

Kajori Lal Agarwal

Vs

Union of India and Others

Civil Appeal No. 666 of 1963

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, V. Ramaswami - I, R. Satyanarayan Raju JJ)

17.12.1965

JUDGMENT

GAJENDRAGADKAR, C. J. -

The appellant Kajori Lal Agarwal was the owner-in-khas of 37.85 acres of land in Mouza Shibnath Das J. L. No. 110 and Mouza Kholai Singh J. L. No. 112 in Siliguri Town in the district of Darjeeling. The said lands were acquired by the Union of India, and the State of West Bengal, respondents 1 & 2 respectively, under the relevant provisions of the West Bengal Land (Requisition and Acquisition) Act, 1948 (No. 2 of 1948) (hereinafter called 'the Act') for the Assam Rail Link Project. Respondent No. 3 is the Land Acquisition Officer, Darjeeling. In those proceedings, the appellant claimed compensation at a flat rate of Rs. 100 per cottah amounting to Rs. 2,27,100. He also put in a claim for Rs. 8,000 on account of the severance and other grounds. Respondent No. 3 made an award under s. 7 of the Act on the 5th February, 1951 directing the payment of Rs. 22,074 to the appellant in lieu of his lands at the rate of Rs. 600 per acre. After the award was pronounced, a notice was served on the appellant under s. 12(2) of the Land Acquisition Act, 1894 (No. 1 of 1894) (hereinafter called 'the Central Act'). On the 21st March, 1951, the appellant accepted the said amount as compensation money under protest.

Thereafter, the appellant filed an application before respondent No. 3 on the 2nd February, 1953 and claimed that a reference should be made by him to the Court for decision of his claim for a larger amount of compensation under s. 8 of the Act. The appellant alleged in his application that having regard to the market value of the land at the relevant time, the amount awarded to him by respondent No. 3 was grossly inadequate. Respondent No. 3 rejected the appellant's application for reference on the ground that it was barred by time.

The appellant challenged the validity of this order by moving the Calcutta High Court in its revisional jurisdiction (Civil Revision Case No. 676 of 1954). On the 16th June, 1955, a Division Bench of the Calcutta High Court allowed the appellant's application and sent the case to respondent No. 3 with a direction that the appellant's application for reference should be dealt with in accordance with law. In remitting the case to respondent No. 3, the High Court observed that though, in its opinion, no limitation had been prescribed for making an application for reference, such an application must nevertheless be made within a reasonable time. On that view, the High Court left it to respondent No. 3 to consider whether the appellant had moved for reference within a reasonable time (vide Kajori Lal Agarwal v. The Union of India & Ors.) (59 C.W.N. 936.).

After the appellant's application was thus remanded to respondent No. 3, he filed an affidavit on the

27th August, 1956 and explained in detail the reasons for the delay made by him in filing his application for reference. On the 10th September, 1956 respondent No. 3 rejected the appellant's application on the ground that he had neglected to move for reference within a reasonable time.

This order was challenged by the appellant again by moving the Calcutta High Court under Art. 227 of the Constitution read with s. 115 of the Code of Civil Procedure (Civil Rule No. 3886 of 1956). On the 6th July, 1959, this case was heard by a Division Bench of the said High Court and the application made by the appellant was dismissed on the ground that the High Court saw no reason to interfere with the order passed by respondent No. 3. It is against this order that the appellant has come to this Court by special leave.

On behalf of the appellant, Mr. Anoop Singh contends that the High Court was in error in not reversing the decision of respondent No. 3; and in support of his argument, he has relied on the fact that on the 12th January, 1953, the Calcutta High Court had ruled in the case of Birendra Nath Ray Sarkar & Another v. Union of India & Another (57 C.W.N. 283) (Civil Rule No. 2940 of 1951) that there was no prescribed period of limitation for an application for reference under s. 8 of the Act, and it was only after the appellant knew about this decision that he was advised to make his present application for reference. Mr. Anoop Singh argues that this fact should have been taken into account by the Calcutta High Court and on that ground, the decision of respondent No. 3 rejecting the appellant's application should have been reversed.

Before we deal with this argument, however, it is necessary to consider the basic question as to whether the Calcutta High Court is right in holding that no period of limitation is prescribed by s. 8 of the Act for making an application for reference. If we hold that s. 8 prescribes a period of limitation, then the question as to whether the appellant moved respondent No. 3 within a reasonable time, will not fall to be considered; and so, we must first consider this question.

Section 8 of the Act reads thus :-

"Reference to Court.

8. (1) The Collector shall in every case -

(a) where any person aggrieved by an award made under sub-section (2) of section 7 makes an application requiring the matter to be referred to the Court;

or

(b) where there is any disagreement with regard to the compensation payable under sub-section (3) of section 7 between the Collector and the person to whom possession of any land is delivered under section 6 refer the matter to the decision of the Court.

(2) The provisions of the Land Acquisition Act, 1894 (No. 1 of 1894), shall mutatis mutandis apply in respect of any reference made to the Court under sub-section (1)".

We have already noticed that when the appellant moved the Calcutta High court on an earlier occasion, the Calcutta High Court had ruled that no limitation had been prescribed by s. 8, though it had added that an application had nevertheless to be made within a reasonable time. Mr. Anoop Singh naturally supports this decision.

It is plain that s. 8(2) makes the provisions of the Central Act applicable mutatis mutandis in respect of any reference made to the Court under sub-s. (1). The Calcutta High Court has held that the effect of the provisions prescribed by this sub-section is to make the relevant provisions of the Central Act applicable to proceedings subsequent to the making of the reference. This view proceeds on the basis that when sub-s. (2) refers to any reference made to the Court, it emphasises the fact that up to the making of the reference the provisions of the Central Act have no application. In other words, this provision does not permit the application of the relevant provisions of the Central Act in relation to all proceedings which take place prior to the making of the reference. When a reference has been made under s. 8(1), a stage is reached for the application of the provisions of the Central Act. This provision does not allow the application of the relevant provisions of the Central Act at any stage prior to the making of the reference. One cannot extend backwards the said provisions. That is how the matter has been succinctly put by the High Court in holding that the period of limitation prescribed by s. 18(2) of the Central Act cannot apply to an application for reference made under s. 8(1) of the Act.

Section 18 of the Central Act reads thus :-

"18. (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 :

(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".

There is no doubt that if the provisions of s. 18(2) can be said to apply to an application made for reference under s. 8 of the Act, the periods of limitation prescribed by sub-s. (2) of s. 18 of the Central Act would be attracted; and if they apply, the appellant's application originally made to respondent No. 3 for reference is barred by time.

In our opinion, the High Court was in error in reading the clause "in respect of any reference made to the Court" in s. 8(2) of the Act as referring to cases where reference has already been made. In the context, what the clause means is that the provisions of the Central Act shall mutatis mutandis apply in respect of any reference intended, proposed, or asked, to be made, and not in respect of any reference already made. Having regard to the scheme of s. 8, considered in the light of the other provisions of the Act, it seems to us clear that the object of the Legislature in making the relevant provisions of the Central Act applicable to reference was to take in all the relevant provisions of the Central Act which had reference to the making of reference; and naturally, these provisions would begin with s. 18 of the Central Act which is the first section in Part III of the Central Act dealing with reference to Court and procedure thereon. It would, we think, be unreasonable to hold that until a reference is made, the said provisions do not apply and it is only after the reference is made that the said provisions begin to operate.

It is true that s. 8(1) of the Act uses the mandatory words "the Collector shall refer the matter to the decision of the Court"; but that does not mean that it necessarily excludes the application of the provision as to limitation. Section 18(1) of the Central Act, though somewhat differently worded, has in law the same effect. It 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 the Collector for the determination of the Court. This provision also, in substance, is mandatory. If an application is made by a person entitled to make such application, the Collector has no option in the matter; he has to refer it to the Court; but even this provision is subject to the limitation prescribed by sub-section (2). The position with regard to the mandatory provision contained in s. 8(1) of the Act is exactly similar. Therefore, the fact that s. 8(1) uses the word "shall" and imposes an obligation on the Collector to refer the matter to the decision of the Court, does not preclude the application of a provision for limitation prescribed in regard to the making of an application for reference.

On principle, it seems extremely unlikely that the Act which deals with acquisition and requisition of properties, could have intended to leave it to the sweet-will of the parties to make an application for reference at any time they like. The High Court no doubt realised the anomalies which would result in adopting such a construction; and so, while it upheld the appellant's contention that there was no limitation prescribed for the making of an application for reference under s. 8 of the Act, it added the corollary that even though no limitation is prescribed, the application must nevertheless be made within a reasonable time. In our opinion, it is unnecessary to invoke such a general consideration, because s. 8(2) of the Act, in terms, makes s. 18(2) of the Central Act applicable, and there is no occasion to consider whether a particular application has been made within a reasonable time or not.

It is somewhat remarkable that if the view accepted by the Calcutta High Court about the construction of s. 8(2) of the Act is correct, even the amendment subsequently made by the Bengal Legislature would be ineffective. It appears that presumably as a result of the decision of the Calcutta High Court, s. 8(2) of the Act has been amended by Act VIII of 1954. The amended provision reads thus :-

"8. (2) The provisions of sub-section (2) of section 18 and of sections 19 to 22 and of sections 25 to 28 of the Land Acquisition Act, 1894, and the principles set out in sub-section (1) and in clause (a) of sub-section (2) of section 7 of this Act, shall, so far as they may be applicable, apply in respect of any reference made to the Court under sub-section (1)".

It would be noticed that this amended provision had taken the precaution of expressly referring to section 18(2) of the Central Act along with other sections as section which are applicable to the proceedings under the provisions of the Act. Even so, the clause that these provisions will apply "in respect of any reference made to the Court under sub-section (1)" still occurs in the amended provision; and if it is held that the words "any reference made to the Court" speak about the proceedings that follow the making of the reference, then the same difficulty may arise as to the application of s. 18 (2) of the Central Act to an application made for reference under s. 8(1) of the Act. This amended provision lends support to the view that the clause "in respect of any reference made to the Court" does not mean that the provisions have to apply after such a reference is made, but that it includes all cases where reference is intended, or proposed, or asked, to be made; and that means that if a party wants to make an application for reference, he is no doubt entitled to require the Collector to make such a reference, but his application in that behalf must be made within the limitation prescribed by s. 18(2) of the Central Act. In our opinion, in regard to the application of s.

18(2) of the Central Act in respect of applications made for reference under s. 8(1) of the Act, no amendment was really necessary; but, of course, the Legislature thought it necessary to make the amendment in view of the decision of the Calcutta High Court on the application made by the appellant on the earlier occasion to that High Court.

Since we hold that the application originally made by the appellant to respondent No. 3 under s. 8(1) of the Act on the 2nd February, 1953 for reference, was barred by time, it is not necessary to consider the appellant's plea whether it was made within a reasonable time. Section 8(2) of the Act read with s. 18(2) of the Central Act specifically prescribes limitation for the making of such applications; and there is no doubt that having regard to the said provisions, the appellant's application is barred by time.

The result is, the appeal fails, and the order passed by the High Court is confirmed, though on different grounds. There would be no order as to costs.

Appeal dismissed.

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