

CASE NO.:
Appeal (civil) 5354 of 2006

PETITIONER:
P.K. Sreekantan & Ors

RESPONDENT:
P. Sreekumaran Nair & Ors

DATE OF JUDGMENT: 04/12/2006

BENCH:
Dr. ARIJIT PASAYAT & S.H.KAPADIA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No.2896 of 2003)

Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment of the Division Bench of the Kerala High Court allowing the appeal filed by the respondent Nos. 1 & 2 while dismissing the appeal filed by the appellants and the State.

Background facts in a nutshell are as follows:
An extent of 2.81.20 Hectares of land comprised in Survey No.1780/1, 1780/4, 1780/9, 1781/1,8,9, 1889/1,2 of the Kadakampally Village was acquired for the purpose of establishment of E.E.C. market at Anayara. Notification under Section 4(1) of the Land Acquisition Act, 1894 (in short the 'Act') was published on 29.5.1992. The possession of the land was taken on 23.7.1992 and an award was passed on 13.7.1992 fixing a total compensation of Rs.45,08,111/-. Dissatisfied with the compensation awarded, applications were filed before the Land Acquisition Officer for referring the matter for adjudication to the Reference Court.

The District Collector by his letter dated 18.7.1994 forwarded the relevant records in respect of the matter for determination under Section 18 of the Act. Along with the said letter, the names and addresses of the interested parties, who had filed the reference applications, were also furnished in the separate sheet attached. As per the sheet attached with the said covering letter, the appellant no.1-P.K. Sreekantan submitted his application dated 4.8.1993. Respondent no.1 P. Sreekumaran Nair submitted his application dated 26.8.1993 and the claimants 3, 4 and 5 submitted their applications on 4.8.1993. The reference application dated 4.8.1993 was given by the appellant no.1 pursuant to the receipt of the award notice dated 13.7.1993 whereby the claimant was informed of the compensation awarded for the property acquired from him. In the said reference application it was stated that an extent of 86 Ares and 41 Sq. metres of property out of the total extent of 2 acres and 41 = cents of property comprised in Survey No.1889 of Kadakampally Village was obtained by him by virtue of the partition deed dated 21.2.1975. It was specifically pleaded that the property is situated in an important locality within city limits having road frontage and easy access, it is a building site and a garden land and it shall fetch a minimum

market value of Rs.5,000/- per cent. It was further stated that the compensation awarded by the Land Acquisition Officer is too low and meager considering the importance of the locality. The award amount was claimed to have been received under protest and, therefore, the Land Acquisition Officer was requested to refer the matter to the Reference Court for adjudicating the land value. Similar claims were made by the other applicants as well. From the reference application so submitted it could be seen that the dispute was only regarding the amount of compensation awarded to the respective land acquired from each one of the applicants, as according to them, amount awarded is low compared to the market value.

Pursuant to the reference so made by the District Collector, the Reference Court issued notice to the parties whereupon the parties filed their respective statements.

Various questions were raised in the appeals which were filed before the High Court. In the appeal filed by the present respondents 1 & 2 it was contended that the Court below has no jurisdiction to go beyond the issues of reference. It had exceeded its jurisdiction in going beyond the issues raised in the reference applications and adjudicating disputes not raised by the parties in the reference applications. The appeal by the present appellant related to the appropriation of the compensation awarded. State's appeal essentially was against the valuation. As noted above, the appeal filed by the respondent Nos. 1 & 2 was allowed with the following observation:-

"In the light of the principles as laid down in the above decisions and in the absence of any reference made on the question regarding the extent of the land acquired from each of the claimants and in the absence of any dispute regarding the apportionment of the amount and in view of the fact that the only question that is referred by the District Collector is regarding the claim for enhancement of the compensation for the land acquired as shown in the award, we find that the court below had no jurisdiction to entertain the dispute regarding the extent of the land acquired from each of the claimants.

Hence we set aside the judgment and decree of the court below so far as it proceeded to determine the questions which are not referred to it. The parties will be entitled to compensation for the extent of the land acquired from them as shown in the award at the rate fixed by the court below."

During the pendency of the appeal before this Court the original respondent No.2\026K.P. Saraswathy Amma died and her legal heirs were substituted by order dated 23rd January, 2004 passed in I.A. No.1 of 2003.

In support of the appeal, learned counsel for the appellants submitted that the Collector was required to refer the actual dispute between the parties and merely because the question of inter se appropriation was not referred, that did not exclude the jurisdiction to decide that issue. Reference in

this context was made to Section 31 of the Act.

Learned counsel of the respondents on the other hand took the stand that in a reference in terms of Section 18 of the Act there is no scope for adjudicating the inter se dispute relating to aforesaid matter. That is a matter covered by Section 30 of the Act.

Sections 18 and 30 of the Act read as follows:

"18. Reference to Court.--(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:

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.

30. Disputes as to apportionment.--When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court."

The reference court derive jurisdiction from the reference made. References under Section 18 and Section 30 are conceptually different from each other. The decree in terms of Section 18 is different from the one in terms of Section 30. Remedy available in terms of Section 55 of the Act is against a decree. The question whether reference court can deal with the question covered by Section 30 of the Act in a reference made under Section 18 of the Act and vice versa has been the subject matter of judicial determination. In (Rai) Pramatha Nath Mullick Bahadur v. Secy. of State (AIR 1930 PC 64) it was held that the jurisdiction of the courts under the Act is a special one and strictly limited to the terms of Sections 18, 20 and 21. It only arises when a specific objection has been taken to the Collector's Award and it is confined to a consideration of that objection. Therefore, it is certain that when the only objection taken is to the amount of compensation that alone is the matter referred and the Court has no jurisdiction to determine or consider anything beyond it.

In Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. v. Allahabad Vikas Pradhikaran and Anr. (2003 (5) SCC 561) the question related to the exercise of jurisdiction under Section 30 of the Act vis-à-vis Section 18. Determination in terms of Section 30 has settings of a decision in the partition suit. In Ajjam Linganna and Others v. Land Acquisition Officer, Revenue Divisional Officer, Nizamabad and Others. [2002 (9) SCC 426] it was held that the Reference Court has no power to convert the reference under Section 30 into one in Section 18 of the Act at the instance of those who did not apply for reference earlier.

Every tribunal of limited jurisdiction is not only entitled but bound to determine whether the matter in which it is asked to exercise its jurisdiction comes within the limits of its special jurisdiction and whether the jurisdiction of such tribunal is dependent on the existence of certain facts or circumstances. Its obvious duty is to see that these facts and circumstances exist to invest it with jurisdiction, and where a tribunal derives its jurisdiction from the statute that creates it and that statute also defines the conditions under which the tribunal can function, it goes without saying that before that tribunal assumes jurisdiction in a matter, it must be satisfied that the conditions requisite for its acquiring seisin of that matter have in fact arisen. As observed by the Privy Council in Nusserwanjee Pestonjee v. Meer Mynooddeen Khan LR. [(1855) 6 M.I.A. 134 (PC)], wherever jurisdiction is given to a court by an Act of Parliament and such jurisdiction is only given upon certain specified terms contained in that Act 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. [See: Mohammed Hasnuddin v. State of Maharashtra (1979 (2) SCC 572)]

In Kothamasu Kanakarathamma and Others v. State of Andhra Pradesh and Others (AIR 1965 SC 304) it was held as follows:

"All the same since the point was permitted to be urged before it by the High Court and has been raised before us on behalf of the State it is necessary to decide it. On behalf of the appellants it was contended before the High Court that by reason of the failure of the State to raise the plea before the Subordinate Judge as to the absence of a reference the State must be deemed to have waived the point. The High Court accepted this argument upon the view that this was not a case of inherent lack of jurisdiction and that the defect in the procedure was such as could be waived. In our opinion the view of the High Court is not correct. Section 12(1) of the Land Acquisition Act provides that after an award is filed in the Collector's office it shall, except as provided in the Act, be final and conclusive evidence as between the Collector and the persons interested of the true area and value of the land and the apportionment of the compensation among the persons interested. The only manner in which the finality of the award can be called into question is by resort to the provisions of Sec.18 of the Land Acquisition Act, sub-section (1) of which reads thus :

"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."

The proviso to sub-section (2) prescribes the time within which an application under sub-s. (1) is to be made. Section 19 provides for the making of a reference by the Collector and specifies the matters which are to be comprised in that reference. Thus the matter goes to the court only upon a reference made by the Collector. It is only after such a reference is made that the court is empowered to determine the objections made by a claimant to the award. Section 21 restricts the scope of the proceedings before the court to consideration of the contentions of the persons affected by the objection. These provisions thus leave no doubt that the jurisdiction of the court arises solely on the basis of a reference made to it. No doubt, the Land Acquisition Officer has made a reference under s. 30 of the Land Acquisition Act but that reference was only in regard to the apportionment of the compensation amongst the various claimants. Such a reference would certainly not invest the court with the jurisdiction to consider a matter not directly connected with it. This is really not a mere technicality for as pointed out by the Privy Council in *Nusserwanjee Pestonjee & Ors. v. Meer Mynooddeen Khan Bahadoor*, 6 Moo Ind App.134 at p.155(PC) wherever jurisdiction is given by a statute and such jurisdiction is only given upon certain specified terms contained therein it is a universal principle that those terms should be complied with, in order to create and raise the jurisdiction, and if they are not complied with the jurisdiction does not arise. This was, therefore, a case of lack of inherent jurisdiction and the failure of the State to object to the proceedings before the court on the ground of an absence of reference in so far as the determination of compensation was concerned cannot amount to waiver or acquiescence. Indeed, when there is an absence of inherent jurisdiction, the defect cannot be waived nor can be cured by acquiescence."

Above being the position, the High Court's view that it was impermissible to deal with the matter covered under Section 30 of the Act while dealing with a reference in terms of Section 18 of the Act is irreversible.

However, it is to be noted that there is no time limit for seeking reference under Section 30 of the Act, though it

should always be done within a reasonable time. The reasonableness of time flows from the need for a finality to judicial proceedings.

In the background of the facts situation of the present case, it would be appropriate to permit the appellants to make an application before the competent Land Acquisition Authority seeking reference in terms of Section 30 of the Act. If that is done, the necessary reference shall be made expeditiously. The amount in deposit shall be transmitted to the concerned court. It shall be open to the parties to seek withdrawal of such portion of the awarded amount in deposit on such terms as may be deemed proper by the said Court. Learned counsel for the parties stated that motion shall be moved for getting withdrawal with security. That is an aspect that the concerned court shall deal with in accordance with law.

Appeal is dismissed except to the extent indicated. No costs.