

PETITIONER:
THE LAND ACQUISITION OFFICER

Vs.

RESPONDENT:
SHIVABAI & ORS.

DATE OF JUDGMENT: 04/04/1997

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Delay condoned.

Leave granted.

This appeal by special leave arises from the judgment made by the Division Bench of the High Court of Andhra Pradesh on April 15, 1994 in A.S. No.1052/92.

Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, the 'Act') was published on August 19, 1965, acquiring large tracts of land comprised in several villages for submersion due to Sriram Sagar Project. The land in question to an extent of 206 acres 16 gunthas of the land is situated in the village Nallur in Nizamabad District. Possession thereof was taken on November 22, 1965. After completion of the enquiry under Section 11, the award came to be made on the same date. The compensation at the rate of Rs.430/- per acre for the dry lands and at the rate of Rs.430/- per acre for dry black cotton lands was awarded and paid. A writ petition was filed in 1986 by two persons, i.e. respondent Nos. 1 and 2, claiming that they had filed an application Nos.1 and 2, claiming that they had filed an application under protest, but reference under Section 8 was not made. The learned single judge directed an enquiry whether notice under Section 12(2) and the award were served on the claimants as per the law then existing; if notice was not served, to take necessary action of reference. In writ appeal, it was confirmed. Thereafter, reference was made in O.P. No.198/90. application, I.A. No.285/91, was filed seeking remission of the reference on the ground that it was obtained fraudulently with the connivance of the Land Acquisition Officer and was barred by limitation. The Additional District Judge by order dated October 23, 1991 dismissed the application. An I.A. was filed for impleading other persons, respondent Nos.3 to 103, and the application was allowed by the District Judge. On the basis thereof, the reference was answered by enhancing the compensation ranging between Rs.3,000/- to Rs.2,000/- per acre. On appeal, the Division Bench in the impugned judgment has confirmed the enhanced compensation. Thus this appeal, by special leave.

When the matter had come up before us, we issued notice to the counsel for the State to produce the Acquittance

Registers. Pursuant thereto, the Acquittance Registers have been produced which establish that on the day when the award came to be passed, the claimants were present and the amount was received by them without protest on November 25, 1965 and two of them, who were not present on that day, received the compensation two days thereafter, namely, November 27, 1965. Under these circumstances, the question arises: whether the reference application came to be made within two months from the date of the award?

The proviso to sub-section (2) of Section 18 speaks thus:

"(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 period shall first expire."

Thus it could be seen that when the parties were present at the time when the award came to be made, the notice under clause (b) of proviso to sub-section (2) of Section 18 was not necessary. As a consequence, within six weeks from the date of the award an application is required to be made for reference under Section 18. If the amount is received without protest, by operation of second proviso to sub-section (2) of Section 31, such person who has received the amount without protest is not entitled to seek a reference under section 18.

Shri C. Sitaramiah, learned senior counsel appearing for the respondents, contends that on the Division Bench's directing to make an enquiry into the matter, the Land Acquisition Officer himself has referred the matter. Unless there is proof of service of the notice of the award under sub-section (2) of Section 12, the limitation does not start. We are unable to agree with the learned counsel. It is now settled law that it is not necessary that the award or its copy should be served on the parties under 12(2) of the Act. If the parties are not present on the date the award came to be passed, then Collector/Land Acquisition Officer shall give immediate notice of his award. The limitation begins to run from the date of the notice as per proviso to Section 18(2). The date of the award and the date of the receipt of the compensation was incidentally the same date. Under these circumstances, it must be presumed that they were present on the date when the award was made and the compensation was received without any protest. Under these circumstances, they are not entitled to seek any reference.

No doubt they had filed the writ petition in the High Court for seeking reference. But the High Court's order was only for making reference on verification and to find out correct factual position. The officer himself was in collusion with the claimants and without making any enquiry he made the reference. Subsequently, some persons were impleaded to the reference. That itself indicates that all

was not going well. It is now settled position in law that the claimants who receive the compensation under protest and who make application under Section 18(1), alone are entitled to seek a reference: third parties, who have been impleaded, have no right to claim higher compensation by circumventing the process of reference under Section 18. Under these circumstances, the reference itself is without any Jurisdiction and barred by limitation. Thereby, the award of the reference court is clearly illegal. On appeal, the High Court has not considered all these perspectives and found it convenient to rely on another judgment to uphold the award of the civil court.

The appeal is accordingly allowed. The Judgment and award of the reference court as well as that of the High Court stand set aside. No costs.

JUDIS