

Pooja K.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 149 OF 2018

Kantilal Zumbarlal Gugale (died)

Thr LRs Rimlabai Kantilal Gugale and Ors. ... Applicants

Versus

The State of Maharashtra

Thr Collector and Ors. ... Respondents

...

Mr. D.R. Jayabhar – Advocate for Applicants

Mr. S.B. Pulkundwar – AGP for Respondent Nos. 1 to 3.

....

CORAM : GAURI GODSE, J.

DATE : 1st March, 2023

PER COURT :

1. Rule. Rule made returnable forthwith. Learned AGP waives service for Respondent Nos. 1 to 3. Civil Revision Application is taken up for final disposal.

2. This Civil Revision Application is filed for challenging the order dated 12th June, 2018 passed by respondent no.2 thereby rejecting the application filed by the applicants for making a reference under Section 18 of the Land Acquisition Act, 1894 ('said Act'). Respondent

no.2 has rejected the application on the ground that application filed by the applicants was beyond the period of limitation.

3. It is the case of the applicants that, their land No.486/1 admeasuring 03H 42R was acquired under the said Act and award under Section 11 of the said Act was passed on 31st May, 2010. An award was passed in the name of deceased Kantilal Zumbarlal Gugale and Prakash Gendmal Luniya. The present Civil Revision Application is filed by heirs and legal representatives of Kantilal Zumbarlal Gugale alongwith Prakash Gendmal Luniya.

4. It is the case of the applicants that, notice under Sub-Section (3) or (4) of the said Act was not served upon the applicants and that the applicants were not present before learned Special Land Acquisition Officer, when the award was made. It is further the case of the applicants that notice under Section 12(2) of the said Act was never served upon the applicants. The applicants contended that they have learnt about the award after obtaining certified copies of necessary documents on 15th May 2018. Hence, they filed an application on 2nd June, 2018 under Section 18 of the said Act, requesting for making a reference for enhancement of compensation awarded pursuant to the award. It is the case of the applicants that, since the notice under Section 12(2) of the said Act was never served upon the applicants, the application for making a reference filed by the applicants was within limitation from the date of knowledge of the award.

5. The respondent no.2 by order / letter dated 12th June, 2018 intimated the applicants that their application filed on 2nd June, 2018

for making a reference under Section 18 of the said Act is filed beyond the period of limitation and hence, the application is rejected. Therefore, the applicants have filed the present Civil Revision Application under sub-section (3) of Section 18 of the said Act, as amended by the State Government of Maharashtra, for challenging rejection of their application for making reference for enhancement of compensation.

6. There is an affidavit-in-reply filed on behalf of the respondents. The learned Assistant Government Pleader stated that, as per the available record, the notice under Section 12(2) of said Act was served upon applicants by way of affixing the notice on the acquired land. He relied upon the communication dated 15th February, 2011 as well as panchanama dated 10th February, 2011. The learned A.G.P. states that, as per the panchanama it is clear that the applicants were not available on the address of the acquired land and hence, notices were served by way of affixing. He therefore submitted that, there is proper service of the notice under Section 12(2) of the said Act and hence, respondent no.2 has rightly rejected the application of the applicants. He relies upon Section 230 of the Maharashtra Land Revenue Code, 1966 in support of his submission that the mode of service adopted by way of affixing is good service. He, therefore, supports the order passed by the respondent no.2.

7. Learned counsel for the applicants submitted that, the mode of service as prescribed in Section 230 of the Maharashtra Land Revenue Code, 1966 is available by affixing only when the regular mode of

service is not possible. He submitted that, perusal of record shows that, there was no service of notice under Section 12(2) of the said Act attempted by regular mode. He further submitted that, copy of the panchanama shows that, notice was affixed on the acquired land, which is an agricultural land. He thus submitted that, applicants were never served with the notice. Hence, from the date of the knowledge of the award, the application filed for making a reference was within time. He submitted that, clause - b of the proviso to section 18 of the said Act states that,

“(b) 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. “

He submitted that, clause - b of the said proviso is interpreted to mean that in absence of proof of service of notice under Section 12(2), the period of limitation is to be calculated from the date of knowledge of the declaration of the award. In support of his submissions he relied upon the decision of the Hon’ble Supreme Court in the case of *Parsottambhai Maganbhai Patel and Ors. Vs. State of Gujarat and Anr.*¹ He, therefore, submitted that application for reference made by the applicants is within limitation, as the limitation period needs to be calculated from the date of knowledge as specifically pleaded in their

application for reference.

8. I have considered the submissions made by the both the parties. I have perused the record with respect to service of notice. The copy of panchanama relied upon by the learned A.G.P. to point out that the notice under Section 12(2) of the said Act has to be treated as served upon the applicants is, on the basis of notice sought to be served by affixing. Perusal of the panchanama shows that the notice was affixed on the acquired land as the claimants were not found at the address of the acquired land. It is not explained as to in what manner the notice was affixed. It is not in dispute that, acquired land is an open land. Hence, case of service of notice by affixing cannot be accepted, in absence of any particulars, as to in what manner the notice was affixed. Except panchanama no other record is produced to show that, notice was served upon the applicants. It is not the case of the respondents that, service by regular mode was attempted. The provisions of Section 230 the Maharashtra Land Revenue Code, 1966, relied upon by the learned A.G.P. specifically provides for service of any notice under the said Code. Nothing is shown to me as to which rules are applicable for service of notice under section 12(2) of the said Act. The provision of Section 230 the Maharashtra Land Revenue Code, 1966 relied upon by the learned A.G.P reads thus :

- (1) Subject to the provisions of this Code and the rules made thereunder, every notice under this Code may be served either by tendering or delivering a copy thereof, or sending such copy by post to the person on whom it

is to be served, or his authorised agent, or, if service in the manner aforesaid cannot be made, by affixing a copy thereof at his last known place or residence or at some place of public resort in the village in which the land to which the notice relates is situated or from which the land is cultivated.

Reliance upon the said provision is of no assistance to the respondents to support of their case. It is not the case of the respondents that the notice under Section 12(2) of the said Act was any time attempted to be served upon the applicants by regular mode.

9. The learned Advocate for the Applicants has rightly relied upon the decision of the Hon'ble Supreme Court in the case of *Parsottambhai Maganbhai Patel and Ors*, as well as following decisions:

- i. *Raja Harish Chandra Raj Singh v the Deputy Land Acquisition Officer and Anr*².
- ii. *Popatlal Mohanlal Chordiya v the State of Maharashtra through Collector and Anr*³.
- iii. *Baban s/o Pandurang Ghalme and Anr v the State of Maharashtra and Anr*⁴.
- iv. *Baban s/o Limbraj Galande v the State of Maharashtra and Anr*⁵.

2 AIR 1961 SUPREME COURT 1500

3 Civil Revision Application No. 134/2007

4 Civil Revision Application No. 237/2007.

5 Civil Revision Application No. 149/2013

Thus, considering the well established principles of law by the Hon'ble Supreme Court in the aforesaid decisions and the view taken by this Court in all the aforesaid decisions, it is clear that valid service of notice under section 12(2) of the said Act is necessary. Thus, if the person making an application for reference under Section 18 of the said Act was not present at the time when Award was made, the period of limitation for filing an application for making a reference under section 18 of the said Act, shall commence from the date of service of notice under section 12(2). Thus, in absence of proof of valid service of notice under section 12(2), the period of limitation shall commence from the date of knowledge of the claimant about the award or the notice under section 12(2).

10. It is not the case of the respondents that the applicants were present at the time when the Award was made. There is nothing produced on record to prove service of notice under Section 12(2) of the said Act upon the applicants. Thus, the case of the applicants that the application was within time from the date of knowledge is required to be accepted. There is nothing shown to disbelieve the case of the applicants. Hence, for the reasons recorded above the application filed by the applicants for making a reference under section 18 of the Land Acquisition Act, 1894 is held to be filed within limitation.

11. The impugned communication dated 12th June, 2018 issued by the respondent no.2 thereby refusing to make a reference under sub section (1) of section 18 of the said Act is on hyper technical view. Such an approach is not in the interest of the State Government, as in

the event enhancement of compensation is granted to the claimants, then the claimants would be entitled to interest from the date of possession. Hence, considering the peculiar facts of the case, I find that this is a fit case to make a reference under Section 18 of the said Act. Hence, following order is passed :-

- a) The impugned communication dated 12th June, 2018, issued by the respondent no.2 is quashed and set aside.
- b) Respondent no.2 is directed to make a reference under sub section (1) of section 18 of the Land Acquisition Act, 1894 as prayed by the applicants in the application dated 2nd June, 2018.
- c) Necessary compliance to be made by the respondent no.2 within a period of six weeks from the date of communication of the present order.
- d) The reference shall be decided by the reference Court on its own merits, as expeditiously as possible.

12. The Civil Revision Application is allowed in above terms.

[GAURI GODSE]
JUDGE