

A

RAM KALI BHATTACHARJEE

v.

STATE OF WEST BENGAL

JULY 25, 1995

B

[K. RAMASWAMY AND K. S. PARIPOORNAN, JJ.]

*Land Acquisition Act, 1894/West Bengal (Requisition and Acquisition) Act II of 1948 :*

C

*Sections 18(2)/11. 12(2)/Section 4—Reference Applications made—High Court holding that they were beyond limitation—Due to paucity of evidence controversy could not be decided—Matter referred to Reference Court.*

D

Certain lands were acquired under the West Bengal (Requisition and Acquisition) Act II of 1948 and the Collector made an award. Claimants preferred a reference and the Civil Court enhanced the compensation. The State went in appeal and the High Court noticed that the reference applications were made beyond limitation and that therefore the award of the Civil Court was held to be without jurisdiction.

E

In these appeals by certificate the appellant contended that when the award was signed by the Collector on March 29, 1951, the service of notice under S.12 (2) of the Act on February 6, 1951 was not correct and so the Reference Applications made on June 26, 1951 and September 7, 1951 were valid and within limitation.

F

Disposing of the appeals, this Court

**HELD :**1. It is not desirable to decide this controversy without and factual foundation. The appropriate course would be that the Reference Court should go into the questions : [312-C]

G

(1) What is the date on which the award as required under s.12 read with S.11 was made by the Land Acquisition Officer, in accordance with laws, and notice as required under s.12(2) were served on the claimants, if they are not present or appeared through counsel at the time of announcing the award under s. 11.

H

[312-D]

(2) What are the dates on which the applications under s.18 came to be filed by the claimants and to decide whether the applications are within the limitation as provided under the proviso to s.18(2) of the Act? [312-E] A

2. The matter is referred to the Reference Court, firstly to decide whether the Reference Applications were made within limitation in accordance with law. If the finding is in favour of the claimant, then it has to decide the compensation according to law. Since it is an old matter the Reference Court is directed to dispose of the matter within 6 months from the date of the receipt of the order. [312-G] B

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1807-09/78. C

From the Judgment and decree dated the 28th September, 1977 of the High Court at Calcutta in appeal from original Decree Nos. 338 of 1958, 339 of 1958 and 340 of 1958. D

P.S. Poti, Rathin Das, S. Murlidhar and S.K. Mehta for the Appellants.

Tapas Ray and Ms. Aruna Banerjee for Respondents. E

The Order of the Court was delivered :

This is an appeal by Certificate under Article 133(1) against the Order of the High Court dated 28th September, 1977 of Calcutta High Court. F

The only question in this appeal is whether the Reference Applications made by the appellant were within the limitation as provided under the proviso to s.18(2) of the Land Acquisition Act, 1894 (for short 'The Act'). The Notification under s.4 of the West Bengal (Requisition and Acquisition) Act II of 1948 was published on April 10, 1949. The record would indicate that the Land Acquisition Collector appears to have made the award on March 22, 1951 and appears to have signed the same on March 29, 1951. We are not giving any finding in that behalf. Dissatisfied therewith the claimants sought for reference and the Civil Court enhanced the compensation. The State went in appeal to the High Court. The Division Bench noticed that the reference applications were made beyond G H

A limitation and that therefore the award of the Civil Court was held to be without jurisdiction. Thus, this appeal by Certificate.

B Shri Poti, the learned senior counsel for the appellant contended that when the award itself was signed by the Collector on March 29, 1951, the service of the notice under s.12(2) of the Act on February 6, 1951 appears to be not correct and so the Reference Applications which came to be made on June 26, 1951 and September 7, 1951 are valid and within limitation and the High Court was not justified in holding that Reference Application were beyond limitation.

C Having considered the paucity of evidence in this behalf, we find that it is not desirable to decide this controversy without any factual foundation. We think that an appropriate course would be that the Reference Court should go into the question :

D (1) What is the date on which the award as required under s.12 read with s.11 was made by the Land Acquisition Officer, in accordance with laws, and notice as required under s.12(2) were served on the claimants, if they are not present or appeared through counsel at the time of announcing the award under s.11?

E (2) What are the dates on which the applications under s.18 came to be filed by the claimants and to decide whether the applications are within the limitation as provided under the proviso to s.18(2) of the Act?

F Since these questions hinge upon the finding of fact and since no positive finding could be recorded in this behalf on the basis of evidence on record. We hold that the Judgment of the High Court was not correct. Accordingly, it is set aside and the award and decree of the Reference Court is also set aside. The matter is referred to the Reference Court, firstly to decide whether the Reference Applications were made within limitation in accordance with law. If the finding is in favour of the claimant, G then it has to decide the compensation according to law. Since it is an old matter the Reference Court is directed to dispose of the matter within 6 months from the date of the receipt of the order of this Court.

The appeals are disposed of in above terms.

G.N.

Appeals are disposed of.