

State of Punjab

Vs

Mst. Qaisar Jehan Begum and Anr.

Civil Appeal No. 592 of 1961

(N. Rajgopala Ayyangar, S. K. Das, A. K. Sarkar JJ)

11.02.1963

JUDGMENT

S. K. DAS, J. -

This is an appeal by special leave from the judgment and order dated November 16, 1959 passed by the Punjab High Court on an application in revision in respect of an order dated December 17, 1957 by which the learned Senior Subordinate Judge of Gurgaon held that a reference by the Collector of Gurgaon under s. 18 of the Land Acquisition Act (Act I of 1894) was incompetent by reason of the circumstance that it was made on an application filed beyond time. The appellant before us is the State of Punjab and the respondent are two ladies being related as mother and daughter. We shall presently state the relevant facts, but before we do so it is necessary to say that the only point on which the High Court disposed of the application in revision before it made by the respondents herein, was whether the civil court to which a reference is made by the Collector under s. 18 of the Land Acquisition Act on an application filed beyond time, can reject the reference on the ground that the reference made is incompetent. On this point there is a conflict of judicial opinion. In disposing of the application in revision the learned single Judge who heard it proceeded on the basis that he was bound by the Division Bench decision of the same High Court in Hari Krishan Khosla v. State of Pepsu [A.I.R. 1958 Punjab 490.], which held that the jurisdiction of the civil court on a reference under s. 18 was confined to considering and pronouncing upon any of the four different objections to an award under the Act which might have been raised in the written application for the reference and the civil court had no jurisdiction to decide the question of limitation. Therefore, the learned single Judge did not go into the further question as to whether the application made for a reference in the present case was filed beyond time or not as prescribed by the proviso to s. 18 of the Act. That question has however been agitated before us by reason of the decision in Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer [(1962) 1 S.C.R. 676.], a decision of this court which was not available at the time when the learned single Judge of the Punjab High Court disposed of the application in revision.

We proceed now to state the relevant facts. The respondents who were evacuees were owners of 55 bighas and 7 biswas of land in two villages known as Salarpur and Nasirpur in the district of Gurgaon. Their lands in the aforesaid two villages along with lands of other persons in other villages were acquired by the appellant for use as a field Firing and Bombing Range. The respondents were not notified about the acquisition and were not present at the time of the award. The respondents alleged, and this was not denied, that the Collector treated the property as evacuee property and none of the notices contemplated by the Land Acquisition Act, 1894 were issued to them. The Collector made an award on October 25, 1953 by which he allowed compensation at the rate of Rs. 96/- per acre in respect of the lands of the respondents. On December 24, 1954 that is

more than a year after the award, the respondents made an application to the Collector in which they said that certain agricultural lands of villages Salarpur and Nasirpur were compulsorily acquired by the Collector by an award dated October 30, 1953 (October 30 was presumably a mistake for October 25), but they were not given any notice of the acquisition proceedings. The respondents further stated that the award had fixed the compensation to be given to the land owners affected by the acquisition, but the amount to be paid to each owner was not apportioned therein. The respondents then referred to a judgment and decree of the Lahore High Court dated November 13, 1944 under which they were held to be the owners of the lands in question. A prayer was made on behalf of the respondents for payment of the compensation money at an early date for the purpose of defraying the expenses of a daughter's marriage, but without prejudice to the claim of the respondents for enhancement of the amount of compensation. The amount of compensation appears to have been paid on July 22, 1955 and on September 30, 1955 the respondents made an application to the Collector for a reference under s. 18 of the Act. In this application the respondents stated that they knew about the award on July 22, 1955 when they received the compensation amount and therefore the petition was within time. The principal objection which they raised to the award was that the marked value of the land was not Rs. 96/- per acre as given in the award, but about Rs. 600/- per acre. The Collector accepted this application in a very short order which stated :

"Public Prosecutor has been heard. Mst. Timur Jehan Begum has filed an affidavit to the effect that she had no knowledge of the award at the time it was made and that she only came to know about it in July, 1955, when she received the award money. Nothing has been shown to me to the contrary to prove that the award was made within the knowledge of the petitioners. Under the circumstances it would be only fair and equitable to refer the petition under section 18 of the Land Acquisition Act to a civil court for determining the compensation, which I hereby do."

A reference was made accordingly to the civil court and the Senior Subordinate Judge of Gurgaon who hear it came to the conclusion that the application made to the Collector for a reference was barred by time, because the Collector's award was made on October 25, 1953 and the application for a reference was made on September 30, 1955. The learned Subordinate Judge expressed some doubt as to whether the respondents were entitled to count the period of the limitation from the date of knowledge but he held that even if they were entitled to do so, their date of knowledge must be taken to be December 24, 1954 on which date they made an application for interim payment and the application for reference having been made more than six months from the date of knowledge, the application was barred by time within the meaning of the proviso to s. 18 of the Act. As to whether it was open to the civil court to go into the question of limitation the learned Subordinate Judge referred to the conflict of judicial opinion and said that the preponderance of opinion was in favour of the view that the civil court could go into the question in order to find out whether the reference was competent or not. In this view of the matter, the learned Subordinate Judge discharged the reference on the ground that it was incompetent. It may be mentioned here that the Division Bench decision of the Punjab High Court in Hari Krishan Khosla's case [A.I.R. 1958 Punjab 490.], was not available to the learned Subordinate Judge on the day he passed his orders. The matter was then to the High Court on an application in revision by the respondents and we have already stated that the High Court dealt with it on the footing of the decision in Hari Krishan Khosla's case [A.I.R. 1958 Punjab 490.]. The High Court accepted the application in revision, set aside the order of the learned Subordinate Judge and directed him to deal with the reference on merits. It is from this order of the High Court that the appeal has come to us by special leave.

It is necessary at this stage to set out the proviso to s. 18 of the Act :

#".....##

Provided that every such application shall be made, -

(a) if the person making it was present or represented before the Collectorate 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."

Assuming that the appellant can raise the ground of limitation, the first question before us is, whether the application made on September 30, 1955 was within time within the meaning of the aforesaid proviso. Clause (a) of the proviso is clearly not applicable in the present case, because admittedly the respondents were neither present nor were represented before the Collector when the latter made his award. The first part of cl. (b) is also not applicable, because the respondents did not receive any notice from the Collector under sub-s. (2) of s. 12 of the Act. That sub-section requires the Collector to give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made. Clearly enough, the respondents herein were entitled to a notice under sub-s. (2) of s. 12 but admittedly no notice was issued to them.

As to the second part of cl. (b) of the proviso, the true scope and effect thereof was considered by this court in Raja Harish Chandra's case [(1962) 1 S.C.R. 676.]. It was there observed that a literal and mechanical construction of the words "six months from the date of the Collector's award" occurring in the second part of cl. (b) of the proviso would not be appropriate and "the knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice, the expression...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." Admittedly the award was never communicated to the respondents. Therefore the question before us boils down to this. When did the respondents know the award either actually or constructively ? Learned counsel for the appellant has placed very strong reliance on the petition which the respondents made for interim payment of compensation on December 24, 1954. He has pointed out that the learned Subordinate Judge relied on this petition as showing the respondents' date of knowledge and there are no reasons why we should take a different view. It seems clear to us that the ratio of the decision in Raja Harish Chandra's case [(1962) 1 S.C.R. 676.], it that the party affected by the award must know it, actually or constructively and the period of six months will run from the date of the knowledge. Now, knowledge of the award does not mean a mere knowledge of the fact that an award has been made. The knowledge must relate to the essential contents of the award. These contents may be known either actually or constructively. If the award is communicated to a party under s. 12(2) of the Act, the party must be obviously fixed with knowledge of the contents of the award whether he reads it or not. Similarly when a party is present in court either personally or through his representative when the award is made by the Collector, it must be presumed that he knows the contents of the award. Having regard to the scheme of the Act we think that knowledge of the award must mean knowledge of the essential contents of the award. Looked at from that point of view, we do not think that it can be inferred from the petition dated December 24, 1954 that the respondents had knowledge of the award. One of the respondents gave evidence before the learned Subordinate Judge and she said :

"The application marked as Ex. D-1 was given by me but the amount of compensation was not known to me, nor did I know about acquisition of the land. Chaudhari Mohd. Sadiq, my karinda had told me on the day I filed the said application that the land had been acquired by the Government."

This evidence was not seriously contradicted on behalf of the appellant and the learned Subordinate Judge did not reject it. It is worthy of note that before the Collector also the appellant did not seriously challenge the statement of the respondents that they came to know of the award on July 22, 1955 the date on which the compensation was paid. In the reply which the appellant filed before the learned Subordinate Judge there was no contradiction of the averment that the respondents had come to know of the award on July 22, 1955. That being the position we have come to the conclusion that the date of knowledge in this case was July 22, 1955. The application for a reference was clearly made within six months from that date and was not therefore barred by time within the meaning of the second part of cl. (b) of the proviso to s. 18 of the Act.

In the view which we have taken on the question of limitation, it is unnecessary for us to decide the other question as to whether the civil court, on a reference under s. 18 of the Act, can go into the question of limitation. We have already stated that there is a conflict of judicial opinion on that question. There is on one side a line of decisions following the decision of the Bombay High Court the re. Land Acquisition Act [(1905) I.L.R. 30 Bombay 275.], which have held that the civil court is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. There is, on the other side, a line of decisions which say that the jurisdiction of the civil court is confined to considering and pronouncing upon any one of the four different objections to an award under the Act which may have been raised in the written application for the reference. The decision of the Allahabad High Court in Secretary of State v. Bhagwan Prasad [(1929) I.L.R. 52 Allahabad 96.], is typical of this line of decisions. There is thus a marked conflict of judicial opinion on the question. This conflict, we think, must be resolved in a more appropriate case on a future occasion. In the case before us the question does not really arise and is merely academic and we prefer not to decide the question in the present case.

For the reasons given above, we would dismiss the appeal with costs.

Appeal dismissed.

</html