

RAJASTHAN HIGH COURT

State of Rajasthan

Vs.

L.D. Silva

Civil Appeals Nos. 32 and 33 of 1952
(Ranawat and Sharma, JJ.)

14.02.1956

JUDGMENT

Ranawat, J.

1. These are two appeals No. 32 of 1952 filed by the State of Rajasthan and No. 33 of 1952 filed by Hakim Martin D'Silva - which arise out of the judgment of the District Judge, Jaipur City, dated the 28th of February, 1952, in a case of reference under the Land Acquisition Act fixing the compensation for the property alleged to have been acquired at Rs. 48,000/-.

2. The facts of this case are that Hakim Martin D'Silva and others (hereinafter to be referred to as the owners) held certain land and buildings in Moti Katla Bazaar, Jaipur, to the east of Amer Road. The Government intended to widen the Amer Road and for that purpose thought it proper to acquire the aforesaid properties. At the time proceedings for acquisition of the aforesaid properties were initiated the Jaipur Land Acquisition Regulation of Samvat Year 1987 was in force. The procedure to be followed under that Regulation required that the department or the Municipal Board when any land was required to be acquired had to make an application to the Durbar for acquisition of the same. It was then under Section 6 of the Regulation for the Durbar to appoint a Land Acquisition Officer in case the application was sanctioned. The Land Acquisition Officer was then to mark out and measure the land and prepare a plan of it. A public notice then had to be published at a convenient place on or near the land to be acquired that also by publication in the Jaipur Gazette stating the particulars of the land and the intention of the Durbar to take possession of it. By the same notice all persons interested in the land were also to be required to appear personally or otherwise before the Land Acquisition Officer and to state the nature of

their respective interests and the amount and particulars of their claims to compensation. The Land Acquisition Officer after holding necessary enquiries had to make an award under Section 11 of the Regulation which was to be notified in the Jaipur Gazette. The Land Acquisition Officer after the publication of the award in the manner prescribed under Section 11 of the Regulation was then authorised to take possession of the property which was to vest from that time absolutely in the Durbar free from all encumbrances. Any person not accepting the award could make an application to the Land Acquisition Officer requiring him to refer the case for the determination of the Durbar.

3. Under orders of the Prime Minister of Jaipur State proceedings to acquire the property occupied by the owners in the present case were started. Notices probably under Section 8 of the Regulation were issued but were not published in the gazette as required by the Regulation. The Land Acquisition Officer after holding an enquiry made a report to the Chief Engineer to the Government of Jaipur State stating therein that the value of the constructions on the land to be acquired was of Rs. 7,773/12/- and also that the owners were not entitled to receive any compensation as the said property had been given to them for residential purposes only by the Government. This report is Ex. P-1 on the record and bears the date of the 12th of January, 1943. The owners then made certain applications to the Land Acquisition Officer asking him to refer the case to Durbar by documents Exs. A-2 and A-3. These applications for reference, of the owners were submitted to the Durbar. At this stage of the proceedings the Jaipur Land Acquisition Act of 1943 (hereinafter to be referred to as the Act) came into force on the 31st of July, 1943, and an application which is Ex. A-4 was made by the owners on the 18th of August 1943, to the Land Acquisition Officer for making a reference to the District Judge under the new Act. The Government on the 30th of March, 1944, by document Ex. A-5, ordered that the property of the owners be acquired for improvement of the Amer Road and a portion of the house of Nawab Usman Khan not occupied by Moti Kala School be granted to the owners temporarily for their residential purposes on the same conditions and restrictions as were attached to their property and they were asked to vacate their property at once and to shift temporarily to Nawab Usman Khan's house. It was further ordered that a site in Fatehtiba Extension Scheme be assigned to the owners for the construction of a house and compensation for the property that was being acquired was to be granted to enable them to construct a new house and the Chief Engineer was directed to submit proposals for this purpose. The Land Acquisition Officer wrote to the Secretary P. W.

D. on the 8th of December, 1944, suggesting that it was not necessary to assign any site at Fatehtiba to the owners as a portion only of the property was then proposed to be acquired and the owners were at liberty to make their own constructions for their residence on the land which was then allowed to remain in their possession. As regards the amount of compensation a figure of Rs. 10,883/12/- was suggested but it was also mentioned that they were not entitled as a matter of right to receive any compensation. But if at all, they might be given compensation by way of grace. The Government, vide its order dated the 12th of January, 1945, which is Ex. A-7 on the record, accorded its sanction for Rs. 10,883/12/- to be paid to the owners. It was further specified in this order that this amount was to be distributed among the owners in accordance with law. The owners then again made an application for making a reference to the Court of the District Judge but it was dismissed by the Land Acquisition Officer on 13th March, 1945, vide Ex. A-8. The Land Acquisition Officer held that an award had been made by his predecessor in office on the 12th February, 1943 (the correct date appears to be 12th January, 1943) and the application made by the owners was barred by the period of limitation. The owners then moved the Government in the matter and obtained an order in their favor directing the Land Acquisition Officer to make a reference as desired by the owners. The Land Acquisition Officer thereupon sent the entire record of the case to the District Judge, Jaipur, for disposal according to law. After the case had come before the District Judge, the Government raised a point that there was no legal award and that there was no valid reference which might confer jurisdiction on the court of the District Judge to decide the question of compensation. The learned District Judge rejected this objection holding that though no details had been given in the order of reference as required by Section 19 of the Act, the reference had in fact been made under the law and he had jurisdiction to determine all those points which are necessary for the purpose of the determination of the points agitated before him. In the opinion of the learned Judge the property that had been acquired by the Government was 42,500 sq. ft. in area and of the value of Rs. 48,000/-. The amount of compensation was fixed accordingly in the sum of Rs. 48,000/-.

4. In the appeal of the Government Mr. Bhargava has strenuously argued that the proceedings before the lower court were not according to law as there was no valid reference before that court or a valid award. A reference has been made to the provision of Section 11 of the Act in order to show that no document on this record can be regarded as an award under the provision of that section.

Similarly, it is argued that the order of reference in the present case only purports to sending the record to the court for disposal and is not in accordance with the requirements of Section 19 of the Act, no details whatsoever having been given in that order as required by the law.

5. Mr. Kasliwal on behalf of the owners has not been able to refer to any document on the record which may be treated as an award but he has referred to an order of the Land Acquisition Officer dated the 13th of March, 1945 (Ex. A-8) and has taken his stand on the observations of that officer appearing in the aforesaid document which are to the following effect :

"On that date (13-2-45) I simply informed the Vakil of the Tikae and the Chhutbhaiyas that the amount sanctioned by the Govt. for the construction of another house for the Hakim family is being sent to the court of the Dist. Judge for the decision of the dispute of apportionment of this amount between the Takae and the Chhutbhaiyas".

The argument of the learned counsel is that when the Land Acquisition Officer as per his own statement in Ex. A-8 informed the owners to take the amount of compensation he should be deemed to have made an award though he may not have properly recorded it in accordance with the provision of Section 11 of the Act.

6. As regards there being a proper reference in this case the learned counsel of the owners has invited our attention to the forwarding letter of the Land Acquisition Officer dated the 21st of August, 1945, by which the record of this case was submitted to the court of the District Judge along with two applications of reference for disposal under Section 18 of the Act. As regards this forwarding letter Mr. Bhargava has contended on behalf of the Government that this letter cannot be taken to be in a proper form of reference as required by Section 19 of the Act, there being absence of all such particulars as are required by law to be put into an order of reference. It has further been urged that this letter is a mere forwarding letter as per directions of the Government and the Land Acquisition Officer did not apply his mind to the making of an order whatsoever for referring the case to the court.

7. Mr. Kasliwal has taken his stand on the decision of the Allahabad High Court in *Secy. of State v. Bhagwan Prasad*,¹ which has been followed in a later decision of the

same court in *Secy. of State v. Bhagwan Prasad*,² in support of the argument that it is not open to the Government to agitate the question of the validity of the order of reference once a reference has been so made. The relevant observations of Mukerji, J., in the former case, are as follows :

"For the purpose of determination as to whether the application is within time, the Collector has to consider the facts and to come to a decision. If he decides that the application is within time and otherwise in order, he will make a reference. It is entirely for him and him alone to decide whether he will make a reference. When he makes the reference, he makes it on behalf of the Government.

Having made the reference, in my opinion, it is not open to the Collector or for the matter of that, the Secretary of State, to say that the reference was wrongly made, although the ground for saying so may be that the application by the owner was belated. The "Court" does not sit on appeal over the Collector and the Land Acquisition Act does not give any authority to the "Court" either in express term or by implication, to go behind the reference and to see whether the Collector acted rightly or wrongly. I am aware of the fact that sometimes the plea of limitation as in this case, is taken on behalf of the Collector or the Secretary of State, but in my opinion, such a plea should not be allowed to be taken".

(Pages 770 and 771) The authority of the decision in the Allahabad case, has been followed in a later decision of that court in Bhagwan Prasad's, and also by the Madras High Court in *Venkateswaraswami v. Sub-Collector, Bezwada*,³

8. The correctness of the Allahabad decision in *Secy. of State v. Bhagwan Prasad*, has been doubted in *Subramania Chettiar v. Collector of Coimbatore*,⁴ which is a division bench ruling and in *Mahadeo Krishna v. Mamlatdar of Alibag*,⁵ The learned Judges of the Bombay and Madras High Courts in the aforesaid two decisions have held that a Collector can only make a reference in accordance with the provisions of law and if he transgresses those provisions it is open to the Government to challenge his action in court and it is open to the court to examine the question of the validity of the order of reference. In both these cases the question for determination was whether an application for reference was barred by the period of limitation and the reference was, therefore, held not valid in law and the learned Judges decided that the application for reference not having been filed within the period of limitation prescribed by law was

not proper and no reference on such an application could be considered to be proper. The Judicial Commissioner's court of Nagpur in *Collector of Akola v. Anand Rao*,⁶ has also taken the same view as has been taken by the Bombay and Madras High Courts in the two cases referred to above. In *Ananta Ram v. Secretary of State*,⁷ the Calcutta High Court has also adopted the same view as that of the Bombay and Madras High Courts that it is open to the District Judge to go into the question of the validity of the order of reference and to refrain from proceeding further in the matter in case the reference is found to be ultra vires.

The Lahore High Court of Pakistan in *Abdul Sattar v. Mt. Hamida Bibi*,⁸ has followed the decisions in the two cases referred to above of the Madras and the Bombay High Courts (E).

9. The reasons behind the Allahabad decision in AIR 1929 Allahabad 769, referred to above, are :

- (1) that the Collector up to the stage of making a reference is an administrative officer subject to the control of the Government and the decisions of the Collector up to that stage are not subject to examination by a Court, and
- (2) that the Collector having acted once in making a reference cannot be allowed to go back and to contend that the reference made by him is incorrect or illegal and the Government being the principal cannot challenge the correctness of the acts of its agent, viz., the Collector when such agent makes the reference on behalf of the Government.

10. The reasoning contained in the Bombay (E) and Madras (D) decisions is that though the Collector acting under the Land Acquisition Act is an agent of the Government, the Government is bound by the acts of its agent only in so far as those acts are in accordance with law and the Government is not bound by the acts of its agent which are contrary to the provisions of law. In one of those cases the Collector did not apply his mind to the point of limitation and made a reference and in the other case the Collector though holding that the application for reference was time barred made a reference and included this point in the reference itself for the determination of the Court. It was, therefore, held that the principle of law laid down in *Secy. of State v. Bhagwan Prasad*, was not the correct one. Mr. Kasliwal has tried to distinguish the Madras (D) and Bombay (E) decisions by urging that in those cases the Government could disown the acts of the Collector who was its agent on the ground that such acts

were contrary to law but in the present case the reference had been made under the direction of the Government itself and the Government, therefore, should not be allowed to disown its own actions. The logic of this argument is based on the law governing principal and agent. We may point out that when there is a specific provision of law the general law of principal and agent cannot be applied. The Government cannot be estopped from pleading that certain provisions of law have not been followed merely because at some stage or the other it directed the Collector to make a reference. In our opinion the principles contained in the decisions of the Madras and Bombay High Courts referred to above are sound and deserve to be followed in preference to those laid down in the Bhagwan Prasad's case.

11. Those were the cases in which there was a legal award and the mistake about the reference was only with regard to the period of limitation. In the present case we find that there is no award at all. Unless there is an award there can be no reference under the Act. The very basis of reference is lacking in the present case. We find that as particulars required to be included in the award and in the order of reference were not there on the record the District Judge had to decide the case without reference to any such facts. He was constrained to put a lump sum amount of Rs. 48,000/- as compensation on mere speculation of the market value of the properties acquired.

12. We find that great hardship has been suffered by the owners inasmuch as they have been dispossessed from their property without payment of any compensation. But this fact alone cannot be taken to render the proceedings of reference valid when the very foundation for a reference appears to be missing.

Under the circumstances of this case the owners certainly deserve sympathetic consideration at the hands of the Government and we think the authorities concerned would make a proper award and proceed according to law in the matter of acquiring the properties of the owners even though possession had already been taken of the properties. In the absence of an award and a valid order of reference it cannot be said proper for this court to go into the question of the quantum of compensation and we, therefore, refrain from going any further into this matter.

13. The Government appeal is allowed but under the circumstances we would make no order as to costs to the Government. The appeal of the owners is dismissed but in that appeal also we make no order as to costs. The order of the District Judge, Jaipur City, dated the 28th of February, 1952, is set aside.

Appeal allowed.

Cases Referred.

1. AIR 1929 All 769
2. AIR 1932 All 597
3. AIR 1943 Mad 327
4. AIR 1946 Mad 184
5. AIR 1944 Bom 200
6. 11 Ind Cas 690 (Nag)
7. AIR 1937 Calc 680
8. AIR 1950 Lah 229