respondent 1 was made beyond six months from the date of the award in question it was beyond time. The view taken by the High Court proceeds on the literal construction of the relevant clause. As we have already seen the award was signed and delivered in his office by Respondent 1 on March 25, 1951, and the application by the Appellant was made under Section 18 on February 24, 1953. It has been held that the effect of the relevant clause is that the application made by the Appellant is plainly beyond the six months permitted by the said clause and so Respondent 1 was right in rejecting it as barred by time. The question which arises for our decision is whether this literal and mechanical way of construing the relevant clause is justified in law. It is obvious that the effect of this construction is that if a person does not know about the making of the award and is himself not to blame for not knowing about the award his right to make an application under Section 18 may in many cases be rendered ineffective. If the effect of the relevant provision unambiguously is as held by the High Court the unfortunate consequence which may flow from it may not have a material or a decisive bearing. If, on the other hand, it is possible reasonably to construe the said provision so as to avoid such a consequence it would be legitimate for the Court to do so. We must therefore enquire whether the relevant provision is capable of the construction for which the Appellant contends, and that naturally raises the question as to what is the meaning of the expression "the day of the Collector's award".

6. There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the

valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical Act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement, an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way.

7. In this connection it is material to recall the fact that under Section 12(2) it is obligatory on the Collector to give immediate notice of the award to the persons interested as are not present personally or by their representatives when the award is made. This requirement itself postulates the necessity of the communication of the award to the party concerned. The legislature recognised that the making of the award under Section 11 followed by its filing under Section 12(1) would not meet the requirements of justice before bringing the award into force. It thought that the communication of the award to the party concerned was also necessary, and so by the use of the mandatory words an obligation is placed on the Collector to communicate the award immediately to the person concerned. It is significant that the section requires the Collector to give notice of the award immediately after making it. This provision lends support to the view which we have taken about the construction of the expression "from the date of the Collector's award" in the proviso to Section 18. It is because communication of the order is regarded by the legislature as necessary that Section 12(2) has imposed an obligation on the Collector and if the relevant clause in the proviso is read in the light of this statutory requirement it tends to show that the literal and mechanical construction of the said clause would be wholly inappropriate. It would indeed be a very curious result that the failure of the Collector to discharge his obligation under Section 12(2) should directly tend to make ineffective the right of the party to make an application under Section 18, and this result could not possibly have been intended by the legislature."

33. In *Bhagwan Das And Others vs. State of Uttar Pradesh And Others* – (2010) 3 SCC 545, relying on *Raja Harish*

Chandra Raj Singh (supra), the Hon'ble Supreme Court has held that the expression "*within six months from the date of Collector's award*" has to be read to mean six months from the date of actual or constructive knowledge of essential contents of the award. However, the expression is not to be interpreted literally because such an interpretation leads to absurd results since a person not knowing the award would be deprived of the opportunity to seek reference to Court. Besides, the procedure would also become unfair, discriminatory, and therefore violative of Articles 14 and 300-A of the Constitution of India.

34. In *Bhagwan Das (supra)*, the Hon'ble Supreme Court also held that the onus in such matters is on the applicant. He has to state on oath that he or his representative was not present when the award was made; he did not receive notice under Section 12(2) and was unaware of the award's contents. The onus then shifts to the Collector to prove otherwise. A vague report furnished by a government official that he informed farmers, but they refused to give acknowledgement, did not satisfy the requirement of actual or constructive knowledge. The Court ultimately accepted the appellants' plea that they became aware of the award dated 14.03.2007 only when notice dated 25.10.2007 was sent to them to receive compensation, and the contents of the award came to their knowledge on 16.11.2007 when the

appellants made further enquiries. The Court accepted the appellants' case about the date of knowledge of the contents of the award and held that the reference made within six months from the said date was within limitation.

35. In this case, as noted earlier, though the Appellant may not have made a statement on oath, the LAO's statement under Section 19 is clear and unambiguous. This statement entirely supports the Appellant's version, and therefore, in the peculiar facts of the present case, and at this point of time, rather than remand the case to enable the parties to lead evidence on this issue, the issue of limitation will have to be decided in favor of the Appellant.

36. Accordingly, the second issue is decided in favor of the Appellant by holding that the reference, in this case, was made within the prescribed period of limitation.

37. On the third issue of the quantum of compensation, the Reference Court was not justified in holding that the Appellant had made no case for enhancement over and above the rate of ₹7/- per sq. mtr. offered by the LAO.

38. The award of 04.11.2003 is on record. This award establishes that a portion of Survey No.32/7 was acquired in 2003 by the Government for embankment and improvement of cross drainage work of water sources 6, 7, 8, and 9 of the main canal of SIP at Cotarli village of Sanguem taluka, Goa. This award acknowledges that part of the property surveyed under No.32/7 was notified, *inter alia*, in the name of Dr. Shankar Nadkarni, the Appellant herein. Ultimately, the LAO determined that the Appellant's acquired portion was bharad land and offered ₹25/- per sq. mtr.

39. By the above award dated 04.11.2003, several lands were acquired. Some of them were bharad, and some were paddy fields. However, when it came to Survey No.32/7, the same was adjudged as bharad land, and a rate of ₹25/- per sq. mtr. was offered.

40. Mr. Lawande submits that under the present acquisition, the remaining portion of Survey No.32/7, Cotarli, Sanguem, Goa, has been acquired for road construction. He submits that this was bharad land. He proposes that Appellant's statement in evidence that the land was being cultivated does not lead to the inference that the land was a paddy field. He submits that even bharad lands are cultivated in the monsoon.

41. The Reference Court has not assessed the above evidence on record. However, if the LAO, in 2003, had determined the market rate of bharad land in Survey No.32/7 itself at ₹25/- per sq.mtr., the Appellant was entitled to some enhancement.

42. However, Ms. Mordekar pointed out that the survey records indicated that the property was tenanted. She referred to the evidence in which even the Appellant has admitted that the acquired property was used as an access. She submitted that there could be no annual enhancement. She offered that the evidence shows that the acquired land was a paddy field.

43. There is evidence about the acquired property admeasuring 1150 sq. mtrs. being used as an access. In addition, there is some dispute on the tenancy issue. Even the survey records speak of some tenants. These are negative factors affecting the acquired property.

44. In *State of Goa & Anr. vs. Antonio Almeida & Ors. - First Appeal No.176/2000 decided on 23.06.2004*, this Court held that if a nominal or naked right of ownership was being acquired, then the compensation ought to be 20% of the value fetched by the owners in the surrounding or adjacent lands. Similarly, in *Rameshchandra Govind Pawaskar (supra)*,

compensation was reduced by 50% where there was no dispute about the acquired land being affected by the provisions of the Agricultural Tenancy Act and the Goa Land Use Act, 1991.

45. In the present case, there is no clear evidence about the acquired property being used as access by all the public members. Possibly, the same was used as access by some few houses in the locality. However, Mr. Lawande pointed out that there were hardly two houses in the locality. Therefore, the principle in *Antonio Almeida (supra)* will not apply with full force. However, some deductions will be due on this count.

46. Similarly, the evidence about the acquired property being affected by agricultural tenancy is also unclear. In the earlier acquisition, the LAO raised no such tenancy issue. There is no proper cross on this issue.

47. Considering the above peculiar circumstances, the interests of justice will be met if the rate is determined at ₹20/- per sq. mtr. This is after considering the negative aspects of the acquired land or, instead, on account of the negative factors affecting the acquired land.

48. Mr. Lawande did contend that if the rate of the bharad land was ₹25/- per sq. mtr. in the year 2003, the rate in the year 2010 would be substantially higher, i.e., at least ₹100/- per sq. mtr. In my opinion, this submission cannot be accepted. The acquired land is at Cotarli, Sanguem. The acquired land was already used as access. At least the survey records refer to some tenants. Considering all these aspects, the enhancement over the last seven years could never have been as much as suggested by Mr. Lawande. Therefore, the enhancement proposed would have to be set off against the negative factors discussed above, for which deductions will have to be made. After making such deductions, the market rate can be determined at ₹20/- per sq. mtr. The third issue is answered accordingly.

49. Accordingly, this appeal is partly allowed. The compensation is re-determined by enhancing the market rate from ₹7/- per sq. mtr. offered by the LAO to ₹20/- per sq. mtr. The Appellant's claim about the rate of ₹150/- per sq. mtr. is, however, rejected.

50. The respondents will now have to pay the appellant compensation at the rate of ₹20/- per sq. mtr. instead of ₹7/- per sq. mtr. The Appellant will also be entitled to statutory benefits and interest in terms of the said Act on the enhanced amount.

51. After deducting the payments already made, the enhanced amount will have to be paid/deposited in this Court within three months from today after notice to the learned counsel for the Appellant. After that, the Appellant will be entitled to withdraw this amount after providing proper identity papers and furnishing bank details. Finally, the Registry to transfer the deposited amount into the Appellant's bank account directly.

52. The appeal is partly allowed in the above terms. Accordingly, there shall be no order for costs.

M. S. SONAK, J.