

ANDHRA PRADESH HIGH COURT

Special Deputy Collector Land Acquisition

Vs.

K. Kodandaramacharlu

Appeal No. 202 of 1960, in O. P. No. 16 of 1959

(Krishna Rao, J.)

01.11.1963

JUDGMENT

Krishna Rao, J.

1. This is an appeal by the Land Acquisition Officer against the award made by the Court of the Subordinate Judge Anantapur enhancing the compensation upon a reference by the appellant under Section 18 of the Land Acquisition Act (1 of 1894), hereinafter called the Act. The only point urged by the learned Government Pleader on behalf of the appellant at the hearing is that the reference was incompetent as there was no application made under Section 18 of the Act by the respondent Kodandaramacharlu and therefore the lower Court ought to have declined to interfere with the award made by the appellant.

2. The facts necessary to appreciate the contention are briefly these : On 22-12-1958, the appellant made his award fixing the market value of the wet lands acquired at Rs. 450/- per acre and of the dry lands acquired at Rs. 50/- per acre. On 29-12-1958, he made the reference to the lower Court under Section 18 of the Act. The reason stated for the reference was that "in response to award enquiry notices issued, Kodandaramacharlu raised an objection to the valuation and wanted a reference to Court if he was not paid Rs. 5,000/- per acre of wet land and Rs. 120/- per acre of dry owned by him". The said objection was raised in the respondent's petition dated 4-11-1958 to the appellant, marked Exhibit B.2 This was prior to the award and admittedly, the respondent did not file any such petition objecting to the amount of compensation after the appellant made the award on 22-12-1958.

3. Section 18 of the Act is in the following terms :

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 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 shall first expire."

The period of limitation for an application under Section 18(1) is extended to six months in cases falling under proviso (b), but this does not assist the respondent as he did not file an application even within the extended period.

4. The appellant contended in the lower Court that it had no jurisdiction to entertain the reference, inasmuch as there was no objection petition by the respondent under Section 18 of the Act. The contention was rejected by the learned Subordinate Judge on the ground that it is not the claimant's petition but the Collector's reference under Section 18 that gives jurisdiction to the Court. Reliance was placed on the following observations of Kuppuswami Ayyar, J., sitting singly in *Venkateswaraswami v. Sub-Collector, Bazwada*¹,

"In the case of a reference under Section 18 it is not the application of the party which gives jurisdiction to the civil Court, but it is the reference made by the Land Acquisition Officer. An application may be given and the reference may not be made. Consequently if the application was not validly made, then it will only indicate that the reference was made without adequate grounds. But that will not make it any the less a reference which would give the Court jurisdiction to enquire into the question referred to.....

"It is clear that it is the duty of the Collector before he makes the reference to decide on the materials before him whether he should make the reference or not, and if he decides to make and does make a reference, it is not open to the Land Acquisition Court to go behind it."

5. It is urged on behalf of the appellant that these observations of Kuppuswami Ayyar, J., are not good law because they have been dissented from by a Division Bench, of the Madras High Court in *Subramania v. Collector of Coimbatore*², and overruled by another Division Bench of the same High Court in *Narayanappa v. Revenue Divisional Officer*³, The answer on, behalf of the respondent is that only decisions rendered up to 5-7-1954 are binding on the High Court of Andhra Pradesh - *Subbarayudu v. State*⁴, This leads me to the question, whether as contended by the appellant, even the decision in AIR 1946 Madras 184, which was rendered on 21-9-1945, impliedly overrules AIR 1943 Madras 327. In any event, as indicated by Bhimasankaram, J., in 1955 Andh LT (Cri) 53 : AIR 1955 Andh 87), it is clear that the view of the matter taken by Kuppuswami Ayyar, J., has to be reconsidered in the light of the subsequent rulings.

¹ AIR 1943 Mad 327 at pp. 328 and 329

³ AIR 1955 Mad 23, on 11-8-1954

² AIR 1946 Mad 184, on 21-9-1945

⁴ 1955 Andh LT (Cr) 53 : AIR 1955 Andh 87 (FB)

6. In *Pramatha Nath v. Secy, of State*⁵, after referring to Sections 18, 20 and 21 of the Act, Sir George Lowndes said :

"Their Lordships have no doubt that the jurisdiction of the Courts under this Act is a special one and is strictly limited by the terms of these sections. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of the objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the 'matter' referred, and the Court has no power to determine or consider anything beyond it."

This indicates that the Court's special jurisdiction under Section 18 of the Act arises only when the terms of that section have been strictly fulfilled. In AIR 1943 Madras 327 the award was made on 16-5-1937, the application under Section 18 of the Act was made on 1-10-1937 and the Land Acquisition Officer ordered the making of a reference under that section on 24-11-1937. The Subordinate Judge held that the application under Section 18 was made out of time, that the reference was incompetent and that the subject-matter of the reference could not be enquired into. He rejected the claimant's contention that he had no jurisdiction to go into the validity of the reference. The claimant took up the matter in revision and Kuppaswami Ayyars, J., held that the Subordinate Judge had no right to question the validity of the reference. The learned Judge noticed that in *Musserwanjee Pestonjee v. Meer Mynoodeen Khan*⁶, Sir John Pattenon who delivered the judgment of the Judicial Committee had stated the principle thus :

"Wherever jurisdiction is given to a Court by an Act of Parliament, or by a regulation in India (which has the same effect as an Act of Parliament), and such jurisdiction is only given upon certain specified terms contained in the Regulation itself, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they be not complied with the jurisdiction does not arise."

But he held that these observations were not applicable because in the case of a reference under Section 18, it is not the application for the party which gives jurisdiction to the Civil Court but it is the reference made by the Land Acquisition Officer. In support of this view, the learned Judge pointed out that if a Land Acquisition Officer refused to make a reference, the High Court could not interfere as held by the Full Bench in *Abdul Sattar Sahib v. Special Deputy Collector, Vizagapatam*⁷, and his decision must be equally final when he decides to and does make a reference.

7. In AIR 1946 Madras 184 the award was made by the Collector on 12-3-1941 and the application for a reference under Section 18 was made on 26-9-1941. The Collector while making the reference pointed out that the application was out of time having been made beyond six months from the date of the award. The Subordinate Judge rejected the reference on the ground that the application was barred by

⁵ AIR 1930 PC 64 at p. 65

⁷ ILR 47 Mad 357 (FB)

⁶ Moo Ind App 134 at p. 155 (PC)

=limitation. The question whether the Subordinate Judge had jurisdiction to consider the point of limitation was considered by the Division Bench. The learned Judges observed that the facts in the case before them were not on all fours with AIR 1943 Madras 327 because the question of limitation had been raised by the Collector in his letter accompanying the reference

and was part of the reference. At the same time, they unreservedly agreed with the view taken by the Bombay High Court in *Mahadeo Krishna v. Mamlatdar of Alibag*⁸, that the Court was not debarred from satisfying itself that the reference under Section 18, which it is called, upon to hear, is a valid reference and quoted with approval the following reasoning of Beaumont, C.J. :

"The basis of the appellant's argument is that the Collector, acting under Section 18, is not a Court, or at any rate not a Court subordinate to the District Court or to this Court, and that the Court cannot interfere with his decision either in appeal or in revision. That, no doubt, is true but that is not really the position. The Collector has power to make a reference on certain specified conditions. The first condition is that there shall be a written application by a person interested who has not accepted the award, the second condition is as to the nature of the objections which may be taken, and the third condition is as to the time within which the application shall be made. It seems to me that the Court is bound to satisfy itself that the reference made by the Collector complies with the specified conditions, so as to give the Court jurisdiction to hear the reference. It is not a question of the Court sitting in appeal or revision on the decision of the Collector; it is a question of the Court satisfying itself that the reference made under the Act is one which it is required to hear. If the reference does not comply with the terms of the Act. then the Court cannot entertain it. I have myself some difficulty in seeing on what principle the Court is to be debarred from satisfying itself that the reference which it is called to hear, is a valid reference. I am in entire agreement with the view expressed by Chandavarkar, J., that it is the duty of the Court to see that the statutory conditions have been complied with. In my opinion, therefore, the learned Assistant Judge was right in dismissing the reference on the ground that it was out of time."

8. It is clear that the learned Judges disagreed with the view of Kuppuswami Ayyar, J., that the Court to which a reference under Section 18 is made cannot go into the validity of the reference. Although they purported to distinguish the decision of Kuppuswami Ayyar, J., there can be no doubt that the position of law on the point expounded by Kuppuswami Ayyar, J., was impliedly overruled. As observed by Beaumont, C.J., in ILR (1944) Bom 90 there is no principle which debars the Court from satisfying itself that the reference it is called upon to hear is a valid reference. This is also the view subsequently taken by Govinda Menon, J., in AIR 1955 Madras 23 at p. 28. The learned Judge said :

"No Court can be compelled to adjudicate upon matter which does not come before it in strict conformity with the requirements of law and it is within the inherent power of the Court to find out whether the matter that comes before

⁸ ILR (1944) Bom 90 : (AIR 1944 Bom 200)

it, is in the proper form and in accordance with the requirements of particular statutes. A passive attitude which the Court is compelled to adopt in cases it is asked to adjudicate upon invalid references cannot be founded on law or reason."

9. In *Md. Ibrahim Sahib v. Land Acquisition Officer*⁹, a Division Bench of this Court observed :

"In our view, therefore, the mere fact that a person is brought before the Court as a non-applicant party does not entitle him to ventilate his own grievances against the award when he himself has not filed an application to the Collector for a reference under Section 18 of the Act."

This observation also indicates that the filing of an application to the Collector for a reference under Section 18 of the Act is a sine qua non for a party being entitled to any relief from the Court hearing the reference. It follows that the Court has jurisdiction to consider the validity of the reference and to reject the reference on the ground that it is invalid.

10. The only question remaining for consideration is whether the respondents objection petition, Exhibit B.2 dated 4-11-1958, prior to the award can be deemed to satisfy the requirements of Section 18 of the Act. The expression "who has not accepted the award" clearly means that the application has to be made after the award. In *Harish Chandra v. Dy. L. A. Officer*¹⁰, as in *Seshachalam v. District Collector, Guntur, 1955 Andh WE 912 : AIR 1957 Andhra Pradesh 687* it was held that limitation "from the date of the Collector's award" under proviso (b) to Section 18(2) of the Act means from the date of the applicant's knowledge of the passing of the award. This would also be consistent only with the application contemplated being made after the award when alone the applicant can be said to have knowledge thereof. Exhibit B-2 made by the respondent before the award cannot be regarded as satisfying the condition of the written application required by Section 18. The result is that the reference was incompetent and the lower Court had no jurisdiction to interfere with the award made by the appellant.

11. The learned Counsel for the respondent has urged that the appellant himself made the reference and is estopped from contending that the reference is invalid. There is no force in this contention. As observed in 'Maxwell on the Interpretation of Statutes' (Eleventh Edition - 1962) at page 379 "consent cannot give jurisdiction and, therefore, any statutory objection which goes to the jurisdiction does not admit of waiver". The principle stated at page 380 "that a person is sometimes estopped by his own conduct from availing himself of legislative provisions intended for his benefit" cannot apply because it cannot be said that the provisions under Section 18 are intended for the benefit of the Land Acquisition Officer.

12. As the reference under Section 18 was incompetent, the appeal is allowed, the award of the lower Court is set aside and the award of the appellant is restored.

⁹(1958) 2 Andh WR 19 at p. 22 : AIR 1958 Andhra Pradesh 226 at p. 229

¹⁰ AIR 1961 Supreme Court 1500

13. The respondent has filed cross-objections for enhancing the compensation. As the reference under Section 18 is found to be incompetent, the cross-objections do not arise for consideration and are dismissed without costs.

14. On the question of costs, both sides are not able to elucidate the stage at which the objection to the validity of reference was raised in the lower Court. It would seem that the point was raised only during the final arguments after the closing of the evidence and was decided against the appellant only in the judgment delivered by the lower Court. In the circumstances, the parties will bear their own costs throughout.

Appeal allowed.

Cross-objections dismissed.